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ACAE HOUSE JOURNAL

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

BUDGET

INCOME TAX

COMPANIES ACT

GST

Highlights

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ET Bengal Corporate Awards presented by ACAE celebrated its sixth year on 16th March, 2018 at The Taj Bengal, Kolkata

Group photographs of ACAE Members

Cross-section of the audience

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Editorial

Dear Members,

To begin with, I would like to quote a famous Ghanaian Diplomat, Kofi Annan, "Knowledge is power, information is liberating, education is the premise of progress – in every society, in every family." With immense delight and happiness, we present you with the issue of ACAE Journal for the month of April, 2018, inaugurating the New Financial Year.

This Journal shall cover the major changes, reforms and applicability of the recent laws and regulations. We are delighted to present before you, our new issue on the recent amendments related to Beneficial Interest under Companies Act, 2013, impact of GST valuation on sharing of cost between group companies, GST on transportation of goods & highlights of the Finance Bill, 2018.

The applicability of GST has brought a bundle of changes in the accounting atmosphere, which shall hence form a major part of this Journal. The Journal comprises of the several developments in the GST law so far and expectations from GST front in 2018. As a whole, more revenue to the Government and benefits to the business, industry and consumers is expected because of a more transparent and tax compliant structure of GST.

The Journal shall cover the highlights of the Finance Bill, 2018. It contains the major changes in the tax rates and definitions. The focus of Union Budget 2018 was on the rural sector, but there was also something for other stakeholders. For example, a Standard Deduction of ₹ 40,000 for salaried taxpayers and increase in exemption on interest income for senior citizens will help increase their disposable income. Bringing more micro, small and medium enterprises into the ambit of the lower 25% corporate tax rate which will help boost their profitability and ability to invest.

Our focus is on new ideas and facts which would help enlighten all of us. We hope that this Journal will be able to cover the relevant matters and provide valuable knowledge on the same. The copy of the Journal shall also be available on our website.

It is rightly quoted by Swami Vivekananda, "All knowledge that the world has ever received comes from the mind; the infinite library of the universe is in our own mind". In the light of this Quote, we request Members to share their observations and feedback on their experience with this Journal, helping us work on the improvement in the construction and contents of the Journal and will also serve as a tool for continuous learning.

We wish to encourage more contributions/ suggestions/feedback from the Members to ensure continued success of the Journal.

Thank you. We hope you will find this Issue informative.

From

Editorial Board

April, 2018

President Speaks

Dear Members,

To begin with, I would like to quote L. Frank Baum, an American Author, "No thief, however skilful, can rob one of knowledge, and that is why knowledge is the best and safest treasure to acquire."

I hope the past year has been prosperous and fruitful to you all. I, on behalf of Team ACAE, extend our warmest wishes, and hope this New Year brings you greater success in your endeavour.

Recent discomforting acts and frauds in the financial sector indicates towards a certain need to enlighten ourselves on the related topic of forensic audit which was conducted by us in January, deliberated by CA Veena Hingarh & CA Vivek Agarwal.

In view of the Government's highly claimed efforts on curbing benami transactions and zero tolerance to black money, a lecture meeting was conducted on "Examining Benami Transactions in the backdrop of Zero Tolerance to Black Money", deliberated by none other than CA (Dr.) Girish Ahuja.

A panel discussion on "Swift Transactions – Cause, Effect, Risks and Audit" was addressed by various heads of major banks and eminent Chartered Accountants.

Like a mother carrying her child in her womb, the nation has been carrying the wonder child GST for more than nine months now. To explain the various technical aspects, a series of seminars/ workshops/ lecture meetings/ panel discussions were organised. A seminar on the Union Budget was also organised with a great success.

The sixth year of the Award Ceremony "ET Bengal Corporate Awards" presented by ACAE reflected inspiration and enthusiasm on the part of The Economic Times. The Jury comprised of personalities from various fields viz. Mr. T. V. Mohandas Pai, Chairman - Manipal Global Education, Mr. P. R. Ramesh, Chairman - Deloitte India, Mr. Ashok Banerjee, Professor of Finance - IIM Calcutta, Mr. Pulak Ghose, Professor of Decision Sciences and Information Systems - IIM Bangalore and Mr. Javed Sayed, Deputy Executive Editor - The Economic Times. Indian Visionary Award was conferred to Mr. Kishore Biyani, Founder & amp; Group CEO - Future Group and Lifetime Achievement Award was presented to Mr. S. K. Roy, Managing Director - Peerless General Finance & amp; Investment Co. Ltd. Dr. Amit Mitra, Minister-in-Charge of Finance, Industry and Commerce - Govt. of West Bengal, was the Guest of Honour.

As the early proverb goes "All work and no play, makes Jack a dull boy", the ACAE had organised a corporate stress buster dance session at SanghVi Camac Street Studio and a Inter CA Study Circle Cricket Tournament to lighten the pressure and work load faced by the students, Professionals & Executives. It has been observed and noted that alongwith excellent preparations a student also needs to master his emotional intelligence in order to achieve a superior work life balance and hence programme on mastering emotional intelligence was conducted alongwith a Workshop on Stress Management which dealt with counselling and new techniques & life skills by reputed Psychologists to help the Members and Students.

I convey my special thanks to the Editorial Board, and specially CA Niraj Harodia for their untiring efforts in bringing out the Journal, and I congratulate them for such a wonderful collection. We hope to continue publishing Journals on significant topics which will be highly beneficial to all Members. I sincerely hope this Issue will be appreciated by our Members. Suggestions are most welcome.

Warm Regards,

CA Arun Kumar Agarwal
President
27th April, 2018

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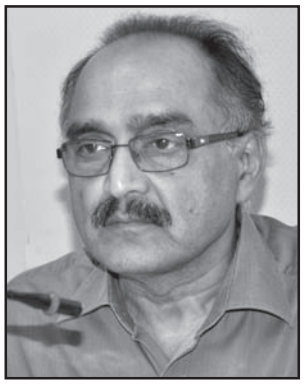

Finance Bill, 2018
Discussion on certain proposed Income-tax Amendments

CA Sanjay Bhattacharya

On going through the Finance Bill, 2018 it is observed that almost one hundred amendments have been proposed by way of insertions, amendments or omissions of various provisions of the Income-tax Act, 1961. Some of the proposed amendments will have substantial effect in the computation of income-tax liability of an assessee. These proposals can be segregated into certain categories like – (1) Individuals including Salary earners, Pensioners and Senior citizens, (2) Capital gains, (3) Computation of Business income, (4) Company taxation, (5) Deductions from Gross Total income, (6) Dividend/Income and Dividend distribution/Income distribution Tax, (7) Computation of Applications of Income for Charitable/Religious Trusts/Institutions, (8) Penalty and Prosecution, (9) Processing and Assessment of income and (10) Applicability of specific requirements under the Income Computation and Disclosure Standards (ICDS). In this write up an attempt is being made to discuss some of the proposed amendments in Income-tax.

1. **Individuals**

(a) Income chareable under the head 'Salaries' – In relation to income chargeable under the head "Salaries" a straightway deduction of Rs.40,000 in computing the taxable Salary, has been proposed by inserting clause (ia) in section 16 with effect from the Assessment Year 2019-20. If the concerned employee is in receipt of Conveyance Allowance for which presently am exemption of Rs.1,600 per month is available, then such exemption will no more be available. However, the existing exemption of Rs.3,200 per month out of the Conveyance Allowance granted to any physically challenged person, is not being withdrawn. Presently, medical reimbursements against actually incurred medical expenses aggregating to Rs.15,000 are not considered as taxable perquisite in the hands of the recipient employee. This non-taxability will also be withdrawn. It appears that those employees who have been receiving the above two benefits, viz., Conveyance Allowance and Medical Reimbursement, will get the extra deduction of Rs.5,800 [Rs.40,000 – (19,200+15,000]. However, all other employees who are not presently receiving the above-mentioned two benefits, will be able to save tax on Rs.40,000. Further, all the Pensioners will get the benefit of deduction of Rs.40,000 from their respective incomes chargeable under the head "Salaries". It is felt that this new provision for allowing Standard Deduction of Rs.40,000 should be considered as a very welcome step for the persons having income chargeable under the head "Salaries".

(b) Senior Citizens – The deduction u/s 80D for Medical premium has been proposed to be increased from the present limit of Rs.30,000 to Rs.50,000 w.e.f. Assessment Year 2019-20. In relation to the Interest income, instead of the presently available deduction upto Rs.10,000 u/s 80TTA in respect of interest earned from Saving Bank Accounts, interest on all types of deposits with banks including co-operative banks as well

as Post offices, will be deductible upto Rs.50,000 u/s 80TTB w.e.f. Assessment Year 2019-20. Further, the relevant TDS provisions u/s 194A are also being proposed to be amended so that in case of a senior citizen there will be no TDS on interest to the maximum limit of Rs.50,000 payable in relation to the deposits. No doubt, the above two proposals are really beneficial for the senior citizens by way of reduction in their Tax liabilities. The amendment proposed in the TDS provisions will save a senior citizen from facing difficulties in obtaining the refund of TDS.

2. **Capital gains**

(a) Equity Shares and Units of Equity Oriented Mutual Funds (EOMF) – One of the most discussed proposal is in relation to the amendments proposed in the matter of computing the Long-term Capital Gain (LTCG) arising from transfer of Equity Shares and Units of EOMF w.e.f. Assessment Year 2019-20. Presently, if Securities Transaction Tax (STT) is paid at the time of transfer of any equity share or a Unit of EOMF, then LTCG arising therefrom is exempt from taxability u/s 10(38). The proposal is for omission of the above-mentioned exemption u/s 10(38). At the same time by way of insertion of a new section 112A, it is proposed to tax @10% of the LTCG exceeding Rs.1 lakh in a year where the relevant transfer of equity shares and/or Units of EOMF are subjected to STT. It has also been proposed that if the concerned equity share or the Unit of EOMF has been acquired before 1st February, 2018, then the higher of the Fair Market Value (FMV) of such share or unit as on 31st January, 2018 and the actual cost of acquisition, will be deemed to be the cost of acquisition for the purpose of determining the LTCG when the said share or Unit will be transferred in future. However, it has been mentioned that no indexation benefit will be considered for determining the LTCG. It has already been clarified by the Central Board of Direct Taxes (CBDT) that if there occurs a loss on transfer of any equity share or unit of EOMF, by taking into account the sale consideration and the actual cost of acquisition, then the resulting loss will be allowed to be set off against any other LTCG or the said loss will be allowed to be carried forward for set off. It is felt that the proposal for omission of the existing section 10(38) and the insertion of a new section 112A are having adverse effect on the capital market. However, keeping in view of the fact that there will not be many persons who will be having LTCG exceeding Rs.1 lakh from the transfer of Equity shares or Units of EOMF, most of the people will be unaffected by these proposals.

(b) Deduction on Investments – Presently, section 54EC allows deduction from LTCG arising from the transfer of any capital asset if within a period of six months from the date of transfer, investments are made in bonds issued by National Highway Authority of India and/or Rural Electrification Corporation Ltd. A new proposal has been made for restricting this benefit of deduction w.e.f. Assessment Year 2019-20 only in relation to transfer of immovable properties, i.e., building or land or both. Further, the bond to be issued on or after 1st April, 2018, will be redeemable after five years instead of the present requirement of three years.

3. **Business Income**

(a) Conversion of an Inventory item into a Capital asset – The Income-tax Act, 1961 presently contains the provisions in section 45(2) providing for the procedure to be followed in determining the tax liability when a Capital asset is converted into Inventory. However, there has not been any provision for the reverse situation, i.e., conversion of an Inventory item into a Capital asset. Now, by way of insertion of a new Clause (via) in section 28 w.e.f. Assessment Year 2019-20, a specific procedure has

been proposed for dealing with a situation where an Inventory item is converted into a Capital asset. On conversion of the Inventory into a Capital asset on a particular date, the FMV of that particular item has to be determined in a manner to be prescribed. This FMV will be considered as a Business income in the hands of the concerned assessee for the year of conversion. Thereafter when the converted item will be transferred, there will arise capital gain which is to be computed by reducing the sale consideration by the FMV determined on the date of conversion. The holding period of the converted Capital asset will be determined by considering the date of conversion as the deemed date of acquisition. So, if the actual disposal of the converted Capital asset occurs within a period of twelve months or twenty-four months, depending upon the nature of the concerned Capital asset as per section 2(42A), it has to be found out whether there has occurred a transfer of a Short-term Capital asset or a Long-term Capital asset. It is felt that this particular procedure in case of a conversion of an Inventory item into a Capital asset, has been overdue for being specifically inserted in the Income-tax Act, 1961. It appears that now the specified procedure will clarify this particular issue whereby litigations will be minimised.

(b) Presumptive Taxation in case of a Transporter – As per section 44AE a person owning not more than ten goods vehicles can offer presumptive income @Rs.7,500 per goods vehicle per month. Now it is proposed to bifurcate the goods vehicles on the basis of their respective gross vehicle weights. If a goods vehicle is having gross vehicle weight or unladen weight exceeding 12 Metric ton then the presumptive income will be Rs.1,000 per ton per month. So a goods vehicle having the weight of 13 Metric ton will have to offer the presumptive income of Rs.13,000 per month. In the case of a goods vehicle not having gross vehicle weight or unladen weight exceeding 12 Metric ton, the present procedure of offering Rs.7,500 per month per goods vehicle, will continue. The proposed bifurcation straightway increases the tax liability in relation to a goods vehicle having gross vehicle weight or unladen weight exceeding 12 Metric ton. In fact, till the Assessment Year 2014-15 there had existed two separate rates for the goods vehicle on the basis of their weight and with effect from the Assessment Year 2015-16 that bifurcation was abolished. Now again the proposal has come for charging more tax on heavy goods vehicle, i.e., goods vehicles weighing more than 12 Metric ton.

4. **Companies**

(a) Rate of tax – In pursuance of the Finance Minister's statement made earlier that tax rate for the Companies would be brought down from 30% to 25%, in the Finance Bill, 2018 specific proposals has been made in this regard. For the Assessment Year 2017-18 the rate of tax for Companies which had turnover not exceeding Rs.5 crore during the Financial Year 2014-15, was brought down from 30% to 29%. For the subsequent Assessment Year, viz., 2018-19 in respect of the Companies having annual turnover not exceeding Rs.50 crore during the Financial Year 2015-16, the rate of tax had been fixed at 25%. Now for the Assessment Year 2019-20 for a company whose annual turnover had not exceeded Rs.250 crore during the Financial Year 2016-17, the rate of tax will be 25%. The Finance Minister in his Speech stated that 99% of the existing companies will fall in this category and only around 7,000 companies would still be charged Tax @30%. This appears to be a big benefit for the Corporate sector. However, MAT rate (presently 18.5%) has not been proposed to be reduced.

(b) Companies undergoing Corporate Insolvency Resolution Process –

(i) In respect of companies falling under the above-mentioned category, for the purpose of computing the Book Profit u/s 115JB(MAT) w.e.f. Assessment Year 2018-19, the aggregate Brought forward Business Loss and Unabsorbed Depreciation as per the Books of Accounts, would be allowed to be reduced. Presently, only lower of the Brought forward Business loss and Unabsorbed depreciation as per the Books of Accounts are allowed to be reduced and the same will be continued for any company other than those which fall under the above-mentioned category.

(ii) The restrictions contained in section 79 for determining the eligibility to carry forward the Business loss and certain other losses to subsequent years depending upon the changes occurred in the shareholding, will not be applicable in case of the companies falling under the above-mentioned category.

(c) Foreign Companies-MAT applicability – It has been proposed to insert a new Explanation 4A in section 115JB with retrospective effect from the Assessment Year 2001-02, to provide that there would be no MAT applicability in case of a Foreign company where the said company's total income would comprise solely of profits and gains from Business referred to in section 44B or 44BB or 44BBA or 44BBB and such income is being offered to tax at the rates specified in those sections. This means that if a foreign company follows the procedure of presumptive taxation as specified in the above-mentioned four sections, such a company will not attract MAT applicability.

5. **Deduction under Chapter VIA**

(a) Deduction in respect of employment of new employees –

(i) There exists only one section in the Income-tax Act, 1961 which provides deduction in respect of employment of new employees and the said section is 80JJAA. According to section 80JJAA if a new employee is employed by an assessee to whom the Tax Audit provisions u/s 44AB apply, subject to the compliance of certain conditions, 30% of the additional employee cost would be deductible for three Assessment Years commencing from the year of such new employments. One of the conditions is that the employment should not be less than 240 days during the yea in which the employment commenced. By way of a proviso it has been provided that in case of an assessee which is engaged in the business of manufacturing of apparel, the limit of 240 days would be reduced to 150 days. Now it is proposed that w.e.f. the Assessment Year 2019-20 this relaxation to 150 days of employment will also be applicable in case of a person who is engaged in the business of manufacturing of footwear or leather products.

(ii) It has further been proposed to provide w.e.f. Assessment Year 2019-20 that where an employee is newly employed in the year of employment for a period less than 240 days or 150 days, as the case may be, but is employed in the immediately succeeding year for a period of 240 days or 150 days, as the case may be, then that particular employee shall be deemed to have been employed in the succeeding year and the provisions of section 80JJAA shall apply accordingly.

(b) Eligibility of deduction *vis-à-vis* furnishing of Return – Section 80AC provides that unless the

return of income is furnished before the due date as specified u/s 139(1), deduction will not be allowable u/s 80-IA or 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE. The above-mentioned six sections are contained in Part-C of Chapter VIA of the Income-tax Act, 1961. It has now been proposed that with effect from the Assessment Year 2018-19 that unless the return is furnished within the due date specified u/s 139(1), no deduction under any of the 15 specified sections under Part-C of Chapter VIA, will be allowed. It is to be noted that section 80JJAA which has been discussed hereinabove, also falls in this category. Further, in respect of a co-operative society where 100% deduction of profit from business is allowable u/s 80P, the eligibility for such deduction will be lost if the concerned co-operative society does not furnish its return of income within the due date specified u/s 139(1).

6. **Dividend/Income and Dividend/ Income Distribution Tax**

(a) Deemed Dividend u/s 2(22)(e) – As per the existing provisions if a company in which the public are not substantially interested, gives any advance or loan to any of its shareholders holding more than 10% shareholding or to a concern where such shareholder is having 20% interest then the amount of loan or advance, to the extent it does not exceed the accumulated profit of the concerned company, is considered as deemed dividend in the hands of the said shareholder. Chapter XII-D containing sections 115-O, 115P and 115Q, deals with the Dividend Distribution Tax payable by a company on declaration, distribution or payment of any dividend. As per the Explanation given in section 115Q the deemed Dividend u/s 2(22)(e) is not considered within the meaning of "Dividends" for the purpose of the above-mentioned Chapter XII-D. In view of the fact that deemed Dividend u/s 2(22)(e) is outside the purview of section 115-O (Dividend Distribution Tax), the exemption provided in respect of Dividend by section 10(34) is not available to the shareholder who is charged to tax on deemed Dividend. Now it is proposed w.e.f. Assessment Year 2018-19 by way of omitting the Explanation in section 115Q and inserting Provisos in sub-sections (1) and (1B) of section 115-O that henceforth if a company gives advance or loan to a shareholder having more than 10% shareholding the resulting deemed Dividend u/s 2(22)(e) would attract Dividend Distribution Tax @30% without grossing up and the concerned company will have to pay such Dividend Distribution Tax. Consequently, it is also understood that the tax liability on the deemed Dividend in the hands of the concerned shareholder would no more be there in view of the coverage of Dividend u/s 2(22)(e) under the exemption clause of section 10(34). It appears that since the taxability of deemed Dividend in the hands of the shareholder and/or any other concern, have been creating difficulties in litigations, the Government has decided to take an easy route for charging tax on deemed Dividend by way of Dividend Distribution Tax.

(b) UTI/Mutual Fund distributing Income – Presently, section 115R is containing provisions for Income Distribution Tax by UTI or Mutual Funds. The provisions of this section relating to Income Distribution Tax are not applicable in case of Income Distribution by any Equity Oriented Fund. It is now proposed that with effect from the Assessment Year 2018-19 an Equity Oriented Fund will have the responsibility to pay

Income Distribution Tax @10% on the Income distributed by it to any of its Unitholders. Further the Income Distribution Tax will have to be grossed up because of which the actual tax will be 13.184% of the Distributed income. It is felt that because of this new charge of tax, there may be proportionate reduction in the income to be distributed by UTI or any Mutual Fund in relation to Equity Oriented Fund.

7. **Charitable/Religious Trusts/ Institutions**

(a) Applicability of section 40(a)(ia) – In case of an assessee being of the above-mentioned categories the expenditure incurred by it for its objects is considered as Application of Income and to the extent of such Applications exemption is available. It is now proposed that with effect from the Assessment Year 2019-20, the provisions of section 40(a)(ia) will apply in determining the Applications. Section 40(a)(ia) provides that there will be a 30% disallowance of any expense in respect of which the applicable TDS provisions have not duly been complied with. Hence, in case of a Charitable Trust/Institution if there is any fault in complying with the TDS provisions then 30% of the relevant amount of expenditure would not form part of the "Applications" of Income during the relevant year.

(b) Applicability of section 40A(3)/(3A) – Similar to the applicability of provisions of section 40(a)(ia) as discussed hereinabove, the provisions of section 40A(3)/(3A) will also be applicable in determining the Applications of Income in case of a Charitable/Religious Trust/Institution. It means that with effect from the Assessment Year 2019-20 if any expenditure is incurred for which a payment exceeding Rs.10,000 is made on a single day otherwise than by Accounting Payee Cheque or through Account Payee Bank Draft then the relevant expenses will not be considered as forming part of Applications.

8. **Penalty and Prosecution**

(a) Penalty for failure to furnish Statement of Financial Transactions or Reportable Account u/s 285BA – Section 271FA provides that for failure to furnish a Statement of Financial Transactions (SFT) or Reportable Account (RA) u/s 285BA there will be levying of penalty of Rs.100 for every day during which such failure continues. It is further provided that if in spite of a notice issued u/s 285BA(5) for furnishing the SFT or RA, there occurs failure then the Penalty will be Rs.500 for every day during which the failure continues. It has now been proposed that with effect from the Assessment Year 2019-20 the existing leviable amounts of penalty of Rs.100 and Rs.500 will be enhanced to Rs.500 and 1,000 per day. It may be noted that the STF that is being referred to in section 285BA, is required to be filed within 31st May following the relevant Financial Year. The Provisions relating to the requirement of the STF and RA to be furnished, are contained in Rules 114E to 114H and the prescribed Forms are 61A and 61B. Last year, i.e., in 2017 the Income-tax Department by holding various meetings at several places, tried to make all the persons aware of the requirements of complying with the provisions of section 285BA. All persons coming under the purview of the provisions of section 285BA, should take necessary care for being saved from the imposition of these enhanced penalties.

(b) Penalty for furnishing incorrect information in Reports and Certificates u/s 271J – Section 271J providing for imposition of penalty of Rs.10,000 by the Assessing Officer or the CIT(Appeals) in case of furnishing of any incorrect information by an Accountant or Merchant Banker or Registered Valuer in any Report or

Certificate under the Income-tax Act, 1961 or Rules made thereunder, was inserted with effect from the Assessment Year 2017-18. However, there had not been any provision in the Act for filing of any Appeal against such imposition of penalty. Now it is proposed to provide with effect from the Assessment Year 2018-19 that in a case of a penalty u/s 271J imposed by the CIT(Appeals), the concerned assessee will have to right to file an Appeal against such imposition before the ITAT. However, it is very surprising that no provision has been made for filing of an Appeal against the Order of Penalty u/s 271J that may be passed by an Assessing Officer. It appears to be a lacuna and so it is expected that it will be suitably corrected at the time of enacting the provisions of the Finance Bill, 2018.

(c) Prosecution for failure to furnish Return of Income u/s 276CC – As per the existing provisions, for initiating the prosecution proceedings a threshold minimum limit of tax of Rs.3,000 is provided. It is now proposed that with effect from the Assessment Year 2018-19 in respect of a company there will no more be any threshold minimum limit of Rs.3,000 and so even if there will be no tax payable by a company, the prosecution proceedings u/s 276CC can be initiated.

9. **Processing of Return and Assessment of Income**

(a) Processing and Intimation u/s 143(1) – Presently as per section 143(1)(a) certain specified adjustments can be made to the Returned Income for processing the Return and one of those adjustments is "Addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return". So, just on the basis of variance of incomes as per the return of income in comparison to Form No.26AS, the Processing Centre of the Income-tax Department is empowered to add incomes. This has been creating great difficulties for the assessees since it is not always the case where whatever credits or payments are reflected in Form No.26AS, has to be compulsorily considered as any income taxable in the relevant year. On appreciating this problem it is now proposed with effect from the Return to be filed for the Assessment Year 2018-19, to omit this particular adjustment by the Processing Centre of the Income-tax Department for the purpose of processing and issuing Intimations u/s 143(1). It is felt that this a very correct step taken by the Ministry of Finance to save the assessees from undue harassments.

(b) e-Assessment proceeding – By inserting w.e.f. Assessment Year 2018-19, three new sub-sections (3A), (3B) and (3C) in section 143, it is proposed to make a Scheme for the purpose of making assessment of total income/loss of the assessees u/s 143(3) so as to impart greater efficiency, transparency and accountability by eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible, optimising utilisation of the resources through economies of scale and functional specialisation and introducing a team-based assessment with dynamic jurisdiction. It is understood that this proposal is being made for expanding the scope of e-assessment through correspondences made electronically in between the Assessment Officers and the assessees. If this scheme is efficiently made and appropriately implemented, it is expected that there will appear real transparency in the matter of assessments.

10. **Income Computation and Disclosure Standards (ICDS)**

It is expected to be known by all the assessees that by the Income

Computation and Disclosure Standards (ICDSs) notified by the Government in pursuance of section 145(2) specific requirements have been prescribed for compliance in computing the income taxable under the heads 'Profits and gains of Business or Profession' and 'Income from Other Sources' for the year. On going through the ICDSs it has been observed that in relation to certain issues there are substantial variances in the methods of accounting followed by different classes of assessees. There had been a challenge in the Court against the validity of the Government's notification for ICDSs. The Hon'ble Delhi High Court in the case of Chamber of Consultants and Another v. Union of India [400 ITR 178(Del)], held the ICDSs ultra vires. So there arose a situation where the Government's desire of implementing the ICDSs was obstructed. So, now the Ministry of Finance has proposed to insert all the ICDSs provisions in the Act itself so that such provisions are backed by the statute itself. The proposed insertions and amendments made by the Finance Bill, 2018, have been made retrospective from the Assessment Year 2017-18 so that the Government's original desire of implementing the ICDSs provisions form the said Assessment Year, is fulfilled. Details of the ICDSs provisions which are proposed to be incorporated for the Act, are not being discussed here since it will require item-wise deliberations. Just to give some examples of ICDSs provisions, a few instances are being mentioned hereunder.

In recognising the revenue for construction contract and/or any other service, it will be required to follow the Percentage of Completion method. For recognising the income, in case of a construction contract as well as service contract, Retention Money, if any, will have to be taken into account. In relation to a construction or a service contract as soon as 25% of the relevant work will be performed, it will be compulsorily required to recognise the proportionate income. Marked to Market losses or expected loss shall not be recognised unless recognition of such losses will be in accordance with any particular ICDS. Where shares are traded, in valuing the stock of shares a category-wise valuation will have to be made on the basis of the lower of the aggregate costs and aggregate net realisable values. Besides, these issues there are some other issues also where differences in methods are observed in comparison with the accounting procedure followed. Since now all these ICDSs requirements will be as per the statute itself, it is felt that these provisions are to be re-looked by the assessees as well as their tax consultants. All assessees, who had not complied with the provisions of ICDSs while filing their Returns of Income for the Assessment Year 2017-18, should consider whether it would be advisable for them to file Revised Returns of Income for the said Assessment Year 2017-18.

Conclusion

There are certain others proposals also made in Finance Bill, 2018 Since it is not possible to discuss each and every proposal, only some of the proposals are being discussed. However, one particular proposal which affects all the assessees should also be mentioned here. This is in regard to the increase in the Cess payable by each assessee. As per the existing provisions, we now pay 3% Cess comprising of 2% Education Cess and 1% Secondary and Higher Education Cess. With effect from the Assessment Year 2019-20 there will be a new Cess under the name and style of Health and Education Cess and the rate of the said Cess will be 4% of the Income-tax liability including the applicable Surcharge.

Satisfaction lies in the effort not the attainment. Full effort is full victory.

– Mahatma Gandhi

Budget analysis :

Highlights of the Finance Bill, 2018

Narayan Jain
LL.M. Advocate and **Dilip Loyalka**, FCA

1. TAX RATES :

1.1 Cess on Income Tax Increased from 3% to 4%

Education and Higher education Cess of 3% on Income Tax and surcharge has been replaced by **Health and Education Cess of 4%.**

The Comptroller and Auditor General (CAG) has highlighted the non-utilisation of cess collected for secondary and higher education in its report on the financial audit of the accounts of the Union government. It has pointed out :

"Against the total collection of 83,497 crore as Secondary and Higher Education Cess (SHEC) in the Consolidated Fund of India during 2007-2008 to 2016-2017, no amount could be transferred to the earmarked fund in public account,".

The CAG report said that was because **neither the schemes on which the cess proceeds were to be spent were identified nor was the designated fund opened in the public account to deposit the proceeds of the SHEC**.

Divisible Pool : It may be noted that Cess is not part of divisible pool so the States are not given any share from collection of Cess. The FM has estimated collection from Cess at Rs. 44000 Cr in Finance Bill 2018.

Give chance to a simple tax Regime : Various kind of **Cess** and **levy of Surcharge** tend to complicate the tax system. It is high time that we say good bye to the same.

1.2 Long Term Capital Gain

Exemption of Long Term Capital Gain on Listed Shares or Units of an Equity Oriented Mutual Fund or Unit of a business Trust U/s 10(38) has been withdrawn w.e.f. AY 2019-20.

However for computing Long Term Capital Gain on transfer of equity Shares or units of equity oriented mutual fund or unit of business trust **on which STT is paid** on such transfer shall be computed by taking **Fair Market Value of the asset as on 31st January, 2018** or **sale price of the share**, whichever is lower, as **cost of acquisition** and in case the actual cost of acquisition is higher than such price, the actual cost shall be taken as cost of acquisition. No benefit of indexation will be allowed on such transfer.

However the Long term Capital gain on these assets shall remain exempt to the extent of Rs. 1,00,000/- and shall be charged to tax @ 10% on balance of LTCG as per **new section 112A**.

Share market has adversely reacted to LEVY OF TAX ON LTCG.

LTCG shall be payable in respect of listed shares and Units of Equity Oriented funds sold on or after 1.4.2018.

On sale of Equity shares and units the concessional rate of 10% will apply only if STT has been paid on purchase as well as on sale of such assets. However some people might have acquired such shares by way of Public

Issue. Proposed Section 112A(4) empowers the Central Government to notify the nature of acquisition in respect of which it will not be necessary to make payment of STT in case of acquisition of shares.

On sale of Units of Equity shares it will be required to pay STT on its transfer otherwise benefit of concessional rate of 10% will not be available apply only if STT

Relevance of FMV as on 31.01.2018 :

If any share is sold on or after 1.4.2018, the FMV (highest price on the stock exchange) as on 31.1.2018 or actual cost whichever is higher will be deducted from sale consideration and on the balance LTCG tax shall be payable @10%.

In case any share is lot listed, the FMV shall be based on the net asset value of such asset as on 31.1.2018.

For Example If an assessee has purchased shares of X Ltd and sold the same as per undermentioned details, the gain shall be computed as under:

Particulars	Situation 1	Situation 2	Situation 3
Date and Cost of Acquisition	01.04.2007, Rs. 1,00,00,000	01.04.2007, Rs. 2,00,00,000	01.04.2007, Rs. 7,00,00,000
Fair market Value as on 31.01.2018	Rs. 5,00,00,000	Rs. 5,00,00,000	Rs. 5,00,00,000
Sale of shares on or after 01.04.2018	Rs 4,00,00,000	Rs 5,50,00,000	Rs 6,00,00,000
Cost of Acquisition for Computing Capital Gain	Rs 4,00,00,000	Rs 5,00,00,000	Rs. 7,00,00,000
Capital Gain	Nil	50,00,000 minus exempts Rs. 1 Lakhs u/s 112A	Loss (1,00,00,000)
Tax	Nil	4,90,000	Nil

1.3 Tax on Certain Companies

Companies having turnover not exceeding Rs. 250 crores for FY 2016-17 shall be taxed @ 25% for AY 2019-20. The concessional rate of 25% was available to companies for AY 2018-19 if turnover did not exceed Rs 50 crores in FY 2015-16. This is a welcome step.

1.4 The concessional rate of Alternate Minimum Tax of 9% has been extended to Unit located in International Financial Service Centre

1.5 The tax on **Deemed dividend** u/s 2(22)(e) will now be paid by the companies u/s 115-O

1.6 The equity oriented mutual fund also to pay Income distribution tax @ 10%

All other Tax rates remain unchanged.

2. Changes in Definitions

2.1 Accumulated profit of amalgamated company shall include Accumulated profit of amalgamating company in case of merger [(Sec 2(22)]

For the purpose of computing deemed dividend accumulated profit of amalgamated company shall include Accumulated profit of amalgamating

company in case of merger whether or not the said profit is capitalised by the amalgamated company.

2.2 Income on conversion of stock into capital asset - where an inventory is converted into capital asset, the fair market value determined in the manner to be prescribed shall be income under the head business and profession – Sec 2(24)(xiia) & Sec 28(via). The fair market value on the date of conversion of stock into capital asset will be treated as deemed income in the year of such conversion.

Any profit or gain arising from conversion of Inventory into capital asset shall be charged as business income under amended sec. 28(via) on the basis of market value on the date of such conversion. [The issue of charging tax on the date of conversion should be revisited and tax should be charged in the year of ultimate sale or transfer].

At present there is no specific provision to charge tax in case of conversion of stock into capital asset

It may be noted that in case of conversion of Capital Asset into Stock in trade the tax treatment is as per existing section 45(2), which provides that tax will be payable in the year of actual sale and not in the year of conversion. In such cases Income is computed firstly from date of acquisition to date of conversion (as capital gain) and then on the basis of difference between date of conversion to date of sale (as business profit).

2.3 Compensation - Any compensation received for termination of employment or modification of terms of employment shall be taxed under head other sources -Sec 56(2)(xi) & Sec 2(24)(xviib)

2.4 Short Term Capital Asset

Where an inventory has been converted into capital asset the period of holding of such capital asset shall be reckoned from the date of its conversion into capital asset. Sec 2(42A).

3. Business Connection Section 9 -

Currently section 9(1)(i) provides that "business connection" shall include any business activity carried out through a person who, acting on behalf of the non-resident, has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident. The proviso to the said Explanation provides that such business connection shall not include any business activity specified therein.

W.e.f. AY – 2019-20, it is proposed to amend so as to provide that "business connection" shall include any business activity carried through a person who, acting on behalf of the non-resident, has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by the non-resident and the contracts are—

(i) in the name of the non-resident; or

(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or

(iii) for the provision of services by that non-resident.

It is further proposed to insert a new

Explanation 2A in clause (i) of sub-section (1) of the said section so as to provide that the significant economic presence of a non-resident in India shall constitute "business connection" of the non-resident in India and the **"significant economic presence"** for this purpose, shall mean—

(a) any transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or

(b) systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means.

It is further proposed to provide that the transactions or activities shall constitute significant economic presence in India, whether or not the non-resident has a residence or place of business in India or renders services in India.

It is also proposed to provide that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.

4. Income exempt from Tax

4.1 Exemption granted for Royalty or technical fees received by a Non-Resident from **National Technical Research Organisation** –

W.e.f. AY 2018-19, It is proposed to exempt that income arising to a non-resident, not being a company, or a foreign company, by way of royalty from or fees for technical services rendered in or outside India to the National Technical Research Organisation.

4.2 Exemption at the time of withdrawal from NPS available to employees has been extended to other assessees also –

At present any payment from the National Pension System Trust to an employee on closure of his account or on his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed forty per cent. of the total amount payable to him at the time of such closure or his opting out of the scheme shall not be included in his total income.

It is proposed to amend the said clause so as to extend the aforesaid exemption to all the assessees who have subscribed to the National Pension System Trust.

5. Educational Institutions, Hospital and Charitable Trusts

5.1 Provisions of 40A(3) and 40(a)(ia) made applicable to **Educational Institutions and Hospital enjoying exemption u/s 10(23C)**

The income of Educational Institutions were exempt u/s 10(23C) and the provisions of section 40A(3) and 40A(3A) relating to payment in cash exceeding Rs. 10,000/- and 40(a)(ia) relating to disallowance on account of non deduction of TDS were not applicable.

W.e.f. AY 2019-20, it is proposed for the purposes of determining the amount of application under item *(a)* of the said third proviso, the provisions of sub-clause *(ia)* of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A shall, *mutatis mutandis,* apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

5.2 Exemption of Long Term Capital Gain of Listed Shares or Units of an Equity Oriented Mutual Fund or Unit of a business Trust U/s 10(38) has been withdrawn w.e.f. AY 2019-20. Section 10(38)

5.3 Charitable Trusts

Provision of 40A(3) and 40(a)(ia) made applicable to charitable trust also –

The provisions of section 40A(3) and 40A(3A) relating to payment in cash

exceeding Rs. 10,000/- and 40(a)(ia) relating to disallowance on account of non deduction of TDS were not applicable to charitable trust.

W.e.f. AY 2019-20, It is proposed for the purposes of determining the amount of application under item (a) of the said third proviso, the provisions of sub-clause *(ia)* of clause (a) of section 40 and sub-sections (3) and (3A) of section 40A shall, *mutatis mutandis,* apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession".

6. Salary

6.1 Standard deduction of Rs. 40,000/- introduced [(Section 16(ia)]–

W.e.f. AY – 2019-20, it is proposed to provide for deduction of Rs. 40,000 or the amount of the salary, whichever is less, for the purpose of computing the income chargeable under the head-salary.

6.2 Exemption with respect to Reimbursement of Medical expenses of Rs. 15,000/- has been withdrawn –

Currently, any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family not exceeding Rs. 15,000 in the previous year is not treated as perquisite in the hands of the employee.

W.e.f. AY 2019-20, the aforesaid exemption as per proviso before section 17(2)(viii) is withdrawn.

7. Business and Profession –

7.1 Compensation received for modification or termination of agreement made taxable [(Section 28(ii)]

W.e.f. AY 2019-20, it is proposed that any compensation due or received by any person, by whatever name called, at or in connection with the termination or the modification of the terms and conditions, as the case may be, of any contract relating to his business shall be chargeable to tax under the head "Profits and gains of business or profession".

7.2 Conversion of Inventory into capital asset

W.e.f. AY 2019-20, where an inventory is converted into capital asset, the fair market value determined in the manner to be prescribed shall be income under the business and profession – Sec 2(24)(xiia) & Sec 28(via).

7.3 Marked to market Loss made allowable

W.e.f. AY – 2017-18, deduction in respect of any marked to market loss or other expected loss shall be allowed, if computed in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145.

The above amendment has been made in view of the Delhi High Court decision in the case of *"The chamber of Tax Consultants and Anr vs Union of India and Ors"*

It is further proposed that no deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss except as allowable under section 36 (1) (xviii) mentioned above.

7.4 Agriculture commodity derivative transactions shall not be considered as speculative transactions (Section 43B)

At present, commodity derivative transaction subject to CTT were not considered as speculative transactions. Agriculture derivative transaction are not subject to CTT, hence were not considered as non-speculative transactions.

W.e.f. AY 2019-20, it is purposedto consider trading in agricultural

commodity derivatives as non speculative transactions.

7.5 Loss or Profit on account of Foreign Exchange fluctuation (Section 43AA)

W.e.f. AY 2017-18, it is proposed to insert section 43AA which provides that subject to the provisions of section 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be, and such gain or loss shall be computed in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145.

It is further proposed to provide that gain or loss arising on account of the change in foreign exchange rates shall be in respect of all foreign currency transactions including those relating to monetary items and non-monetary items or translation of financial statements of foreign operations or forward exchange contracts or foreign currency translation reserves.

The above amendment has been made with retrospective effect from AY 2017-18 in view of decision of Delhi High Court in case of *"The chamber of Tax Consultants and anr vs Union of India and ors"*

8. Difference of 5% between transaction value and Stamp duty value to be ignored for Section 43CA

W.e.f. AY 2019-20 it is proposed that where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105 and five per cent. of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

It is further proposed to amend sub-section (4) of the said section so as to provide that where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by the authority for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement where the

amount of consideration or a part thereof has been received by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account on or before the date of agreement for transfer of the asset.

The difference permitted to the extent of 5 per cent is inadequate and it should be allowed upto 15% as it is a matter of common knowledge that Stamp Duty Value is determined at high figure in an arbitrary manner. The Registrar or Addl Registrar are not Qualified Engineers or Valuers. They go by street-wise rates prescribed by State Government.

9. Section 47 vis-a vis Section 56(2) (x)

9.1 Section 47 contains a list of Transactions not regarded as Transfer. Naturally that should imply that in case of transfer of assets in such cases, there will be no tax.

However section 56 (2)(x) provides for levy of tax in case of transfer of an immovable property aggregate value of which exceeds Rs.50,000 or in case the consideration shown is less than stamp duty value of such property by an amount exceeding Rs.50000 either if the consideration.

There is a proviso below section 56(2)(x)(c) which provided certain transactions which shall be outside the purview of tax as per section 56(2)(x). Some of the items are those which are covered by section 47 like transfer of assets in case of amalgamation or demerger etc. In Finance Bill 2018 items covered by sec. 47 clause (iv), (v) and (xiib) have been added to provide that such transfers will not be taxed. It may be noted

that transfer of capital asset to LLP on conversion if value of capital assets is upto Rs. 5 crore in 3 years preceding the previous year in which conversion takes place.

Similarly sec. 47(xiii) deals with transfer of capital assets by a frm to a company as a result of succession AND sec. 47(xiv) deals with transfer of capital assets by a sole proprietory concern if succeeded by a company.

Going by the basic legal principles, a transaction which is not a transfer under section 47 cannot be taxed under section 56(2) or any other section, unless the section starts with a non- obsentee clause. Section 56(2)(x) does not say 'notwithstanding the provisions of section 47, tax will be payable on transfer of immovable property under section 56(2)'.

Further taxing such transactions under section 56(2), will defeat the Government's purpose of promoting LLPs as also conversion of proprietary concern and partnership firms into companies.

It is suggested that for REMOVAL OF CONFUSION, THE EXCEPTION MENTIONED IN PROVISO BELOW SECTION 56(2)(X)c) should cover the entire transactions not treated as TRANSFER as mentioned in section47.

9.2 Transfer of asset between holding company and its wholly owned Indian subsidiary company and between subsidiary company and its Indian holding company to be outside the preview of Section 56(2)(x)

W.e.f AY 2018-19 transfer of capital asset between holding company and its wholly owned Indian subsidiary company and between subsidiary company and its Indian holding company, which are not regarded as transfer under clause *(iv)* or clause (v) of section 47, shall be outside from the scope of Section 56(2)(x)

10. Lock-in period raised from 3 Years to 5 Years for availing exemption u/s 54EC

W.e.f. AY 2019-20, it is proposed to increase the Lock in period for 5 Years by making amendment to the definition of Long Term Specified Asset, which shall mean any bond, redeemable after 5 years and issued on or after the 1st day of April, 2018 by the National Highways Authority of India or by the Rural Electrification Corporation Limited or any other bond notified by the Central Government in this behalf.

The increase of Lock in period of 3 years to 5 years will adversely affect the taxpayers and
a) they will face firstly liquidity problem and
b) secondly loss of income of almost upto 5% for as many as 5 years i.e. 25% in aggregate as the general return is 10% and the interest on such Bonds is 5%.

It will make investment in Bonds unattractive.

11. Computation of Income from Construction and Service Contract- Sec 43CB

W.e.f. AY 2017-18 **a new section 43CB has been inserted which provides that** profits and gains of a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145. It is further proposed to provide that in the case of a contract for providing services with duration less than 90 days, the profits and gains shall be determined on the basis of project completion method. It is also proposed to provide that in the case of a contract for provision of services involving indeterminate number of acts over a specific period of time, the profits and gains arising from such contract shall be determined on the basis of a straight line method.

It is also proposed to provide that for this

purpose the contract revenue shall include retention money and the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

12. Presumptive income from heavy goods vehicle raised from Rs. 7500 per month to Rs 1000 per tonne (Section 44AE)

At present for the purpose of computing profits and gains of business of plying, hiring or leasing goods carriages an amount Rs. 7,500 for every month or part of a month or an amount claimed to be actually earned by the assessee, whichever is higher, shall be deemed to be the aggregate income.

W.e.f. AY 2019-20, it is proposed to substitute the said sub-section so as to provide that for a heavy goods vehicle, the profits and gains shall be an amount equal to Rs. 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher.

It is further proposed to provide that in the case of a goods carriage other than heavy vehicle, the profits and gains shall be an amount equal to Rs. 7,500 for every month or part of a month during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

13. Capital Gains

13.1 Gain from any transfer of a capital asset, being bond or Global Depository Receipt made by a non-resident on a recognised stock exchange located in any International Financial Services Centre not to be considered as transfer [(Section 47(viiab)]

W.e.f. AY 2019-20, it is proposed that any transfer of a capital asset, being bond or Global Depository Receipt referred to in sub-section (1) of section 115AC or rupee denominated bond of an Indian company or derivative, made by a non-resident on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency, shall not be regarded as transfer.

13.2 Fair market value on date of conversion shall be Cost of acquisition for the converted capital asset [(Section 49(9)]

W.e.f. AY 2019-20 where the inventory has been converted into capital asset and at the time of transfer of such capital asset, the cost of acquisition of such asset shall be deemed to be the fair market value which has been taken into account for the purposes of computing profit u/s 28(via)

13.3 Difference of 5% between Stamp Duty Value and actual consideration to be ignored . (Section 50C)

W.e.f. AY 2019-20 where the value adopted or assessed or assessable by the stamp valuation authority does not exceed one hundred and five per cent. of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration. Also see para 8 above.

14. Income from Other Sources

14.1 Difference upto 5% between Stamp Duty Value and actual consideration in case of immoveable property to be ignored . Sec 56(2)(x)

W.e.f. AY 2019-20 where any person receives any immovable property for a consideration, the stamp duty value of the property as exceeds such

consideration, if the amount of such excess is more than Rs. 50,000 or the amount equal to 5 per cent. of the consideration, whichever is higher, shall be charged to tax under the head "Income from other sources".

14.2 Transfer of asset between holding company and its wholly owned Indian subsidiary company and between subsidiary company and its Indian holding company to be outside the preview of Section 56(2)(x)

W.e.f AY 2018-19 transfer of capital asset between holding company and its wholly owned Indian subsidiary company and between subsidiary company and its Indian holding company, which are not regarded as transfer under clause *(iv)* or clause (v) of section 47, shall be outside from the scope of Section 56(2)(x)

14.3 W.e.f. AY 2019-20, any compensation received for termination of employment or modification of terms of employment shall be taxed under the head other sources - Section 56(2)(xi)

15. Setoff And Carry Forward of Losses The restriction for Set off of losses not to apply to a company where shareholding has changed pursuant to approved resolution under the Insolvency and Bankruptcy Code, 2016 (Section 79)

At present where a change in shareholding has taken place in a previous year in the case of a company, not being a company in which the public are substantially interested, no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year unless on the last day of the previous year the shares of the company carrying not less than fifty-one per cent. of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent. of the voting power on the last day of the year or years in which the loss was incurred.

W.e.f. AY 2018-19, it is proposed to provide that nothing contained section 79 shall apply to a company where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

16. Deductions

16.1 Delayed return will disentitle to the deductions u/s 80H to 80TT- (Section 80AC)

At present as per section 80AC where, in computing the total income of an assessee of the previous year relevant to the assessment year commencing on the 1st day of April, 2006 or any subsequent assessment year, any deduction admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE, shall be allowed to him only if he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.

W.e.f AY 2018-19 It is proposed to substitute section 80AC so as to provide that in computing the total income of an assessee, **deduction under Section 80H to 80TT (Chapter VIA- Part C) shall be allowed only if the return is filed within the due date specified under sub-section (1) of section 139**.

16.2 Limit for medical insurance and preventive check up for Senior citizen has been raised from Rs 30,000 to Rs 50,000 (Section 80D)

At present for medical insurance or preventive health check-up of a senior citizen, deduction of thirty thousand rupees is allowed. Further, in the case of very senior citizens, the said section also provides for a deduction of medical expenditure within the overall limits of thirty thousand rupees.

W.e.f. AY 2019-20 It is proposed that

the deduction of fifty thousand rupees in aggregate shall be allowed to senior citizens in respect of medical insurance or preventive health check-up or medical expenditure.

It is further proposed to provide that where an amount is paid in lump sum in the previous year to effect or to keep in force an insurance on the health of a person specified therein for more than a year, then, subject to the provisions of this section, there shall be allowed for each of the relevant previous years, a deduction equal to the appropriate fraction of the amount.

16.3 The deduction for expenses of specified disease of senior citizen/ very senior citizen has been raised to Rs 1,00,000-(Section 80DDB)

At present a deduction is available to an individual and Hindu undivided family with regard to amount paid for medical treatment of specified diseases in respect of very senior citizen upto Rs. 80,000 and in case of senior citizens Rs. 60,000 subject to other conditions.

W.e.f AY 2019-20 It is proposed to increase the limit to Rs. 1,00,000 in case expenditure is incurred for senior citizen or very senior citizen.

16.4Scope for deduction to Start Up business enhanced-(Section 80-IAC)

At present deduction is available to an eligible start-up, if it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2019; the total turnover of its business does not exceed Rs. 25 crore rupees in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March, 2021; and it is engaged in the eligible business.

W.e.f. AY 2018-19 It is proposed to provide that deduction under the said section shall be available to an eligible start-up, if it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2021; the total turnover of its business does not exceed Rs. 25 crore rupees in any of the seven previous years beginning from the year in which it is incorporated.

It is also proposed to amend the definition of "**eligible business"** to mean a business carried out by an eligible start up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation.

16.5Condition for deduction for new employment relaxed-(Section 80JJAA)

At present a deduction of 30 per cent. of emoluments paid to a new employee for three years is available. In order to claim the deduction, the new employee must be employed for more than two hundred and forty days in the year of employment or one hundred and fifty days in case of business of manufacturing of apparel, subject to certain conditions.

W.e.f AY 2019-20, it is proposed to provide that where a new employee is employed during the previous year for a period of less than 240 days or 150 days, as the case may be, but is employed for a period of 240 days or 150 days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the provisions of this section shall apply accordingly.

(This amendment should have been made retrospectively as number of appeals are pending before different appellate forums on the issue)

Further the benefit of employing for 150 days only has been extended to business of manufacturing of footwear or leather products.

16.6 The benefit available to Co-operative society engaged in marketing of agricultural produce grown by its member extended to Producer Companies- (Section 80PA)

W.e.f. AY 2019-20 It is proposed to insert section 80PA so as to provide that in case of an assessee, being a Producer Company, having a total turnover of one hundred crore rupees or less in any previous year, the gross total income includes any income from the marketing of agricultural produce grown by its members, or the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or the processing of the agricultural produce of its members, the whole of the amount of income or profits and gains and business attributable to any one or more of such activities shall be deducted in computing the total income of the assessee for the previous year relevant to any assessment year commencing on or after the 1st day of April, 2019, but before the 1st day of April, 2025.

It is further proposed to provide that where the assessee is entitled also to deduction under any other provision or provisions of Chapter VIA, the deduction under this section shall be allowed from the gross total income as reduced by the deductions under such other provision or provisions of the said Chapter.

16.7Deduction of Rs. 50,000 of Interest Income of Senior Citizen introduced –(Section 80TTB)

W.e.f. AY 2019-20 Senior citizen shall be entitled to a deduction upto Rs. 50,000 out of its interest income on deposits with a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or a co-operative society engaged in the business of banking (including a co-operative land mortgage bank or a co-operative land development bank) or a Post Office as defined in clause (A) of section 2 of the Indian Post Office Act, 1898.

It is further provided that senior citizen will not be entitled to deduction of Rs. 10,000 u/s 80TTA. In such a situation the benefit of section 80TTB should be extended to Interest form Saving Bank account as well as Post Offices.

17 Special Tax Rates

17.1 Exemption of Long Term Capital Gain of Listed Shares or Unit of an Equity Oriented Mutual Fund or Unit of a business Trust U/s 10(38) has been withdrawn w.e.f. AY 2019-20.

For computing Long Term Capital Gain on transfer of equity Shares or equity oriented mutual fund or unit of business trust on which STT is paid on such transfer shall be computed by taking Fair Market Value of the asset as on 31st January, 2018 or sale price of the share whichever is lower as cost of acquisition and in case the actual cost of acquisition is higher than such price the same shall be taken as cost of acquisition. No benefit of indexation will be allowed on such transfer.

However the Long term Capital gain on these assets shall remain exempt to the extent of Rs. 1,00,000/- and shall be charged to tax @ 10% on balance of LTCG.

However these provisions shall not apply to Equity shares which have been acquired on or after 01.10.2004 and no STT has been paid at the time of acquisition.

For Example see chart in para 1.2 above.

17.2No expenditure will be allowed with respect to Income assessed u/s 68, 69, 69A, 69B,69C or 69D–(Section 115BBE)

At present Section 115BBE(2) provides that no deduction in respect of any expenditure or allowance or set-off of any loss shallbe allowed with respect to income returned by assessee u/s 68, 69, 69A, 69B,69C or 69D.

W.r.e.f. AY 2017-18 it is proposed that no expenditure will be allowed with respect to income assessed u/s u/s 68, 69, 69A, 69B,69C or 69D even if assessee has not returned the income under these section.

17.3Aggregate unabsorbed depreciation and loss brought forward shall be allowed for computing book profit in case of a company, against whom an application for corporate insolvency resolution process has been admitted-(Section 115JB)

W.e.f. AY 2018-19 it is proposed to amend *Explanation* 1 to section 115JB so as to provide that in case of a company, against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016, the aggregate amount of unabsorbed depreciation and loss brought forward shall be allowed to be reduced from the book profit and the loss shall not include depreciation.

17.4 Provisions of MAT shall not apply to Foreign company on income chargeable under section 44B or section 44BB or section 44BBA or section 44BBB-(Section 115JB)

W.r.e.f. AY 2001-02 it is proposed that the provisions of the section 115JB shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, where its total income comprises solely of profits and gains from business referred to in section 44B or section 44BB or section 44BBA or section 44BBB and such income has been offered to tax at the rates specified in the said sections.

17.5W.e.f. AY 2019-20 The concessional rate of Alternate Minimum Tax of 9% has been extended to Unit located in International Financial Service Centre- (Section 115JC & 115JF)

17.6W.e.f. 01.04.2018Deemed dividend will now be paid by the companies u/s 115-O @ 30% (Section 115-O)

17.7 The equity oriented mutual fund also to pay Income distribution tax @ 10%-Sec 115R

At present any amount of income distributed by the specified company or a Mutual Fund to its unit holders is chargeable to tax and such specified company or Mutual Fund is liable to pay additional income-tax on such distributed income at the rate specified in the said section. However, in respect of any income distributed to a unit holder of equity oriented funds in respect of any distribution made from such funds is not chargeable to tax under the said section.

W.e.f 01.04.2018 It is proposed to amend the section 115R so as to provide that where any income is distributed to any person by an equity oriented fund, the fund shall be liable to pay additional income-tax at the rate of ten per cent. on income so distributed.

18. PAN

Application of PAN made mandatory for Certain persons-Sec 139A

W.e.f. 01st April 2018 it is proposed to insert a new clause (v) and (vi) under section 139A which provides that every person, not being an individual, which enters into a financial transaction of an amount aggregating to two lakh fifty thousand rupees or more in a financial year shall apply to the Assessing Officer for allotment of a permanent account number.

Further the managing director, director, partner, trustee, author, founder, *karta,* chief executive officer, principal officer or office bearer of the above mentioned entity or any person competent to act on

behalf of the person referred to above, shall also apply to the Assessing Officer for the allotment of permanent account number.

19. Return of Income

Insolvency professional authorised to Sign return of Income of company under Insolvency and Bankruptcy Code, 2016 (Section 140)

W.e.f. 01.04.2018 in respect of a company where an application has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016, the return shall be verified by the insolvency professional appointed by such Adjudicating Authority.

20. Scope of adjustment reduced for processing of return u/s 143(1)

At present section 143(1)(a) provides that at the time of processing of return of income made under section 139, or in response to a notice under sub-section (1) of section 142, the total income or loss shall be computed after making the adjustments specified in clauses *(i)* to *(vi)* therein.

Sub-clause *(vi)* of the said clause provides for adjustment in respect of addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return.

W.e.f.AY 2018-19 It is proposed to insert a new proviso to the said clause so as to provide that no adjustment under sub-clause *(vi)* of the said clause shall be made in respect of any return furnished for the assessment year commencing on or after the 1st day of April, 2018.

21. Scheme of E Assessment [(Section 143(3A),(3B) & 3(C)]

A scheme for e-assessment eliminating interface between assessee and Assessing officer and introduction of team based assessment with dynamic jurisdiction will be notified in the official gazette.

22. Income Computation Disclosure Standards

22.1The struck down provisions of ICDS has been legalised-(Section145A)

W.r.e.f. AY 2017-18 old Section 145A has been replaced with new section 145A which provides for the purpose of determining the income chargeable under the head "Profits and gains of business or profession" as under,—

(i) the valuation of inventory shall be made at lower of actual cost or net realisable value in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145;

(ii) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;

(iii) the valuation of inventory being securities not listed on a recognised stock exchange; or listed but not quoted on a recognised stock exchange with regularity from time to time, shall be valued at actual cost initially recognised in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145;

(iv) inventory being securities other than those referred to in clause *(iii)*, shall be valued at lower of actual cost or net realisable value in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145 and for this purpose the comparison of actual cost and net realisable value shall be done category-wise.

It is also proposed to provide for an *Explanation* in the said section so as to provide that any tax, duty, cess or fee, by

whatever name called, under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment for the purposes of the said section.

23. Point of Taxation

23.1 Interest on any compensation or on enhanced compensation, , shall be taxed in the year of receipt Section 145B(1)

W.r.e.f. AY 2017-18 **Interest on any compensation or on enhanced compensation, , shall be taxed in the year of receipt**

23.2Claim for escalation of price in a contract business or export incentives shall be taxed on achieving reasonable certainty-Sec 145B(2)

W.e.f. AY 2017-18 The 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.

23.3 Subsidy or grant to be taxed in the year of receipt - Section 145B(3)

W.r.e.f. AY 2017-18 Subsidy referred to section 2(24)(xviii) shall be taxed in the year in which it is received, if not charged to income tax for any earlier previous year.

24. Tax Deduction at Source

24.1 Interest on 7.75% Saving (Taxable) Bonds, 2018 made subject to TDS-Section 193

W.e.f. 01.04.2018, it is proposed to provide that the person responsible for paying to a resident any interest on 7.75% Savings (Taxable) Bonds, 2018 shall deduct income-tax, if the interest payable on such bonds exceeds Rs. 10,000 during the financial year.

24.2 No TDS on interest paid to senior citizen upto Rs 50,000-Sec 194A

At Present where the amount of income or, as the case may be, the aggregate of the amounts of income credited or paid or likely to be credited or paid during the financial year by the person, does not exceed Rs. 10,000, where the payer is a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution, referred to in section 51 of that Act); or co-operative society engaged in carrying on the business of banking; or on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; or Rs. 5,000 in any other case, no tax at source is required to be deducted.

W.e.f 01-04-2018 it is proposed to amend the said section so as to provide that in case of senior citizen, no TDS is to be deducted on interest income upto Rs. 50,000.

25. Penalty

Penalty for delayed reporting of Financial transactions has been raised from Rs 100 per day to Rs 500 per day and Rs 500 per day to Rs 1000 per day(Sec 271FA)

At present if a person who is required to furnish the statement of financial transaction or reportable account under sub-section (1) of section 285BA, fails to furnish such statement within the prescribed time, he shall be liable to pay penalty of Rs. 100 for every day of default. Section further provides that in case such person fails to furnish the statement of financial transaction or reportable account within the period specified in the notice issued under sub-section (5) of section 285BA, he shall be liable to pay penalty of Rs. 500 for every day of default.

W.e.f. 01.04.2018 It is proposed to amend the said section so as to increase the penalty from Rs. 100 to Rs. 500 and from Rs. 500 to Rs. 1000, for each day of continuing default.

26. Prosecution

Exemption from prosecution for a tax liability not exceeding Rs 3000 not available to company (Section 276CC)

At present a person shall not be proceeded against under the said section for any assessment year commencing on or after the 1st day of April, 1975, if the tax payable by him on the total income determined on regular assessment as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed Rs. 3000.

W.e.f. 01.04.2018 it is proposed to amend the provisions of the said sub-clause (b) so as to provide that the conditions specified therein shall not be applicable in respect of a company.

27. Report in respect of International Group Sec 286

The said section, *interalia,* provides for specific reporting regime containing revised standards for transfer pricing documentation and a template for country-by-country reporting.

Sub-section (2) of the said section provides that the parent entity or the alternate reporting entity of an international group which is resident in India shall furnish a report in respect of the international group on or before the due date specified under sub-section (1) of section 139 for furnishing of return of income of the relevant accounting year.

It is proposed to amend the said sub-section so as to provide that the said report for every reporting accounting year shall be furnished within a period of twelve months from the end of said reporting accounting year.

It is further proposed to amend sub-section (3) to give reference therein of the report to be furnished under sub-section (4).

It is also proposed to amend sub-section (4) so as to provide in cae of a constituent entity, resident in India, whose parent entity is outside India that,—

(a) report of the nature referred to in sub-section (2) shall be furnished within the period specified in sub-section (2); and

(b) an additional condition for filing of report by said entity in a case where a country or territory, of which the parent entity is resident, is not obligated to file the report of the nature referred to in sub-section (2).

It is also proposed to amend sub-section (5) so as to provide that the due date for furnishing of the report of the nature referred to in sub-section (2) by said entity with the tax authority of the country or territory of which such entity is resident, would be the due date specified by that country or territory.

It is also proposed to consequentially substitute clause (b) of sub-section (9) so as to provide that the term "agreement" would mean a combination of,—

(i) an agreement referred to in sub-section (1) of section 90 or sub-section (1) of section 90A; and

(ii) an agreement as may be notified by the Central Government for exchange of the report referred to in sub-section (2) and sub-section (4).

It is also proposed to consequentially amend clause j) of sub-section (9) so as to also make reference to the report referred to in sub-section (4).

These amendments are clarificatory in nature.

These amendments will take effect retrospectively from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years.

It does not matter how slowly you go as long as you do not stop. – ***Confucius***

Long Term Lease – Whether Sale or Renting of Immovable Property?

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The transaction of immovable property has been the subject matter of litigation under the direct as well as indirect taxes. The disputes are of various nature like whether income from renting is income from house property or business income under the Income Tax Act?, whether renting income is chargeable to service tax?, taxability of income from joint development agreements, the disputes relating to stamp duty, etc. The issues are endless. One such issue is whether long term lease of any immovable property wherein lease premium is charged from the lessee is a transfer by way of sale or transfer by way of rent. The present article seeks to examine the said issue in detail.

A person can acquire immovable property which may be either freehold or leasehold. Both the modes of acquisition of immovable property are recognised under Transfer of Immovable Property, Act 1882. Section 54 of the Act defines Sale as '*Transfer of ownership in exchange for a price paid or promised or part paid and part promised*'. The said section encompasses transfer of freehold as well as transfer of leasehold land with the only condition being that there should be transfer of ownership.

A common mode of transfer of immovable property by way of long term lease which can be for 99 years or more. Generally, the government transfers land on leasehold basis only, though the private transactions also takes place on leasehold basis. A builder after acquisition of land on leasehold basis can do the construction and transfer the constructed property by way of lease. The leasehold agreement in such cases may provide for payment of lease premium with or without annual rent and in such cases the question which arises is whether such cases of lease are transfer by way of sale or not. The service tax authorities have been taking a view that such cases of transfer are not sale rather they are renting and consequently the provision of service tax as applicable to renting are to be looked into for the purpose of determination of taxability of such type of transaction. In case of a sale of an immovable property the transaction is liable to service tax after taking into account abatement on account of land.

In this regard, it is to be noted that under Finance Act, 1994 vide Notification No. 26/2012-ST dated 20-06-2012, under Entry No. 12, an abatement of seventy percent has been provided by the Government in case of 'Construction of a complex, building, civil structure or part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority.

Thus, in case there is transfer of immovable property, then service tax is leviable only on thirty percent of the value in case the consideration is received before the issuance of completion certificate by the competent authority.

The transaction of immovable property by way of sale are being seen by the revenue from a different angle and are being sought to be treated as renting of immovable property on the pretext that there cannot be any transfer of land by way of lease agreement. The said wrong notion is on account of the word 'lease' which is included in the definition of 'renting' as defined in Section 65B (41) of the Finance Act, 1994.

In this regard the issue has to be seen from various angles to find out as to what is the legal status of such transaction.

Generally, in a transaction of lease of immovable property by way of lease agreements to different parties in consideration of a lump sum payment known as lease premium ,there may or may not be a periodical rent in such transactions.

Now, the above facts have to be interpreted in its legal form and background:

In this regard it is imperative to take note of the definition of 'Renting' as defined under section 65B (41) of the Finance Act, 1994 which read as:

"renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;

On reading the definition as aforesaid, it is observed that the language used in the above definition is '***transfer of possession or control of the said immovable property'*** which signifies only the transfer of possession and not ownership. In this regard, it is to be noted that there is a broad difference between the two terms viz. 'possession' and 'ownership'. Renting signifies only the transfer of right to use any property against the payment of some periodical amount as against sale or lease where there is a transfer of possession along with ownership and all rights.

In this regard, it is also imperative to take note of the meaning of the terms 'Rent' as well as 'Sale' which has nowhere been defined under the Finance Act, 1994. Hence, recourse has to be had to the dictionary meanings, definitions contained in other relevant Acts and the meaning assigned to the said terms in various judicial precedents:

Meaning of the term 'Rent'

As given in the Black's Law Dictionary- *'Consideration paid, usu. periodically, for the use or occupancy of property'*

Rent generally denotes the periodical payment to be given by the tenant to the landlord for which the landlord holds the power of eviction. Hence, under the rental service the landlord has the power to force the tenants to cease the possession on account of any kind of default on the part of tenant.

Meaning of the term 'Sale'

In Transfer of property Act, 1882 'Sale' has been defined as: *'Transfer of ownership in exchange for a price paid or promised or part paid and part promised'*.

The above definition indicates that in order to constitute a sale, there must be transfer of ownership from one person to another i.e. all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor does not hold any interest and rights in the property in case of sale.

Hence, in the context of interpretation of the two terms viz. 'Rent and Sale' as stated hereinabove, the major difference can be construed as under:

In the case of rent the landlord does not transfer the whole right in relation to the property and carry with himself the power of eviction at any time of default on the part of the tenant whether it be for default in periodical payment of rent or non fulfilment of any other conditions as may be thumped by the landlord.

On the contrary, in case of sale, the transferor transfers all rights related to property to the transferee. Thereafter, the transferor does not carry any power of eviction against the transferee.

In view of the above, it can be construed since that in construction of immovable properties which are being transferred to different buyers on exchange of consideration which is a onetime lump sum amount and no periodical rent whatsoever is being collected from the buyers, it cannot be said to be a transaction of renting of immovable property.

Moreover, no such power of eviction can be kept by the builders in case of lease agreements which is a substantive requirement of renting.

Although the agreements entered into with different parties for this purpose may be sometimes be nomenclated as Sub- lease agreement but in substance the agreements are merely for transfer of ownership of such property to the prospective buyers. Also, there is no condition on the buyers that they cannot further transfer such property to any other buyer. Also, it is a deemed fact that even after the end of the term as mentioned in the agreements, the possession of such immovable properties will still be in the hands of respective buyers and the same is transferred for perpetuity without involvement of any continuous periodical payment. Therefore, it is very apparent that these transactions have all the attributes of sale. Therefore, it cannot be at all said that such service is 'renting of immovable property' in any manner whatsoever. The difference between sale and rent is very loud and clear.

The fact that whether the said transactions are in the nature of rent or sale in the context of leasing had been a subject matter of litigation and various judicial pronouncements and principles which are discussed herein below are worth noting.

One time premium cannot be said to be rent:

Rent means periodical payment for enjoying the possession of any property. Onetime payment cannot be said to be said to be the rent.

Transfer of Property Act brings out the difference between the price paid for transfer of a right to enjoy the property and the periodic payment of rent to the lessor. When the interest of the lessor is parted with for a price, the price is said to be premium or salami. But, the periodical payments for continuous enjoyment of the benefits under the lease are in the nature of rent. The former is in the nature of Capital Receipt and the latter is in the nature of Revenue Receipt.

In this regard, reference may be had to the case of City and Industrial Development Corporation of Maharashtra Limited versus Commissioner of Service Tax, 2014 (11) TMI 127 (Bombay H.C.) wherein the Hon'ble Bombay High Court granted stay on the view that Service tax under the head 'renting of immovable property' could only be levied on the quantum of rent received on month to month or year to year basis and not on the lease premium.

Further reference may be had to the case of Greater Noida Industrial Development Authority v. CCE & ST, Noida, [2014] 51 taxmann.com 73, wherein the Hon'ble Delhi CESTAT had clearly distinguished two types of consideration viz. rent and lease premium. In this case reference was made to the case of CIT v. Panbari Tea Co. Ltd. [1965] 57 ITR 422(SC) wherein it was held by the Apex court that when the interest of the lessor is parted with for a price, the price paid is premium or salami, but the periodical payments for continuous enjoyment are in the nature of rent. The former is in the nature of capital income and the latter is the revenue receipt. Service tax can only be levied on the element of rent and not on the premium or salami part.

In view of the detailed analysis hereinabove, following two situations emerge:

1. Lease agreement has been entered into with the covenant that the consideration for such lease would be paid periodically on continuous basis till the period of usage of such property. In this case the lessor reserves a right of eviction i.e. in case of default of non payment of periodical amount, the lessor can force the tenant to vacate such property. Hence, service tax can be levied on such periodical amount under the heading renting of immovable property.
2. Long term lease agreement has been entered into with the covenant that only a one time lease premium is to be paid for taking the possession of such property. There is no question of further payment of any rent periodically. In this case the lessor does not hold any right with such property. Thereby, here the lessee is even allowed to transfer such leasehold right to any further party. In this case, it is in the nature of capital receipt and service tax cannot be levied on lease premium amount.

Interpretation in the context of Direct taxes

In the case of the Indian Newspaper Society (ATA No. 918 & 920/2015), the Hon'ble Delhi High Court has ruled that lease premium paid by the assessee for acquiring a plot of land on an 80 years lease was in the nature of capital expense and not falling within the ambit of Section 194I of the Income Tax Act, 1961 (TDS on Rent). The court reasoned that since all the rights, easements and appurtenances in respect of the said land were in effect transferred to the lessee for 80 years and since there was no provision in lease agreement for adjustment of premium amount paid against the annual rent payable, the payment of lease premium was a capital expense not requiring deduction of tax at source.

Similar view has been taken by other High Courts as well.

In this regard, it is to be further noted that there has been a lot of litigations with regard to the treatment of one time lump sum lease payments in the case of long term lease of immovable property as to whether it is in the nature of capital expenditure or revenue expenditure.

In all of the cases in this regard, the Department has accepted the decisions of the High Courts and has not filed any SLP. In this regard, it has been clarified by the Central Board of Direct Taxes, vide CBDT Circular No. 35/2016, dated 13-10-2016, that lump sum lease premium or one time upfront

lease charges, which are not adjustable towards periodic rent, paid or payable for acquisition of long term leasehold rights over land or any other property are not payments in the nature of rent.

Therefore, in the light of the above clarification made by the CBDT, it can be construed that lease premium for the long term lease is in the nature of capital expenditure and not revenue.

Interpretation in the context of Accounting Standards :

Indian Accounting Standards states the criteria for classification of lease into Financial Lease and Operating Lease.

In this regard, Financial Lease and Operating Lease have been defined as under:

"A finance lease is a lease that transfers substantially all the risks and rewards incidental to ownership of an asset. Title may or may not eventually be transferred.

An operating lease is a lease other than a finance lease."

On analysis of the definitions as above, it is construed that Financial Lease substantially represents transfer of ownership of the property.

In this regard, some of the criteria for classification of a lease into financial lease are as under:-

1. Lease term is for the major part of the economic life of the asset even if the title is not transferred.
2. The lessee has the ability to continue the lease for a secondary period at a rent that is substantially lower than the market value.

Thus, it can be construed that if the constructed immovable properties are being transferred to the different parties for the period of 99 years or more, in such a case, it can be said that such immovable properties are being transferred for its major part of the economic life.

Further, if the lease agreements clearly mentions about the extension of the lease term and if nowhere in the agreements it has been stated about further payment of any amount for such extension, it can be assumed that lease agreement will be renewed without involvement of any further consideration in this regard. Hence, it can be construed that the lessee can continue the lease for a secondary period at a rent that is substantially lower than the market value.

Hence, in such a case if the lease agreements fulfil the aforesaid conditions, it cannot be in any manner said that such lease is not in the nature of financial lease, since, financial lease by its definition stated above represents transfer of ownership with all rights.

Opinion by the Expert Advisory Committee :

It is also imperative to take note of the fact that the matter regarding the accounting treatment to be given in the books of accounts in respect of the plots/land allotted by the corporation under the lease premium scheme for the period of 99 years was referred to the Expert Advisory Committee of the Institute of Chartered Accountants of India and it was opined as under (Reference can be taken from 'Compendium of Opinions' issued by ICAI-Volume No. XXVI):

"In respect of the lease agreements for long periods, e.g., 60 years and 99 years, it is generally expected that on the expiry of the lease term, either the lease period would be extended or the title will pass to the lessee at some agreed amount. This amounts to passing of the significant rights of ownership in the land to the lessee. Thus, it would be in the nature of sale of plots and should be accounted for, accordingly. This requirement, according to the Committee, is recognition of the principle of 'substance over form' as per AS- 1 issued by ICAI- "Disclosure of Accounting Policies" which read as:-*The accounting treatment and presentation in the financial statements of transaction and events should be governed by their substance and not merely by the legal form."*

In this regard the committee also noted that the same principle is also recognised in Schedule VI to the Companies Act, 1956, which requires leaseholds to be shown as the fixed asset of the lessee and not of the lessor.

Interpretation in the context of Stamp Act:

In the case of Gajepal Singh v. Board of Revenue, [1976] 1976 taxmann.com 70, High Court of Allahabad held that the lease premium cannot be said to be rent. The courts are not to be guided by the nomenclature but to see whether the document in question satisfied the requirement of a lease premium or rent. Hence, such lease premium is in the nature of capital receipt and not revenue receipt.

The U.P Stamp Act, 1962 also differentiates between the lease granted for premium without reserving any further rent and lease premium in addition to rent reserved and thereby different rate of duty is applicable in both the cases.

Interpretation under the GST Law:

Under the GST regime as well it is observed that in case of supply of construction service involving transfer of property in land or undivided share of land, as the case may be, an abatement has been prescribed for the value of land included in the total consideration where the value of land or undivided share of land, as the case may be, in such supply is deemed to be one third of the total amount charged for such supply. In this regard, it is to be noted that it has been specifically clarified that such abatement of one third value shall apply even if the supply of land or undivided share of land is by way of lease or sub lease. For this purpose reference may be had to the **Notification No. 1/2018-Central Tax (Rate) dated 25-01-2018.**

In this regard, it is to be noted that the provisions contained in the Service Tax Laws and that contained in the GST laws with respect to the taxability of construction service is pari materia with the only difference that under the GST regime abatement has been given only with respect to the value of land unlike in service tax regime where abatement was given for both value of land and materials. Moreover, had it been the intention of the legislature to include long term leasing of land as envisaged in the instant case, under the category of renting services and to exclude the same from the ambit of construction service then there was no need to clarify upon the applicability of the benefit of abatement even to "leasehold land".

From the above it is to be absolutely clear that for the purpose of arriving at the value of construction service by considering the applicable abatements, even leasehold land shall be entitled for such benefit and it should be construed as sale of land.

The clear intention of the legislature is that the value of any land cannot be made taxable under both the laws whether it be service tax or GST.

Conclusion:

In view of the principles discussed hereinabove, it can be construed that the long term leasing of any property substantially for whole of its economic life for a one time lump sum consideration without involvement of any further periodic payment can never be said to be Renting of Service in any manner whatsoever and the transaction is in the nature of sale of immovable property.

Things can be viewed many different ways. Choosing to have a positive attitude regardless of circumstances will have the greatest impact on your success.

Beneficial interest under Companies Act, 2013

CA Mohit Bhuteria

The passing of Companies (Amendment) Act, 2017 (Act, 2017) has led to the genesis of discussion regarding beneficial ownership. Herein we have put together some relevant questions on this topic:

1. What is the need for relooking at the provision pertaining to beneficial ownership?

One may argue that Act, 2013 was not devoid of a provision pertaining to beneficial ownership since section 89 of Companies Act, 2013 (Act, 2013) dealt with disclosures pertaining to the same. However, the same was not enough due to the following reasons:

i. No definition of beneficial owner / ownership. The same was left to general understanding regarding the term(s);

ii. The onus was on the registered owner and beneficial owner to disclose. With no definition of beneficial owner in Act, 2013, one was left wanting for a proper guideline to follow.

These points necessitated the need to introduce a provision regarding a definition and identification of beneficial ownership in a company. This suggestion was made in the Report of The Companies Law Committee dated February, 2016.

2. Was the Indian legislation devoid of any provision pertaining to beneficial ownership earlier?

No. As mentioned earlier, the Act, 2013 or for that matter even Companies Act, 1956 was not bereft of a provision pertaining to beneficial ownership. However, the current provisions did not warrant an active involvement on the part of company to identify beneficial ownership. The need of the hour was also to deter a circuitous routing of money through a maze of investments. In this endeavour, recently the MCA notified the Companies (Restriction on number of layers) Rules, 2017[1] wherein the number of subsidiaries that a company could have was limited to two barring a few class of companies.

Apart from Companies Act, The Prevention of Money Laundering Act, 2012 (PMLA) defines beneficial owner as follows:

> *Means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.*

Further, SEBI has also issued Guidelines on Identification of Beneficial Ownership (SEBI Guidelines)[2] wherein beneficial ownership has been defined as follows:

> *The beneficial owner is the natural person or persons who ultimately own, control or influence a client and/or persons on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.*

3. What is the definition of Beneficial Interest in Act, 2013?

The Act, 2017 has introduced the definition of Beneficial Interest as follows for the purpose of section 89 (Declaration in respect of beneficial interest in any share) and section 90 (Register of significant beneficial owners in a company):

> *For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or* ***otherwise****, the* ***right or entitlement*** *of a* ***person*** *alone* ***or together***

with any other person *to—*

(i) exercise or cause to be exercised any or all of the rights attached to such share; or

(ii) receive or participate in any dividend or other distribution in respect of such share.(emphasis supplied)

Some noteworthy points are:

i. The definition is not exhaustive by nature. Hence any change or novel method of signifying beneficial interest will also be covered by the sweep of the definition;

ii. The methods for determining beneficial interest are open ended. Hence apart from the usual methods of identifying beneficial interest such as through any contract / arrangement, any other method such as pledge with usufructs / exercise of any option or right / exercise of any warrant / conversion of security / will also be covered[3];

iii. Beneficial interest has not been limited to only one person. The interest can also arise together with any person. Hence it is not necessary that the interest has to arise only with say relatives as in section 2(76)(v). It can also be with unrelated parties;

iv. The interest has to be of a 'person', not an individual.

4. Who would be a 'person'?

Since the Act, 2013 does not define 'person' we look at the definition in General Clauses Act, 1860:

"person" shall include any company or association or body of individuals, whether incorporated or not;

Hence for the purpose of section 89, beneficial interest can be held by an individual or a company. The relevance of this definition for section 90 has been dealt with later.

5. Is the definition of beneficial interest relevant to debentures?

The definition clearly talks about interest in a share and understandably so. It does not differentiate between equity and preference shares. However, it talks about direct and indirect interest. Hence interest in convertible debentures whether partially, fully, compulsorily or not will be covered by the definition.

6. Is the use of the word 'person' appropriate?

As is understandable from the definition of beneficial interest, the aim is to establish the ultimate owner of the shares, whether an individual or a corporate. The definition is similar to the definition in United States Securities Exchange Act of 1934[4].

However, if one was to see the definition of beneficial interest in PMLA or in SEBI Guidelines, the same has been defined with respect to an individual.

Hence the scope of the definition of beneficial interest under Act, 2013 is broader. However, the definition falls short of explaining that the process of look through should be adopted till which point i.e. if it is determined that A Ltd is the beneficial owner of B Ltd will the shareholding of A Ltd also be relevant? This query is answered by section 90(1).

7. What does section 90(1) envisage?

Section 90(1) reads as follows:

Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

The following are noteworthy :

i. Although beneficial interest has been defined with respect to a person, section 90(1) requires an individual to make disclosure regarding his beneficial

interest in the shares of a company amounting to not less than 25%. In the absence of any specification, the entire share capital has to be considered for the purpose of calculating the cap of 25%;

ii. The beneficial owner can be an individual or more than one person;

iii. The beneficial interest need not necessarily be in the form of shareholding. Any right to exercise such as a pledgor or an option holder or actual exercise of significant influence or control will also be covered;

iv. The onus of making the declaration is on the individual beneficial holder;

v. Details such as particulars apart from nature of interest or the time period within which declaration has to be made is yet to be prescribed;

vi. The Central Government has been empowered to exempt certain class or classes of person from the requirement to make declaration.

8. Who has been exempted from the requirement of making declaration?

Currently, no one. It is pertinent to mention here that under United States Securities Exchange Act of 1934[5], the following have been exempt from definition of beneficial owner:

i. Member of a national securities exchange;

ii. A person who in the ordinary course of his business is a pledgee of securities under a written pledge agreement;

iii. A person engaged in business as an underwriter of securities.

Further SEBI by way of circular dated January 24, 2013[6] has stated that where the client or the owner of controlling interest is a listed company, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.

9. What is the meaning of significant influence or control for the purpose of section 2(27)?

The definition of 'significant influence' as an Explanation to the definition of Associate has been amended by the Act, 2017 to mean control of at least **20% of total voting power**. Hence there is an obvious conflict with section 90(1) because of the following reasons:

i. The threshold for determining beneficial interest is 25% of the shares (whether equity or preference) of company whereas the threshold for determining significant influence is 20% of total voting power;

ii. There is also a conflict with respect to calculation of the threshold limit. For the definition of beneficial interest, shares are the base be equity or preference and for significant influence, total voting power is the base. Total voting power will mean the equity shareholding of the company.

Control is defined in section 2(27) to include the right to appoint majority of directors or control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner. Hence control does not have to be exercised necessarily through shareholding.

10. What are some instances of control?

One may refer AS-21 pertaining to Consolidated Financial Statements[7] in this regard.

11. How will the individual identify himself as the beneficial owner?

The answer to this query is ambiguous. The onus is very well on the individual but how many layers does one have to dig to establish beneficial interest? One may argue that a cap of two layers of subsidiaries as mentioned earlier will serve the purpose however, the application of that provision is limited. Subsidiary would mean exercise or control of more than 50% of total voting power[8] whereas the threshold is much lower for beneficial interest. For shareholding in companies which is less than 50% of total shares, it remains to be seen if the ultimate beneficial shareholder will identify himself or not.

In this regard, one may refer the SEBI circular dated June 10, 2016[9] pertaining to KYC norms for ODI subscribers. Herein SEBI has prescribed

that the materiality threshold for identification of beneficial owner should be first applied at the ODI subscriber level and look through principle should be applied to identify the beneficial owner of the material shareholder / owner entity.

Similarly, it is important that for the purpose of disclosure in section 90(1), a look through approach should be adopted such that one sees beyond the immediate material shareholding and identifies the ultimate beneficial owner.

12. Suppose A Pvt Ltd has 6 corporate shareholders holding 16.67% each of the total shareholding. There is no subsisting agreement to exercise any right over the company. The 6 corporate shareholders are in turn held by Mr. A, his relatives and some of his employees. Will disclosure under section 90(1) be required by Mr. A?

Section 90(1) requires an individual holding 25% or more of total shareholding or having the right to exercise or actually exercising significant influence or control to make disclosure.

In this case, there are no subsisting agreements between the shareholders of A Pvt Ltd. Hence the assessment for disclosure under section 90(1) will be solely on the basis of shareholding. The material threshold for beneficial interest is 25% of the shares of the company. In this case, none of the shareholders hold more than 16.67% of the total shareholding of A Pvt Ltd. However, the shareholding in the shareholder companies is in turn held in by Mr. A, his relatives and some of his employees implying that Mr. A has indirect beneficial interest in A Pvt Ltd. Hence disclosure by Mr. A along with others holding indirect beneficial interest of 25% or more of shareholding is required under section 90(1).

13. Suppose it is established that Mr. A along with A Pvt Ltd and AB Pvt Ltd are the beneficial owners of B Ltd. Herein, A Pvt Ltd and AB Pvt Ltd hold 12% of shareholding of B Ltd each. Mr. A holds 1% of shares of B Ltd as the beneficial owner. Under such circumstances who is liable to make the disclosure under section 90(1)?

The individual shareholding of beneficial owners is immaterial for the purpose of calculating the threshold limit of section 90(1). The joint shareholding of an individual along with other persons or trust has to be considered. In this case, Mr. A may be holding only 1% of shares of B Ltd. However, together with A Pvt Ltd and AB Pvt Ltd he holds 25% of shares of B Ltd. Hence Mr. A, being the individual has to make the disclosure under section 90(1).

14. Suppose it is established that ABC Pvt Ltd along with A Pvt Ltd and AB Pvt Ltd are the beneficial owners of B Ltd. Herein, A Pvt Ltd and AB Pvt Ltd hold 12% of shareholding of B Ltd each. ABC Pvt Ltd holds 1% of shares of B Ltd as the beneficial owner. Under such circumstances who is liable to make the disclosure under section 90(1)?

As has been discussed earlier, a literal reading of section 90(1) clarifies that an individual beneficial owner has to make disclosure. Under such circumstances, one needs to investigate further into the shareholding of A Pvt Ltd, B Pvt Ltd and ABC Pvt Ltd to arrive at the individuals who are ultimately holding the shares. This will be a strenuous and long drawn exercise. Further, it is not necessary that the ultimate shareholding has to be with an individual. It may also be with a trust or a partner of a partnership firm. Under such circumstances it is not clear that who will be liable to make the disclosure. Probably once the format of the disclosure is released, we will receive clarity.

15. What are the other provisions of section 90 of Act, 2013?

The other provisions are as follows:

i. The company has to maintain a register of interest declared by individuals under section 90(1) and changes therein;

ii. The register shall be open to inspection by any member on payment of prescribed fees;

iii. The company shall file a return of significant beneficial owners of the company and changes therein with the RoC;

iv. The company shall give notice to any person whom it has reasonable cause to believe to be a significant beneficial owner or having knowledge of identity of a significant beneficial owner or has been a significant beneficial owner at any

time during the three years immediately preceding the date on which notice is issued and who is not registered as a significant beneficial owner;

v. The information required as above shall be given by the person within a period not exceeding 30 days of the date of the notice;

vi. On failure to provide such notice or on receipt of unsatisfactory information, the company shall apply to the NCLT. *It is to be noted that the obligation to apply to the NCLT is mandatory on the company;*

16. What are the penal provisions under section 90?

On the recommendation of The Companies Law Committee in their Report dated February, 2016, the following penal provisions have been prescribed for person failing to make disclosure under section 90(1):

i. Punishable with fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 10 lakhs;

ii. If the failure is a continuing one with a further fine which may extend to Rs. 1000 for every day after the first during which the failure continues;

It is to be noted here that disclosure under section 90(1) has to be made by an individual. However, the penal prosecution under section 90(1) will be on a 'person' failing to make disclosure. Hence every beneficial owner will be liable to criminal prosecution.

Further if a company fails to maintain the register of interest and file information with RoC or denies inspection of the register, then the company and every officer[10] of the company who is in default shall be punishable with fine which shall not be less than Rs. 10 lakhs but which may extend to Rs. 50 lakhs and where the failure is continuing one, with a further fine which may extend to Rs. 1000 for every day after the first during which the failure continues.

Further, if a person willfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under section 90, he shall be liable to action under section 447.

(Footnotes)

[1] http://www.mca.gov.in/Ministry/pdf/CompaniesRestriction OnNumberofLayersRule_22092017.pdf

[2] https://www.sebi.gov.in/legal/master-circulars/dec-2010/aml-cft-master-circular_14421.html

[3] https://www.ecfr.gov/cgi-bin/text-idx?node=17:4.0.1.1.1 &rgn=div5#se17.4.240_113d_63

[4] *Ibid*

[5] Supra 3

[6] https://www.sebi.gov.in/legal/circulars/jan-2013/guidelines-on-identification-of-beneficial-ownership_24206.html

[7] http://www.mca.gov.in/Ministry/notification/pdf/AS_21.pdf

[8] Amended by Bill 2017. Earlier more than 50% of total share capital was to be considered.

[9] https://www.sebi.gov.in/sebi_data/attachdocs/1465796415786.pdf

[10] According to section 2(60) of Act, 2013 officer who is in default has been defined to means 'the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—
(*i*) whole-time director;
(*ii*) key managerial personnel;
(*iii*) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
(*iv*) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
(*v*) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
(*vi*) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer

GST on Transportation of Goods

CA Sushil Kr Goyal

Goods Transport is an important aspect of every economy because it primarily facilitates Trade and Commerce. Most popular form of goods transport in India is transportation of Goods via road. As per the statistics of National Highways Authority of India, about 65% of freight traffic is carried by the roads. Therefore, road transportation plays pivotal role in economic growth of our nation.

Goods transportation by road is done largely by the transporter properly known as Goods Transport Agency (GTA). Apart from this other means for transportation of goods are available, like transportation by truck owners or by provider of vehicle on hire. In this article, an attempt has been made to compile provisions about the Goods Transport Agency (GTA).

What does GTA mean?

Goods Transport Agency (GTA) is not defined in the GST Acts but it has been provided by the way of explanation to Entry No. 9(iii) of Notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017.

"Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called".

In fact this definition has been a replica of what was available under the Service Tax regime and the same has been borrowed from Section 65(26) of the Finance Act, 1994. This indicates that, while others might also hire out vehicles for goods transport or do transportation of goods but only those issuing a consignment note are considered as a GTA.

Consignment Note

As per Rule 54 (3), where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing following information apart from information as required by Rule 46 for issue of invoice-

- Gross weight of the consignment.
- Name of consignor.
- Name of consignee.
- Registration number of the goods carriage in which the goods are transported.
- Details of the goods transported.
- Details of Place of origin and destination.
- GSTIN of the person liable for paying tax whether as consignor, consignee or GTA.

Scope of GTA

The services include not only the mere transportation of goods, but also other intermediate/ancillary services provided such as-

- Loading/unloading
- Packing/ unpacking
- Trans-shipment
- Temporary warehousing etc.

If above services are included and not provided as independent activities, then they will form part of GTA services. In this case, it will not be considered as mixed supply rather it will be considered as composite supply and taxable on the basis of principal supply concept.

Section 9(3) of CGST Act, 2017, has empowered the Central Government that on the recommendations of the Council, by notification, specify categories of supply of goods or services

or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both. Services of GTA has been notified by the notification no. 13/2017- Central Tax (Rate), dated 28th June, 2017, under Reverse Charge Mechanism if received by following:

a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or

b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or

c) any co-operative society established by or under any law; or

d) any person registered under the Central Goods and Service Tax Act or the Integrated Goods and Service Tax Act or the State Goods and Service Tax Act or the Union Territory Goods and Service tax Act; or

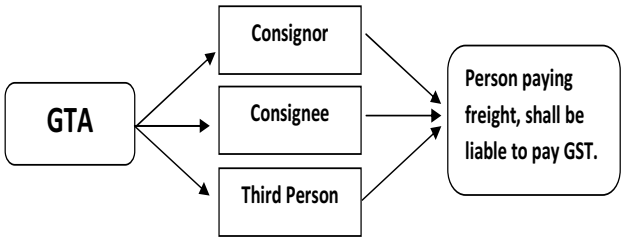
e) any body corporate established, by or under any law; or

f) any partnership firm whether registered or not under any law including association of persons; or

g) any casual taxable person;

located in the taxable territory.

As per the above notification, the person **who pays or is liable to pay freight** for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the receiver of service.



Exemption to GTA from Registration.

A person who is engaged in making only supplies of taxable goods/services on which reverse charge applies is exempted from obtaining registration under GST. (Notification No. 5/2017-Central Tax (Rate), dated 19th June, 2017)

Exemption from GST

A. Based on the Service Provider

Services by way of transportation of goods-

a) by road except the services of-

(i) a goods transportation agency;

(ii) a courier agency;

b) by inland waterways, are exempted.

Earlier, in Service Tax regime, this exemption was covered in negative list. This exemption basically exempts all service of transportation of goods by road other than by a GTA or Courier Agency. One must identify exact nature of service while deciding his liability in GST. (Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017)

B. Based on the Goods

GST is not payable in case of transportation of following goods –

a) agricultural produce;

b) milk, salt and food grain including flour, pulses and rice;

c) organic manure;

d) newspaper or magazines registered with the Registrar of Newspapers;

e) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

f) defence or military equipments.

(Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017)

C. Based on the Value

GST is not payable where value of transportation service is –

a) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;

b) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;

One must take care that in case more than one consignments for one consignee being transported in one goods carriage, value of all

consignment meant for the consignee should be added to determine the applicability of exemption. (Notification No. 12/2017-Central Tax (Rate), dated 28th June, 2017)

D. Based on Service Receiver

GTA service provided to an unregistered person including an unregistered casual taxable person is exempt. But this exemption is not applicable for services provided to the persons covered under reverse charge mechanism. (Notification No. 32/ 2017-Central Tax (Rate), dated 13th October, 2017)

Tax rate and Input Tax Credit

In terms of Notification No. 11/2017- Central Tax (Rate), dated 28th June, 2017 and Notification No. 20/2017- Central Tax (Rate), dated 22nd August, 2017, GTA can opt for 12% GST with ITC or 5% GST without ITC. GTA has to opt at the beginning of the financial year. ITC is available only on goods or services used in supplying the GTA service, i.e., by the GTA itself.

In case of reverse charge, person paying tax under RCM is liable for 5% GST and the same can be availed as ITC without any restrictions. The person availing the service is always eligible for ITC irrespective of tax paid by him or GTA and irrespective of rate of tax paid on the services.

Moreover, as per Notification No. 22/2017 – Central Tax (Rate), dated 22nd August, 2017, RCM is applicable only if GTA has not opted to pay taxes @ 12%. This simply means that if GTA is claiming ITC with paying tax @ 12%, then provisions of section 9(3) RCM, is not applicable and GTA is require to pay taxes on forward charge basis. But if GTA is opting for 5% tax rate with no ITC to servie provider but no restriction of credit to the receiver of service paid under RCM.

Place of Supply of GTA under GST

The place of supply of services by way of transportation of goods, including by mail or courier to

(a) a registered person, shall be the location of such person.

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

Whether the services of GTA are in the nature of intra-state or inter-state supply, the location of supplier and place of supply has to be considered.

Accordingly, location of the supplier means -

- If supply is made from a registered place of business, the location of such place of business;
- If supply is made from a place other than the registered place of business (a fixed establishment elsewhere), the location of such fixed establishment;
- If supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply;
- In other cases, the location of the usual place of residence of the supplier.

Whether 12% or 5% GST ???

When supplier of service, the GTA opts for collecting and paying taxes @ 12% (6% CGST + 6% SGST or IGST 12%), credit of Input Tax will be passed on to the receiver of service. At the same time receiver of service can take credit of 12% full tax.

In case of 5% GST, RCM is applicable and input tax of GTA will not get passed on to the receiver of service. In case of RCM cost of transportation of service will be higher than the cost of service if tax is paid under forward charge.

If you believe in yourself and have dedication and pride - and never quit, you'll be a winner. The price of victory is high but so are the rewards.

– Paul Bryant

Cross Charge under GST Regime

CA Ankit Kanodia

Introduction to Cross Charge

GST Law has deemed existence of branches of different units across India as distinct persons (subject to the exception of multiple branches registered under one GSTIN in Same state who are considered as one person, unless separately registered as Business Vertical) and thus, the following consequences emerge from such deeming fiction:

- ✓ Any provision of goods or services from one branch to another would constitute supply betweensuch branches
- ✓ Any Expenditure which are incurred at any Branch Office but whose outcome is used by different branches require cross charge

Identification of Cross Charges

Generally, one of the offices of anyBusiness Enterprise houses one or many management functions of the said organisation, like administrative, administrative, marketing, etc, generally referred to as Head Office. The Business Enterpriseexpends a lot of money on such managerial functions while the services of such functions are used by all or many branches. The said Head Office having housed such function cannot be said to have used such expenses for its output supply solely but such expense belongs to all Branches of the Business Enterprise. It is important to mention that Cross Charge moves across not only branches but can also move across Group Companies, in situations where many offices of different group companies are run from the same premises, wherein Cross Charge to all such companies for business support is necessary. Some of the common expenditure made by such Head Office are –

- ✓ **Sales and Marketing Expenditure:** Sales, Marketing expense including brand development of the Company are expended centrally on major advertisements like sponsorship, media spending, PR expenses etc. Even when offices which perform mere marketing expenses are required to Cross Charge.
- ✓ **Managerial Functions:** Generally, the top management of a company is stationed at one place but looks after the functioning of all offices. Such office is basically a sort of management office and thus, the entire cost of the management team including rent, salary, consumables etc are to be Cross Charged from other offices.
- ✓ **Engineering, Designing and Technical Team:** The expense is basically for a team which provide technical support in terms of designing, concept to all those involved in execution and thus, the entire expense need to be Cross Charged.
- ✓ **Tax, Legal and General Counsel Functions:** These functions are generally housed at one place not only for a Company but also for a group of companies and thus, its Cross Charge requires through investigation in the nature of such expenses.
- ✓ **Accounting and Finance Management:** Many Companies manage their accounting functions centrally and primary accounting team is located out of one office, such teams are responsible for all branches and not merely one and thus, their expenses are required to be Cross Charged.
- ✓ **Purchase and Logistics Management**: The name says it all as one of the offices generally issues all purchase order and

negotiates and control vendor payment and movement of material to various locations in the Country.

Requisite Measuresfor Implementing Cross Charge

Though no single formulae can address all situations, yet the following are suggestive things to be examined to avoid any future disallowance of ITC or demand on count of supply by various organisations:

- ✓ **Proper Agreements with Vendors:** Business Enterprises should clearly define in their agreements as to whether the agreement is for provision of services centrally or directly at various branches but payment to be made centrally. Clear policy for such expenditure will help the Company in avoiding a possible demand of GST
- ✓ **Clear Input-Output Relationship:** Organisation should clearly mark the cost centres to their income and expenses so that they donot miss to cross charge anyCommon Expense
- ✓ **Separate Trial Balances for Each Registration:**Separate Trial Balance marking all Income, Expenses, Assets Liabilities is must for every GST registration
- ✓ **Transfer Pricing Study for Organisation**: Transfer Pricing study should be conducted to detect all requisite cross charges

Periodicity and Mechanism of Cross Charge

There are no specific provisions or mechanism prescribed under the GST law on the periodicity of Cross Charge.However, it is advisable that the Business Enterprise should raise cross charge invoices (i.e. valid tax invoice to be reported under GSTR - 1)on monthly basis, by end of the relevant month. Such agreed timeline should be documented by way of an office memorandum. Thus, the Business Enterprise should raise the Cross Charge Invoice on 31st / 30thday of the month in which the services were rendered under Cross Charge.

Division of Expenditure for Cross Charge

Every transaction of cross charge would require an individual examination and no uniform formulae can run for all expenses and branches and, thus, Judicious Application is required for proper Cross Charge. Some of the examples are as under:

- ➢ Property insurance could be allocated on the basis of asset values while product liability insurance could arguably be allocated on the basis of sales.
- ➢ Legal department can measure some costs as related to specific cases directly. While common expenses for legal and secretarial can be divided on the basis of turnover.
- ➢ Measurable direct costs in IT department like personal computers provided to each department, data storage volume, data transmission volume, and transaction volume can form basis of charge.
- ➢ Service Centres can again cross charge their costs on the basis of turnover of different units.
- ➢ General Management Costs can create a cross charge on the basis of again turnover including inter state turnover of different units.
- ➢ Other suitable method depending on case to case basis.

Valuationfor Cross Charge

Section 15 of CGST Act, 2017 read with CGST Rules, provides for the method for determination of valuation of supply of goods or services between branches, which is as follows:

The Value of Supply for the Supply under Cross Charge Mechanismneeds to be determined as per the provisions of Section 15 of CGST Act, 2017 and Rule 28, which determines the Value of Supply of goods or services or both between distinct or related persons, other than through an agent, Rule 30, and Rule 31 of the CGST Rules, 2017. Now, as per the said provisions –

- If the Recipient is Eligible for Full Input Tax Credit, i.e., the goods or services or both that has been supplied is not Ineligible for Input Tax Credit as per Section 17(5) of the CGST Act and the same are not liable for reversal of ITC under Section 17(1) or Section 17(2) of the CGST Act and Rule 42 and Rule 43 of the CGST Rules, 2017, then the value declared in the invoice will be deemed to be the Value

of Supply (Second Proviso to Rule 28 of the CGST Rules, 2017)

- In any other case –
  - If goods are intended for further supply as such by the recipient, then at the option of the supplier, the Value of Supply will be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person (First Proviso to Rule 28 of the CGST Rules, 2017)
  - In any other case, -
    - If Open Market Value of Such Supply is available, then such Open Market Value of Such Supply will be the Value of Supply (Rule 28(a) of the CGST Rules, 2017)
      - "Open Market Value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made (Explanation to Chapter IV of the CGST Rules, 2017)
    - If Open Market Value of Such Supply is not available, then the Value of Supply of Goods or Services of like kind and quality will be the Value of Supply (Rule 28(b) of the CGST Rules, 2017)
      - "Supply of Goods or Services or Both of like Kind and Quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both. (Explanation to Chapter IV of the CGST Rules, 2017)
    - If Value of Supply is not determinable under above clauses, then the value of supply will be the value as determined by the application of Rule 30 or Rule 31, in that order (Rule 28(c) of the CGST Rules, 2017)
      - Where the Value of Supply of goods or services or both is not determinable by any of the preceding rules, the value shall be 110% of the cost of production ormanufacture or the cost of acquisition of such goods or the cost of provision of suchservices (Rule 30 of the CGST Rules, 2017)
      - Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter (Rule 31 of the CGST Rules, 2017)
      - In case of supply of services, the supplier may directly opt for Rule 31,ignoring Rule 30 (Proviso to Rule 31 of the CGST Rules, 2017)

Accordingly, if the Business Enterprise is engaged in Taxable Supply only, then none of its Branches will be liable to make any reversal under Section 17(1) and Section 17(2) of the CGST Act, 2017 and Rule 42 and Rule 43 of the CGST Rules, 2017. Further, as Business Support Services are not covered under Section 17(5) of the CGST Act, the various Branches will be eligible to claim full ITC of the GST chargeable on the Supply of Business Support Services supplies under Cross Charge. Therefore, the Head Office of the Business Enterprise can adopt any reasonable amount as the Value of Supply.

However, it must be noted that the Value of Supply should be such that the GST Chargeable on such Value is in proximity to the amount of ITC availed by the Head Office. In case the Value of Supply is relatively too high, then the Head Office will have

relatively higher GST Output Liability, which it may not be able to pay off fully by utilization of the ITC availed and would have to pay the balance liability by cash. Similarly, in case the Value of Supply is relatively too low, then the Head Office will have relatively lower GST Output Liability when compared to the ITC availed and it would have to carry forward such additional ITC into the next month.

However, if the Business Enterprise is engaged in Taxable Supply and Exempt Supply, then its Branches engaged in effecting exempt supplies will be liable to make reversal of ITC availed under Section 17(1) and Section 17(2) of the CGST Act, 2017 and Rule 42 and Rule 43 of the CGST Rules, 2017. Therefore, the Head Office of the Business Enterprise will have to determine the Value of Supply by determining Open Market Value and, if found available, such Open Market Value will be the Value of Supply of Business Support Services providedunder Cross Charge.

Now, as such Business Support Services are not generally supplied between persons other than related and distinct persons, the open market value of such services would not be available generally and the Business Enterprise will have to determine the Value of Supply by determining the Value of "Supply of goods or services or both of like Kind and Quality" and if found available such Value of "Supply of goods or services or both of like Kind and Quality" will be the Value of Supply of Business Support Services provided under Cross Charge.

However, it might be possible that the Value of "Supply of goods or services or both of like Kind and Quality" could also not be determined and, then, the Value of Supply will be determined under Rule 30 of the CGST Rules, 2017 as 110% of the Cost of Provision of Such Services.Now, theCost of Provision of Such Services should include all the expenditure made but should exclude, expenditure on which GST is not leviable like, Employee Related Cost,Interest-Related Finance Cost, etc.

Now, if Cost of Provision of Such Services is also not available, then the Value of Supply willbe determined using reasonable means consistent with the principles and the general provisions of Section 15 of the CGST Act and the provisions of Chapter IV of the CGST Rules, 2017.

Consequences of Not Implementing Cross Charge

- ✓ Potential for GST liability as such supply is taxable and when detected at audit / investigation stage
- ✓ Denial of ITC to unit who has availed credit on common expenses on the ground that such expenses are not used by it wholly in provision of output supply
- ✓ Interest and penalty in case of above demands
- ✓ Such amounts when paid on detection by department shall also not be available as credit to other branch as ITC is barred for tax paid under Section 74, 129 and 130
- ✓ Other consequential penalties for procedural defaults

Entire water of the sea can't sink a ship unless it gets inside the ship. Similarly, negativity of the world can't put you down unless you allow it to get inside you.

Impact of GST Valuation on Sharing of Cost Between Group Companies

CA Shubham Khaitan

One of the major areas of dispute during the Service tax regime has been the valuation of the goods and services which are commonly used by group companies. The impact and allocation of GST for these group companies will also be a major aspect under the current regime. The approach to be followed here depends on whether the goods/services have been outsourced from third party or have been provided internally.

Valuation of goods and services which are outsourced from third party

Various goods and services are procured by group companies from third parties. To analyse the valuation of these goods and services, there can be two approaches which can be evaluated here.

The first approach is that the expenses may be incurred by any of the companies. However, upon following the basis of factor costing for the relevant cost, such cost may be divided among the two companies. There may be internal adjustments of the payments periodically for the differential between the amount incurred and the amount apportioned based on the factor cost. In this cost sharing method, the reimbursement will be on actual expenditure basis and there is no profit element involved. However, this approach is not free from litigation. There have been innumerable judicial cases under Service tax which have arisen under this approach. This will be because the invoice may be in the name of one of the companies and the Input tax credit has to be availed by that company as well. However, the expenditure may have to be recognized in another company's books because of the apportionment using factor costing. Reconciliation statement between the audited financial statements and the returns as per the GST regime to be filed for every financial year under the GST regime may also not depict the right picture. This can result in raising of questions by the Department.

The second approach is that the expenses should be incurred by only one company and it should avail the complete input tax credit. In turn, that company should raise an invoice on the other company for the portion of services that has been received by that other company. To find the basis of such service, the factor costing technique should be used once again. For each nature of expense, the basis of apportionment should be found out. Once this basis is known, the actual cost that has been incurred can be known using the books of accounts. Thereafter, using the basis of apportionment, the actual cost to be apportioned to the other company can be found out. Then, the company which has incurred that cost can raise an invoice for the cost apportionable to the other company. Taxes charged by one company in the invoice will be availed by the other. So, the matter will be profit neutral for the group as a whole. At the same time, it will lower chances of litigation as one company is paying taxes for the services provided to the other. So, this is the recommended approach that should be followed for dividing of cost between two companies.

For the purpose of exact valuation as per the GST law, one should also refer to Section 15 of the CGST Act, 2017. As per the said section, the value

of supply of goods or services has been stated to be the transaction value i.e. the price actually paid or payable for the said supply where supplier and recipient are not related and the price is the sole consideration. Group companies will always be considered as related persons as per the explanation to Section 15. In the case of related persons, one may need to refer to Rule 28 of the CGST Rules, 2017. As per the said rule:

"The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or

services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services."

As per the provisions given above, open market value should be given the first priority if the recipient and supplier are related. Open market value has been defined to be the following:

"open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;"

Hence, OMV basically refers to the supply of such services in a situation where the supplier and recipient are not related and price is the sole consideration.

However, as per the proviso to Rule 28 of the CGST Rules, 2017, it should be mentioned here that the value mentioned as per the invoice will be deemed to be the open market value. Once, the open market value is determinable, one need not refer to the other provisions of the rules for determining the taxable value.

When the cost is incurred by one company by procuring services from third party, the value charged can be considered as the open market value. This is because the transaction occurs between the supplier and the recipient wherein both are not related and price is the sole consideration. One should find the proportion to be allocated to the other company depending on the nature of cost using factor costing. Then this proportion so arrived should be used to apportion the cost using the value adopted in the transaction with the third party. To further secure the matter, the law allows any value as adopted in the invoice to be the taxable value when the recipient is eligible for full input tax credit in a related party transaction.

Valuation of goods and services provided internally

Various facilities owned by one companycan be used by the other for running its operations. For the expenses incurred regularly, the apportionment of cost has already been discussed above. However, for the usage of the facilities, a separate charge should be levied by one company to the other. It is pertinent that a suitable value should be adopted for the usage of these facilities for the purpose of charging GST.

As per Section 15 of the CGST Act, 2017, the value of supply of goods or services has been stated to be the transaction value i.e. the price actually paid or payable for the said supply where

supplier and recipient are not related and the price is the sole consideration. Group companies will always be considered as related persons as per the explanation to Section 15. In the case of related persons, one may need to refer to Rule 28 of the CGST Rules, 2017. As per the said rule:

"The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or

services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services."

As per the provisions given above, open market value should be given the first priority if the recipient and supplier are related. Open market value has been defined to be the following:

"open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;"

Hence, OMV basically refers to the supply of such services in a situation where the supplier and recipient are not related and price is the sole consideration.

If OMV is not available, then the supply of goods or services or both of like kind and quality should be taken. It may be extremely difficult to find the value of similar goods or services in the given case as the erected plant and machinery being transferred may not be an openly tradable good.

One should refer to Rule 30 if the valuation cannot be arrived on the basis of the open market value and value of supply of goods or services of like kind and quality. Rule 30 mentions that the value taken should be 110% of the cost of production or manufacture or the cost of acquisition of goods or cost of provision of services.

If the value cannot be determined by Rule 30 either, one can determine the valuation on the basis of reasonable means consistent with the principles and the general provisions of section 15 and the rules. The supplier of services has an option to avail this rule avoiding Rule 30 completely.

However, as per the proviso to Rule 28 of the CGST Rules, 2017, it should be mentioned here that the value mentioned as per the invoice will be deemed to be the open market value. Once, the open market value is determinable, one need not refer to other provisions of the rules for determining the taxable value.

Conclusion

It may be emphasized that the valuation mentioned in all the above cases have been opined based on the provisions of the GST law. As far as practicable, the methods to be adopted for finding the correct market value has been recommended. However, the decision relating to the arm's length prices should only be taken after complying with the relevant provisions of transfer pricing.

GST in 2018- what's in Store?

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Touted to be the most challenging and historic change in India, the Goods and Services Tax (GST) in India has had a major rejig in the indirect taxation regime of the country. The new regime is a consumption based tax which aims to tax the event of "Supply" rather than different events like manufacture, sale etc. which was the scenario in the earlier tax regime. Due to the presence of the multiple legislations, the earlier tax regime consisted of different events for leviability which in some cases had overlapping provisions in one or more Acts.An important reason for introducing GST is that it will increase the efficiency with which resources are allocated in the economy. The GST remedies the cascading effects of the sales tax and service tax. Unlike sales tax and service tax, which are collected only at the point of sale to the final consumer, GST revenue is collected throughout the production process.An important effect of GST would be to improve compliance. The value chain under the GST will be fully traceable. Thus, the GST regime shall be away to redress the issues of double taxation.

The implementation of any reform in a country like India with a population of over 1.2 billion is a challenging task and so has been the case with the GST implementation too. India houses a vast number of unorganized business players in almost every industrial sector and with small chunk of these players within the banking channels and ambit of current taxation regime, the task altogether becomes humongous. Thus, the decision to replace the indirect tax regime faced a huge amount of resistance and criticisms, in fact, this is why it took 17 years for the Indian government to introduce GST in India.

Progress so far

The GST regime which saw its sunrise on 1st July, 2017, has experienced its amount of struggle. The sail to the new regime has not been smooth and can be called a bumpy ride even though we are in the fourth month of its implementation. The GST regime differs in lot many sense from the earlier tax regime which has been in existence for decades. The new regime is highly technology driven system which warrants for the monthly reporting and payment of the revenue of person's covered by the GST regime. A small snapshot of the registration and revenue figures has been illustrated through the table below:

GST figures as on 29th August, 2017[1]

Persons who were required to file returns	59.57 lakhs
Persons who have filed returns	38.38 lakhs
Percentage	64.42
Total revenue from GST	92, 283 crore
Total tax payers	72.33 lakhs
Complete migration	58.53 lakhs
New registration	18.83 lakhs

GST figures as on 25th September, 2017[2]

Persons who were required to file returns	68.20 lakhs
Persons who have filed returns	37.63 lakhs
Percentage	
Total revenue from GST	90,669 crore

GST figures as on 23rd October, 2017[3]

Persons who were required to file returns	
Persons who have filed returns	42.91 lakhs
Total revenue from GST	92,150 crores

Major developments in the GST law so far

The GST council has already met 24 times[4]and has made several changes in the text of the law, majorly to combat the shortcomings of the original version of the law. Let us take a note of the highlights of such changes –

1. **Exemption from registration for persons availing inputs subject to reverse charge[5]**

   As per the original law, any person who was required to pay tax on reverse charge basis, was required to obtain GST registration mandatorily. This became an unnecessary hardship for the business undertakings, as a large portion of the populationrequired attracted the registration requirements, even where their aggregate turnover remained lower than the specified limits. In order to remove the hardship from the small scale businesses, the GST Council made changes in the GST law to cast an exemption to these entities from registration requirements.

2. **Grandfathering provisions relating to transactions that had taken place before 1st July, 2017 and continuing through[6]**

   Several grandfathering provisions for pre-GST era transactions were introduced in order to provide a relief to the Industry at large. One such important relief was in respect of old/existing leases of motor vehicles purchased and leased prior to 1st July, 2017. The changes are as given below:-

   a. Leasing ofmotor vehicles purchased and leased prior to 1st July, 2017 would attract GST at a rate equal to 65% of the applicable GST rate (including Compensation Cess).

   b. Such motor vehicles when sold shall attract GST of 65% of the applicable GST rate (including Compensation Cess).

   c. Sale of vehicles by a registered person who had procured the motor vehicle prior to 1st July, 2017 and has not availed any Input Tax Credits of Central Excise duty, VAT or any other taxes paid on such motor vehicles, would also be subject to 65% of applicable GST rate (including Compensation Cess). This notification would be valid till 1st July, 2020.

   This change was very significant for the car leasing players who were otherwise greatly affected with the new provisions making the economics of the leasing business unfavorable. The notification comes as a huge sigh of relief to leasing companies, saving them from incurring huge losses on existing lease contracts. This addresses the major issue of tax mismatch for the leasing companies.

3. **Revision in turnover limit for composition levy[7]**

   An eligible registered person, whose aggregate turnover in the preceding financial year did not exceed seventy five lakh rupees, may opt to pay, in lieu of the central tax payable by him, an amount calculated at the rate of -

   (i) one per cent. of the turnover in State in case of a manufacturer,

   (ii) two and a half per cent. of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II of the said Act, and

   (iii) half per cent. of the turnover in State in case of other suppliers

   Further, the amount of aggregate turnover eligible for composition scheme has been enhanced from Rs. 75 lakhs to Rs. 1 crores.[8]

Pursuant to the power with the Government to increase the limit of aggregate turnover, and based upon the recommendations of the GST Council, the aforesaid change is in favor of the small service providers. This would provide them relief from undertaking the lengthy compliances applicable to a normal supplier.

4. Suspension of payment of tax in reverse while availing supplies from unregistered persons[9]

A registered person procuring taxable goods/ services from unregistered suppliers, shall not be required to pay CGST under reverse charge mechanism U/s 9(4) of CGST Act, 2017 till March 31, 2018 with effect from 13th Oct, 2017.

Practically procurement of goods from unregistered suppliers can not be avoided. Hence, the deferment of the applicability of section 9(4) will enable smooth implementation & success of GST.

5. Suppliers of services below threshold limit exempted from compulsory registration even if carrying out in inter-state supplies[10]

All service providers, whether supplying intra-State, inter-State or through ecommerce operator,will be exempt from obtaining GST registration, provided their aggregate turnover does not exceed Rs. 20 lakhs.

This shall serve as a measure towards taxpayer facilitation to exempt such suppliers providing services through an e-commerce platform from obtaining compulsory registration provided their aggregate turnover does not exceed the threshold limit.

6. No GST on advance received against supply of goods for all assesses[11]

All persons (below or above 1.5 cr limit) shall not be required to pay tax on advance received against future supplies of goods. This facility was allowed only to persons below the 1.5 cr limit which will continue to enjoy the relaxation from 13th October 2017 but all other taxable persons (other than composition) will now enjoy from 15th November 2017 onwards.

Pursuant to this notification, GST shall not bepayable at the time of transfer of funds, but at the time of appropriation of funds, i.e. whenthe invoice is raised.

7. Major rejig in the rate schedule[12]

The GST council meeting slashed tax rates on 178 items coming under 28% slab rate which leaves on 50 items under the highest tax rate of 28%. Also, there were changes in the filing period which was reduced from monthly to quarterly making easier compliance for the small medium enterprises. Overall, the council took noteworthy decisions in its meeting and made the overall easier environment for the business units to operate.

8. Operationalization of anti-profiteering provisions[13]

Section 171 of the CGST Act provides for the anti-profiteering measures so as to ensure that benefit of credit available is ultimately passed on to the consumer. Previously, with change in law and to enable ease of understanding for all the assessees, anti-profiteering measures were kept in abeyance.The constitution of the National Anti-Profiteering Authority is expected to bolster consumer confidence and ensure all stakeholders reap the intended benefits of GST.

9. E-way bill[14]

In the recent 24th GST council meeting, it was finally decided that the electronic way bill commonly known as e-way bill is introduced and will be applicable from 1st February 2018 across the nation. However, the states can introduce any individual pattern of e-way bill in there own but it is mandatory to introduce the e-way bill in respective states by the given deadline.

What to expect on GST front in 2018

There has been a major overhaul in the provisions of the GST regime that were initially introduced in the wake of practical problems faced by the tax payers. To counter this, at reasonable interval of time, the GST Council meets to decide on course of action to be taken by the government to resolve the issue.

The GST common portal gst.gov.in is a common platform for all the GST related issues and various practical issues are being experienced while working on GST common portal. It is desirable that in the upcoming year all the utilities on the GST portal are being implemented after being thoroughly tested before and thereafter the industry is mandatorily required to comply with it.

Further,matching insistence should become operative however, it is expected that only for above a threshold limit of say Rs. 10,000 of credit, the matching requirement must be applicable and below the threshold the matching requirement can be done away with.

With respect to the non-taxable supplies, it is expected that the same should be kept outside the ambit of 'exempt supplies' as well as 'aggregate turnover'. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.

The Government is expected to come out with clarifications that are desirable on some major debatable issues. For instance, in terms of para 6 Schedule III of the CGST Act, Actionable Claims other than lottery, betting and gambling is neither be treated as a Supply of Services nor supply of goods. Actionable claim has been defined under the CGST Act to have the meaning assigned to it under Transfer of Property Act, 1882. Accordingly, it can be inferred that secured debt would get excluded from the definition of Actionable Claims. Thus,becoming eligible to GST which may be subject matter of dispute in future if not clarified timely by the Government. Further, assignment / securitization transactions are transactions in money being assignment of loan receivables. Taxing such transactions would mean either taxing a loan transaction or taxing interest thereon. Countries worldwide like Canada, Malaysia, United Kingdom, Singapore, Australia etc. have specifically kept securitization transactions outside the indirect tax regime. Hence, suitable clarification must be provided on these issues.

GST helpdesks have been a boon for resolving transitions, registration etc. issues/ queries and is helping one and all with smooth transition to GST regime. Considering the bulk of enquiries made to the help desks, it is also likely that additional manpower shall be deployed for resolving queries/ issues, reducing call/ email revert time to help keep up the good work undertaken by GST helpdesk. An assistance provided by properly trained officials will add to the smooth functioning of the GST helpdesk and providing specific answers to the queries/ issues as against being referred to GST Acts, Rules, FAQs etc.

What is needed to be done further?

1. **A thorough study of the problems arising from the implementation of GST in every industry**

   In order to develop an efficient and effective taxation system, it necessary on the part of the government to understand various facets of the Industry. This would include analyzing the industry impact considering the global situation of the product / service along with the impacton major vendors and customers.

2. **Establishing an expert committee representing every industry who could then report to the GST Advisory council**

   The industry specific provisions can be monitored and reviewed only by experts belonging from the said industry. An expert committee representing each industry shall contribute towards bringing a lot of positive changes favorable for the taxpayers.

3. **Detailed Industry guides to be issued to keep the industry player abreast of the changing provisions and scenarios**

   This would assist the tax players in getting solutions to their trade specific queries and concerns at a micro level.The same will serve as a guide to taxpayers in relation to GST matters from the point of view of a specific industry or sector.

4. **Helping multilateral organizations and professional bodies like SIDBI, ICAI, ICSI etc to train professionals who can assist the taxpayers in fulfilling their obligations.**

   The lack of knowledge and expertise can only be filled up by providing necessary training and guidance to these professional, who are responsible for assisting and carrying out the various obligation on behalf of the taxpayers. In order to get acquainted with GSTN and related procedures, an optional access can be provided to the interested assessees to help them with training and understanding of GSTN systems.

5. **Conducting detailed surveys on problems being faced by the tax payers and their probable solutions**

   In order to support smooth transition and ensure reduced litigations, the problems faced at the operational level must be examined. This shall also help in addressing the concerns and taking suitable steps in this regard. Further, conducting frequentGST audit on the basis of the data generated on a quarterly basisshall keep a check on the effectiveness of the tax system.

Conclusion

GST is a new law but existing industry practices are old, time tested and designed as per existing laws to get the maximum benefit. Each business process has its own function and bearing on the tax liability of a business. For a business to adapt and cope up with the changing horizons they need to change in a way that makes a business insulated from the heat and cold showers of GST. Hence, a critical look at each and every business process must be taken, keeping GST law in consideration and make necessary changes to get the best out of GST. As a whole, the Indian economy is expected to be benefitted in the long term since GST will bring a more transparent and tax compliant structure resulting in generation of more revenue to the government as well as benefits to the business, industry and consumers.

(Footnotes)

[1] http://cbec.gov.in/resources//htdocs-cbec/press-release/Fresh%20Press%20note%20on%20GST%20Rev.%20Fif.%20for%20July%2017.pdf

[2] http://cbec.gov.in/resources//htdocs-cbec/press-release/CBEC%20Press%20release%20dt.%2026.09.2017%20on%20GST%20FIG.%20SEPTEMBER%2017.pdf

[3] http://cbec.gov.in/resources//htdocs-cbec/press-release/CBEC_Press%20_Release_dt24.10.2017 GST_Revenue_Figures_as_on_2

3rd October 2017%20.pdf

[4] As on 18th December, 2017

[5] http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-5-central-tax-english.pdf

[6] http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-37-CGST-rate-english.pdf

[7] http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-8-central-tax-english.pdf

[8] http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-46-cgst-english.pdf

[9] http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-38-cgst-rate-english.pdf

[10] http://w

ww.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-65-central-tax-english.pdf

[11] http://www.cbec.gov.in/resources//htdocs-cbec/gst/notfctn-66-central-tax-english.pdf

[12] http://www.cbec.gov.in/resources//htdocs-cbec/press-release/CBEC_Press_Release_dt_16.11.2017

after_on_GST%20Rate_Changes.pdf

[13] http://www.cbec.gov.in/resources/htdocs-cbec/gst/adv_GST.pdf

[14] http://www.cbec.gov.in/resources//htdocs-cbec/press-release/

CBEC_Press_Release_dt_16.12.2017_on_Interstate_E-Way_Bill.pdf

NEW MEMBERS ENROLLED : APRIL, 2017 TO MARCH, 2018

Sl.No.	Name	Membership No.
1.	CA Puja Agarwal	L 1357
2.	Dr. Dilip Kr. Datta	L 1358
3.	CA Bhabataran Maji	L 1359
4.	Ms. Rachna Jaiswal	L 1360
5.	CA Rajni Lath	L 1361
6.	Mr. Manoj Kataruka	L 1362
7.	CA Lalit Kumar Shroff	L 1363
8.	CA Praveen Kumar Shroff	L 1364
9.	CA Bishnu Kant Agarwal	L 1365 *
10.	CA Rahul Sureka	L 1366
11.	CA Ravi Sarda	L 1367
12.	CA Abhijit Pathak	G 1368
13.	CA Amit Saraf	L 1369
14.	Mr. Mrityunjoy Seal	L 1370 *
15.	CA Mukesh Khandelwal	L 1371
16.	CA Adarsh Rathi	L 1372
17.	CA Harsh Satish Udeshi	L 1373 *
18.	CA Ramakant Sureka	L 1374
19.	CA Om Prakash Dokania	L 1375*
20.	CA Partha Pratim Ghosh	L 1376
21.	CA Sourabh Mitra	L 1377
22.	CA Amita Mundra	L 1378
23.	CA Sushil Kr. Agrawal	L 1379
24.	Mr. Ritesh Kr. Agarwal	L 1380
25.	Mr. Kaushik Gangwal	L 1381
26.	CA Kamlesh Kumar Agarwal	L 1382
27.	CS Ghanshyam Saraf	L 1383 *
28.	CA Rishabh Jain	L 1384
29.	CA Vivek Chiraniya	L 1385
30.	CA Aditya Chirimar	L 1386
31.	CA Vinod Kr. Khetan	L 1387
32.	CA Gagan Kedia	L 1388
33.	CA Rajiv Kr. Agarwal	L 1389
34.	CA Gurjot Singh Gulati	G 1390
35.	Ms. Priti Kanoria	L 1391 *
36.	CA Abhijit Bandyopadhyay	L 1392 *
37.	Mr. Ajay Kumar Joshi	L 1393
38.	CA Vidyut Sethi	L 1394
39.	CA Debayan Patra	L 1395
40.	CA Lata Saraogi	L 1396
41.	Mr. Kailash Dhanuka	L 1397
42.	CA Piyush Chirania	L 1398
43.	CA Ajay Kumar Tekriwal	L 1399
44.	CA Gurjot Singh Gulati	L 1400 *
45.	CA Prabir Kumar Biswas	L 1401 *

* **Conversion from General to Life Membership**

ACAE
NOTE

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

(Registered under the Societies Registration Act, 1860)

An ISO 9001 : 2015 Certified Organisation

6, Lyons Range 3rd Floor, Unit - 2, Kolkata - 700 001
Phone : +91-33-2210-7724 • Telefax : +91-33-4060-8353
E-mail : info@acaekolkata.org • Website : www.acaekolkata.org
GSTIN : 19AAATA7029F1ZV

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APPLICATION FORM FOR MEMBERSHIP

To
The General Secretary,
Association of Corporate Advisers & Executives
6, Lyons Range, 3rd Floor, Unit - 2
Kolkata – 700 001

FOR OFFICE USE ONLY

Date of Receipt _____
Membership Approved on _____
Membership No. Allotted _____

Chairperson
Membership Development Sub-Committee *General Secretary*

Dear Sir,

Please **ENROL** me/us as a **LIFE/GENERAL MEMBER** of the Association. I/We agree to abide by the Memorandum and Rules & Regulations of the Association.

1. Name in Full (IN BLOCK LETTERS) : _____
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Qualifications : _____
5. Occupation : _____
6. Name of the Concern with which associated : _____
7. GSTIN : _____
8. Designation : _____
9. CA/CS/ICWAI Membership No. : _____
10. Blood Group : _____ (Self) _____ (Spouse)
11. Date of Marriage : _____ Name of Spouse _____
12. Office Address : _____
13. Resident Address : _____
14. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
    Mobile : _____ E-mail : _____
15. Address where Circular etc. should be sent : ☐ Office ☐ Residence

I am/We are sending herewith Rs. _____ (Rupees _____)
by Cash/Cheque No. _____ Dated _____ Drawn on _____
towards ☐ Life Membership ☐ General Membership.

Place : _____
Date : _____

_____
Signature of the Applicant

Proposed By : Name : _____
ACAE Membership No. : _____ Signature : _____

Seconded By : Name : _____
ACAE Membership No. : _____ Signature : _____

NOTES :
1. *Fee for Life Membership Rs. 11,800/- (for individuals only) (inclusive of GST)*
2. *Fee for General Membership :*
   a) *Annual Subscription Rs. 8850/- and Admission fees Rs. 8850/- (For Firm and Body Corporate) (inclusive of GST)*
   b) *Annual Subscription Rs. 1770/- and Admission fees Rs. 1770/- (for individual) (inclusive of GST)*
   c) *Annual Subscription will be half, if Membership Commences after 30th September of the year in which the membership is approved.*
3. *Cheques should be drawn in favour of* ***Association of Corporate Advisers & Executives.***

ACAE – ALBUM

Lecture Meeting on Recent Amendment in Companies Act, 'Struck-off' Companies, Disqualification of Directors, Condonation of Delay Scheme, 2018 (CODS Scheme) on 10.01.2018 at ACAE, Emami Conference Hall

Felicitation of Guest Speakers CA Nitesh More and CS Deepak Kr. Khaitan

Lecture Meeting on Forensic Audit on 12.01.2018 at ACAE, Emami Conference Hall

Guest Speaker CA Veena Hingarh giving her deliberations

Programme for Articles/Students on (1) Mastering Emotional Intelligence (2) Important Deductions under Chapter VIA of Income-Tax Act, 1961 on 13.01.2018 at ACAE, Emami Conference Hall

Guest Speaker CA Niraj Agrawal, CA Pramod Kr Mundra, Chairman-Students & New Members Sub-Committee and Guest Speaker -An Article Mr. Amit Sureka

Interactive Session with Dr. Parthasarathi Shome, Chairman, International Tax Research and Analysis Foundation, Bangalore and Visiting Fellow, Faculty of Law-Taxation, London School of Economics, London on Direction of Economic and Fiscal Policies – Recent Trends on 19.01.2018 at ACAE, Emami Conference Hall

President CA Arun Kr Agarwal, Chairman-International Tax Research and Analysis Foundation, Bangalore, Dr. Parthasarathi Shome, Vice President CA Vasudeo Agarwal and General Secretary CA Jitendra Lohia

Workshop on Goods and Services Tax (GST). (1) E-Way Bill. (2) Practical Issues in Exports and Refunds, (3) ITC and Reversal thereof under GST alongwith practical workings on 30.01.2018 at ACAE, Emami Conference Hall

Special Invitee Shri J B Dutta, Assistant Commissioner, GST Nodal Officer,Kolkata Zone giving his deliberations. Others on the dais Guest Speakers CA Vikash Parakh, CA Amit Jain, and CA Rajeev Agarwal.

Watch Live Telecast of Union Budget – 2018 with Panel Discussions on 01.02.2018 at ACAE, Emami Conference Hall

Panelist CA S S Gupta, President CA Arun Kr Agarwal, Panelist CA Pulak Kr Saha and Convenor of Study Circle CA Anup Kr Sanghai

Seminar on Union Budget – 2018 on 03.02.2018 at Vidya Mandir

General Secretary CA Jitendra Lohia, Guest Speakers CA K R Sekar, Partner, Deloitte Haskins and Sells LLP, Bengaluru, Shri N K Poddar, Sr. Advocate, Supreme Court of India, President CA Arun Kr Agarwal, Guest Speaker Shri Shailesh P Sheth, Advocate,SPS Legal, Mumbai and Convenor of Study Circle CA Anup Kr Sanghai

Programme for Articles / Students on Provisions of Tax Deducted at Source under Income-Tax Act, 1961 on 10.02.2018 at ACAE Emami Conference Hall

One of the students presenting a memento to Guest Speaker CA R R Modi

Panel Discussion on E Way Bill – Issues and Challenges on 13.02.2018 at Kala Kunj

Panelists CA Rip Das, Eminent Tax Consultant, Shri Khalid Aizaz Anwar, Sr. Joint Commissioner, Adv N D Saha, Chairman, All India Federation of Tax Practitioners (EZ), Moderator CA Arun Kr Agarwal, Shri Santosh Saraf, Past President, MCCI, Logistics Industry, CA Shagun Tulsyan, Head - Indirect Taxation, Emami, FMCG Industry

Lecture Meeting on (1) Examining Benami Transactions in the backdrop of Zero Tolerance to Black Money. (2) Income Computation and Disclosure Standards – A Critical Analysis on 16.02.2018 at BCCI

Convenor CA Anup Kr Sanghai, Guest Speaker CA (Dr.) Girish Ahuja, Delhi, President CA Arun Kr Agarwal and Guest Speaker CA S S Gupta

Cross-section of the participants

Lecture Meeting on Relevance of Common Law in Income-Tax Proceedings on 27.02.2018 at ACAE, Emami Conference Hall

Guest Speaker CA Ramesh Kr Patodia giving his deliberations

Panel Discussion on Swift Transactions – Cause, Effect, Risks and Audit on 06.03.2018 at ACAE, Emami Conference Hall

Moderator CA Vivek Agarwal along with Panelists Mr. Prafulla Kr Dash, Dy. General Manager, Zonal Head-Commercial Banking EZ, ICICI Bank, Kolkata, CA Tushar Kanti Basu, Partner, Gosh Basu & Associates, Kolkata, and Mr. Bijitendra Mondal, Assistant General Manager, UCO Bank, FCC IEP Kolkata

Programme for Articles/Students on Supply, Composition Scheme and Reverse Charge under GST on 10.03.2018 at ACAE, Emami Conference Hall

Articles & Students listening attentively to the deliberations by Guest Speaker CA Pramod Dayal Rungta

Lecture Meeting on (1) Issues in Accounts & Audit in Companies Amendment Bill, 2017, (2) Valuation Rules under Income-Tax Act, 1961 on 13.03.2018 at ACAE, Emami Conference Hall

Guest Speakers CA K K Chhaparaia and
CA (Dr.) Debashis Mitra

Programme for Articles/Students on Time and Place of Supply under GST on 17.03.2018 at ACAE, Emami Conference Hall

Guest Speaker CA Pradeep Modi giving his deliberations.

Lecture Meeting on (1) Audit Quality & Oversight on Profession : Root Cause Analysis and Emerging Legislation. (2) NFRA and its impact on 17.03.2018 at R Singhi Hall, EIRC Auditorium

Convenor ACAE Study Circle, CA Anup Kr Sanghai, Guest Speaker CA (Dr.) Debashis Mitra, President CA Arun Kr Agarwal and Guest Speaker CA P R Ramesh, Partner, Deloitte Haskins & Sells LLP, Mumbai

On the dais invitees Chairperson-EIRC CA Sonu Jain, Central Council Members-ICAI CA Sushil Kr Goyal, CA Ranjeet Kr Agarwal and CA (Dr.) Debashis Mitra (Guest Speaker) and President ACAE CA Arun Kr Agarwal

Workshop on Stress Management (1) Counselling – The Talking Remedy, (2) New Techniques and Life Skills on 20.03.2018 at ACAE Emami Conference Hall

Guest Speaker Ms. Nivedita Bhattacharjee, President CA Arun Kr Agarwal, Guest Speaker Ms. Saroj Agarwal and General Secretary CA Jitendra Lohia

Seminar on Audit of Banks. 1 (i) CBS Controls – Its impact on Financials (ii) Analysis of CBS Reports for NPAs & Frauds. (2) (i) Audit of Advances including Restructuring of Advances (ii) Long Form Audit Report (iii) RBI Circulars on Advances issued during recent months including Master Circular on Advances. (3) Critical System related issues involved in Bank Audit including SWIFT Transactions on 22.03.2018 at Kala Kunj

General Secretary CA Jitendra Lohia welcoming the Guest Speakers. On the dais, Convenor ACAE Study Circle, CA Anup Kr Sanghai, Guest Speaker Prof. Arif Ahmed, FCA, Director, South-Asian Management Technologies Foundation, Kolkata, CA D S Premnath, Partner, C Ramachandram & Co., Hyderabad, and CA Dipankar Chatterji, Sr. Partner, L B Jha & Co., Kolkata.

Glimpses of Cororate Stress Buster organised on 10th February, 2018 at SangVi Camac Street Studio

ET Bengal Corporate Awards presented by ACAE celebrated its sixth year on 16th March, 2018 at The Taj Bengal, Kolkata

(L-R) Dignitarires CA P R Ramesh,Chairman-Deloitte India, CA Jinesh S Vanzara,ACAE Chairman-ET Bengal Corporate Awards Committee, CA Arun Kr Agarwal, President - ACAE, Dr. Amit Mitra,Guest of Honour, MIC of Finance, Industry and Commerce, Govt. of WB, Mr. Javed Sayed, Deputy Executive Editor, The Economic Times and Mr. Ashok Sen., Associate Vice President, The Times Group, light the Inaugural Lamp.

Dr. Amit Mitra sharing a brief report card on the state's progress.

CA Arun Kr Agarwal, President - ACAE giving his speech.

Dr. Amit Mitra confers the Indian Visionary Award on Mr. Kishore Biyani, Founder & Group CEO, Future Group.

Mr. Sanjiv Goenka, Chairman RP Sanjiv Goenka Group, confers the Lifetime Achievement Award on Mr. S K Roy, Managing Director, Peerless General Finance & Investment Co. Ltd (receiving on Mr. Roys behalf CFO Mr. A K Mukhuty)

A Glimpse of Inter-CA Study Circle Cricket Tournament on 14.01.2018 at Space Circle

Participating Teams

- ACAE CA Study Circle – EIRC
- Central Kolkata CA Study Circle – EIRC
- DTPA CA Study Circle – EIRC
- Views Exchange CA Study Circle – EIRC
- VIP Road CA Study Circle – EIRC
- Vitta Salahkar CA Study Circle – EIRC

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Co-ordinating Study Circle – ACAE Chartered Accountants' Study Circle – EIRC

VIP CA Study Circle – EIRC won the match and the Runner up – Central Kolkata CA Study Circle – EIRC.

CA Pramod Kr Mundra, Chairman – Sports Sub-Committee

At a glance - Annual Picnic at Panchmukhi Residency, Badu Road, Kathore More, Madhyamgram on 21st January, 2018










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