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NEWSLETTER

PUNE BRANCH
OF WIRC OF ICAI

(Subscribers copy not for sale)

PUNE BRANCH OF WIRC OF ICAI

Forthcoming Programmes

SR. NO.	DATE	SEMINAR NAME	ANALYSIS	VENUE	TIME	FEES	CPE HRS.
1.	Every Monday of June 2019	GST War Room – Free Event on " GST Annual Return and Audit"	Basic	Visit puneicai.org	Visit puneicai.org	No Fees	N.A.
2.	7th June, 2019	Seminar on "Intricacies in GST"	Basic	ICAI Bhawan, Bibwewadi, Pune	5.00 pm To 8.00 pm	Rs. 300/- Plus GST	3 Hrs.
3.	8th, 9th, 15th, 16th, 22nd & 23rd June, 2019	Certificate Course on Concurrent Audit of Banks – 381st Batch	PQC	Under Finalisation	9.00 am To 5.30 pm	http://ccm.icai.org	Refer Link
4.	15th June To 31st August, 2019 (Every Sat & Sun)	Post Qualification Diploma in International Taxation	PQC	Hotel Ramee Grand, Apte road, Pune	10.00 am To 5.30 pm	Visit icai.org	Refer Link
5.	1st To 5th August, 2019	5 days Course on Blockchain Technology for Professional Accountants	PQC	Under Finalisation	9.30 am To 5.30 pm	Rs. 20,000/- Plus GST	30 Hrs.

Notes:-

1) Registrations half an hour before program timings mentioned above.
2) For online registrations & detailed programme structure visit www.puneicai.org
3) Spot Registration Fees will be charge 25% extra

Congratulations to our senior member **CA. Girish Natu.** He is now **first Indian** who has been selected by **World Badminton Federation as "Certificated Referee".**

Awareness Programme on "ICAI Valuation Standards 2018 and Related Aspects"

CA. Ravishu Shah
Speaker

CA. Anand Bathiya
Speaker

CA. Drushti Desai
Speaker

Participants

Chairperson's Communique

CA. Ruta Chitale
Chairperson
Pune Branch of WIRC of ICAI

Respected Members,

Pune has a tradition of organizing refresher courses, especially on two subjects' viz., Direct-Indirect Taxes and Company Law and recently we have concluded with them. Similarly after introduction of GST and considering the pace of modifications/ procedural changes it has been our endeavor to arrange multiple sessions on this issue. I sincerely hope that members shall take full benefit of these seminars.

Do send your specific Queries on the concerned topics as and when the program gets announced either to me personally or to any person in the managing committee, either through Email/ call or even whats-app. Currently we do communicate to the speaker about the expectations and specific queries, if any however your interest and questions on the subject shall be of importance and also would be in wider interest of all our own members. Albert Einstein himself has remarked "The important thing is to never stop questioning"

Socrates has said "I know you will not believe me, but the highest form of Human Excellence is to question oneself and others". Our institute believes in highest form of Excellence and we do strive to achieve it. Considering what Socrates has said and as a result of deliberation with our own seniors, we shall be soon arranging a format of special session each month wherein only the Questions shall be answered by experienced / senior members in respect of a particular subject/topic.

With the election results now in place and the cabinet soon to be announced, we may expect changes. The expectations from us are on a rise and the attestation function may be slowly but surely moving from "true and fair" to "true and correct". The question is whether we, our own internal processes, our own SOP's are ready to take this transition from fair to correct. We together need to adopt or if not agreeable, resist such changes. For that I appeal to each and every one of our members to kindly go through all the 'exposure drafts', 'draft return formats' etc. sent for our comments. Later when these drafts become mandatory then at that time it is indeed very difficult to communicate and get the changes done. Then all we are left is to comply/ adopt to such changes!! Recently modified/changed format of form 10 B (under Income Tax Act, 1961) is under consideration. Kindly go through the same and communicate your comments, if any. Your contribution is important for all!

Fraternity connect is one of the aspects which we as a branch are trying to establish! Recently we conducted a Help desk at one of the investment banks and there was a good response from the members who worked there. Kindly let us know if you wish to conduct such program at your office. The program is a success even if one single member gets re-connected to alma-mater since ultimately it is the Connect that counts!!

Warm Regards,
CA. Ruta Chitale

Goods and Services Tax
Governance and Risk Management Perspective

Contributed by :- CA. Sheetal Vaidya-Deshpande
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Introduction

Goods and Services Tax has been implemented internationally in varied formats. In India, historical indirect taxation system caused a severe cascading effect which undermined the economy, overburdened the consumers financially and made products uncompetitive globally. Multiplicity of complicated procedures and tax rates in various states created a difficult business environment.

On this background, in India, **'One Nation One Tax'** idea was contemplated at various forums for many years. The core idea underlying GST is **Ease of Doing Business.** This reform aims to simplify and streamline procedures, bring about uniformity in tax rates and thus create an enabling environment for business, in particular, and growth of the economy at Macro level by creating Common National Market.

Another important objective is to implement effective **Digital Governance through implementation.** Now through this reform, G2B (Government to Business) and G2C (Government to Citizens) interface is completely Digital in India. **Special purpose vehicle, Goods and Services Network (GSTN), is responsible for IT infrastructure in all the states.** This is an enabler for Digital Governance through implementation of GST in India.

Business Scenarios & initial hiccups

During implementation of GST in India, many companies faced common problems of interpretations. GST Return filings and related Compliances resulted into non-compliances or payment of penalties. Common problems largely were -

1) GST Control Accounts not cleared.
2) GST Calculation did not include manual entries passed in ERPs.
3) Claiming GST on total tax Invoice amounts when the part of transaction was not subject to GST.
4) Incorrect interpretations or review processes for amended legislation concerning taxable supplies.
5) In case of related entities, both entities claiming same expense item.

6) Incorrect transfer of GST information among entities.
7) Processing rebates incorrectly, non-adjustments of discounts.
8) System errors and transposition errors.
9) Technical understanding and interpretations etc.

Now over couple of years, Businesses achieved some amount of process maturity and common understanding of GST Reforms in its spirit. However, this is being continuous compliance related to transactions, monitoring control plays very vital role. **'GST Governance Mechanism'** will help to have real time monitoring tool in place. Further, it will ensure - **Do it right the first time.**

Below is the 'GST Business CTQs metrics(Critical to Quality)', which is an example of monitoring tool, regular validation of which will give timely alarms for GST Compliances and identification of gaps if any. Below is an example of CTQ metrics - Basic nature of business, products, geography spread, seasonality and client requirements configured CTQ metrics can be prepared.

Sr. No.	Business CTQs	Description	Risks
1	Documented Process	To have documented procedures, SOPs, Work instructions Checklists for GST compliance	Non Compliance, Redundancy of Tasks
2	Data Analysis & Volume Compilation	Manual Data Extraction, Multiple Reports compilation, Adjustments of Debit Notes/Credit Notes, Reversals Disallowances etc.	Defective Output, Rework & Redundancy
3	Records and Reference Management /Supporting Evidences	Retrieval of Taxation provisions, Legal opinions, Advisory communications, Conceptual Clearances, Email approvals	Lack of Ownership, Statutory Non-compliance
4	Centralized Return Filing	Multiple Teams handling Returns	Multiple Touch points, Non Standardized Process
5	GSTR-2 Reconciliation	Eligible & Non eligible ITC (Input Tax Credit), Reverse Credit Mechanism, Reconciliations with Vendor Invoices.	Incorrect Input Output Tax, Cash Loss, Statutory Non - Compliance
6	Reconciliation	Reconciliation between carry forward of excess credit with monthly returns versus ERP system.	Statutory Non-Compliance
7	Transaction Accuracy	Tax Charged by vendors, accounting entries.	Lack of accuracy Statutory Non-compliance

GST Governance is a subset of Corporate Governance. Corporate Governance ensures profitability with sustainability at organizational level. Likewise, GST Governance will ensure accuracy at compliance level, which ultimately benefits organization in following ways -

- Identify, assess & manage right amount of tax.
- Getting input credits to which a business is entitled to.
- Preparedness for any unusual transactions or system failures.
- System can cater to for growth and expansion of business.
- Mechanism can validate if best practices are followed or not.
- Identify additional measures to reduce the Risk of compliance failures.

Ultimately, governance which is right way of doing things, should be set at top level as ***'Tone at the top'.*** GST Governance if followed in right dimensions, objectives of reform will be achieved which ultimately will help business to grow in domestic as well as in international market in the days to come.

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Seminar on "GST Audit & Recent Trends in GST Litigation"

CA. Sandeep Sachdeva
Speaker

Participants

Seminar on "GST Audit & Recent Trends in GST Litigation"

CA. Dilip Phadke
Speaker

Participants

Brand Usage - Not an International Transaction

Contributed by :- CA. Suraj R. Agrawal
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Case Law Citation:-

Hyundai Motor India Limited (I.T.A. No. 739 and 853/Chny/2014, 563 and 614 /Chny/2015, 842 and 761/Chny/16 and CO73/Chny/16 Assessment years: 2009-10, 2010-11 and 2011-12)

Case Summary:-

Facts of the case:

▪ The taxpayer is engaged in the business of manufacturing and sale of passenger cars within and outside India. It is a wholly-owned subsidiary of Hyundai Motor Company, Korea (HMC).

▪ The Transfer Pricing Officer (TPO) during the course of assessment proceedings held that the tax payer was mandated to use the brand name 'Hyundai' in every vehicle manufactured by it as per the technology agreement. This, the TPO argued, resulted in enhancement of the brand value of HMC, the legal owner. The TPO concluded that the tax payer was rendering brand promotion services to the parent company in India for which it was not adequately compensated.

▪ The TPO proposed an adjustment in the form of a brand fee to be received by HMIL by adopting various techniques for each AY under consideration. Brand fee to be received by HMIL in the first year was determined using the increase in global brand value of 'Hyundai' on the basis of brand valuation report published by a consulting firm, 'Interbrand'. For the following years, statistical methods were adopted to establish the correlation between market capitalization and the brand value of Hyundai.

▪ Dispute Resolution Panel (DRP) upheld the TPO's analysis and confirmed the brand fee adjustment proposed by the TPO.

▪ Aggrieved by the orders of lower authorities, the company filed an appeal before the Tribunal.

Issue

- Whether the usage of foreign Associated Enterprise (AE) brand name on the cars manufactured and sold by the tax payer amounted to rendering of brand promotion service, and whether it constituted an international transaction under section 92B of the Income-tax Act, 1961(Act).

Ruling:

· The Tribunal's ruling analyzed whether the benefit accruing to HMC, Korea as a result of increased brand value due to the sale of Hyundai cars by HMIL is an international transaction as per Section 92B of the Act.

· The Tribunal held that accretion of brand value through advertising, marketing and promotion is a conscious effort, but brand building by increased sales is a subliminal exercise and a by-product of economic activity of selling the products in the Indian market.

· Accretion of brand value was analyzed by the Tribunal on two aspects – nature of arrangement using the brand name by the tax payer, and the scope of the definition of international transaction as per Section 92B of the Act. The Tribunal indicated that usage of brand name on the vehicles manufactured by the tax payer is a privilege, a marketing compulsion and amounts to direct and substantial benefit to the tax payer due to the credibility and reputation of the brand name.

· An important industry phenomenon which was acknowledged by the Tribunal was that it is common commercial practice to have the foreign entity's brand name as mandatory, as it is essential in the technology agreement to protect the intellectual property owned by the foreign parent.

· The ruling also mentioned that there can never be a comparable uncontrolled price for such a transaction, as in these circumstances, the entities entering into the transactions will become AEs as per the deeming provisions of Section 92A (2)(g) of the Act.

· The accretion of brand value was also analyzed by the Tribunal in terms of the provisions of Section 92B of the Act by examining each and every part of the definition. It was established that though the scope of definition includes intangibles, the issue under consideration did not deal with purchase or sale or lease of intangibles, and hence the same was not covered.

· The Tribunal also held that the technology agreement was examined by the TPO and the arm's length nature of consideration flowing out of the said agreement was not contested by the TPO. Therefore the arrangement as per the technology agreement, which permits the tax payer to use to the brand name, was held to be at arm's length, and a separate benchmarking was not warranted.

· The Tribunal further ruled that even though the international transaction definition includes a clause for "provision of services", mere accretion of brand value as a result of using the brand name of the foreign parent cannot be construed as a service; on the contrary, it is a privilege provided to the tax payer. Further, an incidental benefit accruing to an AE cannot be benchmarked unless it is owing to a specific service rendered by the tax payer.

· Lastly, the Tribunal demonstrated that the accretion in brand value is not covered by the residuary clause of the definition as it is not on account of costs incurred by the tax payer and does not result in impact on income, expenses, losses, assets of the tax payer.

Conclusion

The above ruling is one of the significant rulings on a highly litigated issue – marketing intangibles. Transfer pricing aspects of marketing intangibles have gained prominence over recent years and there have been several court rulings on the subject.

Most of the earlier rulings have primarily focused on excess advertising, marketing and promotion expenses incurred by the tax payer. The present ruling has highlighted a different side of the subject and has dealt with in detail, the brand building activity and related attribution. The ruling negates tax department's basic argument of notional brand fee income to be received by the tax payer for building the brand of the foreign entity in India. The ruling also presents an in-depth analysis of the definition of international transaction under Section 92B of the Act, and held that notional income - brand fees -is not covered under the said definition.

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Corporate Governance
A self discipline rather than a regulatory requirement

Contributed by :- CA. Vijay Ashtekar
Email :- office@ashtekarca.com

Corporate Governance though it has been a recent phenomena as far as Indian laws and industries are concerned and way back few decades with Western countries, it has the roots from Maurya Dynasty when Arya Chanakya used to follow them. The history reveals that the principles of Corporate Governance were constituted by Arya Chanakya.

Those were constituted and implemented to have more and more transparency in the governance of kingdom by the king, as well as key personalities of his cabinet.

Corporate Governance is not the outcome of any law or regulation or an issue in corporate world. It is inherent in every business activity right from the inception. It doesn't have identity of corporate structure or similar organization. Even a proprietary organization or a partnership firm needs governance. It's like diet control or daily exercise whether to adopt when your physician tells you after lot of examinations and expenditure or doing it on your own.

Corporate Governance is about maximizing shareholder value legally, ethically and sustainably. The board should exercise its fiduciary responsibilities in the best interests of all the stakeholders. The term stakeholders do not restrict to shareholders but it covers the employees, creditors, debtors, tax authorities, society, etc.

According to Milton Friedman, Nobel Laureate in Economics, the sole aim of a business is and should be the maximization of shareholders' value.

Corporate Governance is a culture and not a set of rules and regulations. Certainly there are guidelines to have effective Corporate Governance.

An important determinant of the survival and growth of any business organization is transparency in its financial statements and various reports.

The Cadbury Committee of U.K. was the first to suggest creation of three strong pillars of corporate governance i.e. -

Nomination committee, Remuneration committee and Audit committee.

The nomination committee selects independent, non-executive directors to the board, the remuneration committee decides the remuneration payable to the non-executive directors and the audit committee ensures the preparation and presentation of true and fair picture of the organization's financial statements.

Indian economy, industry being completely integrated with the world economy, industry cannot afford to ignore better corporate practices. In India, during last two decades, many attempts were made by setting up various committees to formulate the framework of good corporate practices and effective corporate governance.

The very first attempt was made by Confederation of Indian Industries and issued its report in April 1998 with many recommendations.
Then Sebi Committee tabled its report in May 1999, with certain recommendations.
Subsequently Ganguly Committee presented its report in April 2002.
Another report was presented by Naresh Chandra Committee in December 2002.
N Narayanmurthy Committee issued its report in February 2003.

Despite all these recommendations and provisions of Company Law, the issues like Satyam Computers, ICICI Bank, IL&FS are being experienced. But that doesn't mean that good corporate practices are not being followed by others too. There are many such organizations who have adopted corporate governance very seriously and being followed.

The principles of Corporate Governance include -
Fair trade practices
Corporate Social Responsibility
Timely compliance of laws applicable
Wealth maximization of all stakeholders
Timely payment of taxes due to exchequer
Code of ethics
Doctrine of Trusteeship
Protection of minority interests
Evaluation of the board and its decisions

Trusteeship involves a strong code of discipline and ethical behavior as well as equally strong principle of accountability.

The word 'Ethics' has the origin from the word 'ethos' that means character or manners.
It is a science of morals, a treatise on rules of conduct which may be referred as moral principles.

Corporate ethics refers to a set of rules of conduct applied to business which is acceptable to society at large without any excuses.

The Bhagwad Gita talks about 'Aparigraha' (non-possession) and 'Sambhava' (equalism). Gandhiji found these principles of Bhagwad Gita as the base for his philosophy of Doctrine of Trusteeship. According to him, the owners or managers of an organization are the trustees of the organization and they should never forget this position and act with that responsibility like a trustee does.

Corporate Governance is always being discussed in board rooms, industry forums, seminars and conferences. The Committees are set up, reports are tabled and being waited to have some scam or fraud in the industry. The immediate harsh action is taken either to tighten the existing law provisions or enactment of some irrational law amendments. Timely preventive measures are expected to be taken to avoid the issues.

The assessment of board is done when there is scam or fraud which is a post mortem job. The appraisal of board members and the decisions taken have to be carried out periodically i.e. every year.

The board members at SMEs should be educated regularly about the importance of corporate governance in their own interest.

Every company which fulfils any of the criteria listed below should appoint at least one independent director within a year from the date of fulfillment of the criteria.
A company -

a) achieves turnover of Rs. 100 crores, or
b) employees more than 100 employees, or
c) borrows loans from banks and / or financial institutions more than Rs. 25 crores.

This regulation will certainly help to avoid failure of a company for some unwarranted reasons.

The best way of performing high standard of business practices is through self-regulation.

Business should be conducted in a manner that earns the goodwill of all concerned through quality, efficiency, transparency and good values.

SEBI regulations, Company Law and other various laws applicable to a listed company ensure the existence of corporate governance in such listed companies but there is hardly any mechanism to ensure corporate governance in SMEs.

It is no way restricted to a listed company or a public company. In fact it is more relevant to SME category organizations where public do not have direct interest however many other small sections get affected because of poor corporate governance in these organizations.

Corporate governance is equally or more important for SMEs. The rate of failure or shutting down of the businesses is more in SMEs than large corporate entities. It is mainly because of absence of governance from outside bodies and lack of internal self discipline. The hasty decisions, harsh actions of owner managers badly affect the performance of the organization resulting in insolvency, bankruptcy and eventually shutting down the organization.

Corporate Governance or good governance has benefits like perpetual existence of an organization, consistency in performance, healthy financial position, brand creation, good market standing, high market capitalization, best credit rating, etc.

Many internal and external factors become cause of the failure of SMEs like - lack of vision, absence of mission, financial indiscipline, limitations of regulatory agencies to supervise, competition by large organizations, red tapism, etc.

It's not only the ignorance of the controlling people of the SMEs that become the cause of the failure, but many a times it has been observed that these people are unaware of certain things or they have other priorities of running the business. In such a situation a Chartered Accountant plays a significant role to save the organizations from failure. Being a knowledgeable and vast experienced professional, he can certainly ensure good governance in such SMEs.

Being in the position of Statutory Auditor, Internal Auditor, Management Consultant, he can take lead and guide the people and if required, make them follow certain principles to ensure good governance.

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