



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Issue No. 7 - July 2019

NEWSLETTER

**PUNE BRANCH
OF WIRC OF ICAI**

(Subscribers copy not for sale)

"When you feel that God is rubbing you against rocks, do not lose hope, the truth is that he is polishing a diamond stay precious."

PUNE BRANCH OF WIRC OF ICAI

Forthcoming Programmes

SR. NO.	DATE	SEMINAR NAME	VENUE	TIME	FEES	CPE HRS.
1.	3rd & 4th August, 2019 + 5th August at Chikaldara	National Tax Conference at Amaravati (Incl. Chikaldara RRC 1 Day)	Sant Dnyaneshwar Sanskrutik Bhawan, Amravati	8.30 am To 6.00 pm	Conf. Rs. 3200/- Plus GST with Accommodation & Rs. 2500/- Plus GST without Accommodation Chikaldara Rs. 2000/- Plus GST Travel Pune-AM-Pune Rs. 1700/-	12 Hrs.
2.	8th & 9th August, 2019	National Tax Conference at Shirdi	CA Ramesh Phirodia Auditorium, Hotel St. laurns, Shirdi	9.00 am To 6.00 pm	Conf. Rs. 2800/- Plus GST Accommodation Rs. 1200/- (Triple Sharing Basis)	12 Hrs.
3.	9th & 10th August, 2019	34th Regional Conference of WIRC	Yogi Sabhagruh, Dadar (E), Mumbai	9.00 am To 5.30 pm	Rs. 3953/- (Inclusive GST) upto 15th July, 2019	12 Hrs.
4.	10th August, 2019	Seminar on Information Technology Law & its Challenges	ICAI Bhawan, Bibwewadi, Pune	4.00 pm To 7.00 pm	Rs. 200/- Plus GST (Free for Saturday Series Participants)	3 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

MSME Conclave (Role of CAs in Make in India & Maharashtra)



Inauguration



Participants



CA. Julfesh Shah
Speaker



CA. Bhavesh Thakkar
Speaker



CA. Maheshwar Marathe
Speaker



CA. Kusai Goawala
Speaker

Yoga for Health, Harmony & Happiness (30 Days Yoga Session) on the occasion of International Yoga Day



Chairperson's Communique

Respected Members,

Wishing you all a very Happy Platinum Jubilee !!!!

Our esteemed Institute completes its 70 years of existence and definitely it is a proud moment for all of us. The ICAI is constantly innovating, upgrading and make it enriching for us members. However, we as members also have a responsibility – infact a duty to our mother institute. In my view, such responsibility is fairly shouldered if we take interest, interact, share your own views- on a whole participate in all the activities organized by the Institute, as far as possible as your busy schedule permits. Such your participation would be effective in promulgating the innovative ideas/ concepts (e.g. UDIN) of our institute.



CA. Ruta Chitale
Chairperson
Pune Branch of WIRC of ICAI

1st July- Foundation Day was celebrated with lot of fanfare. Your branch had organized 'Night Marathon'. The reason and thought behind specifically arranging it at 'night' was to underline our motto – Ya esha supteshu jagarti That person who is awake in those that sleep. The spiritual thought being: One whose conscious is always awake in this dark world outside. Our sense of ethics and professionalism need to be constantly sharpened in these changing times. The Night marathon was to remind us and the society of all this.

We Chartered Accountants are also at the forefront while discharging our Professional Social responsibility. As like every year, we at Pune branch are very proud to state that more than 643 bottles of blood was donated by our CA fraternity.

With the increasing work stress and pressures, as mentioned in my earlier communique, Health is of utmost importance. It reminds me of Lokmanya Bal Gangadhar Tilak and of Swami Vivekanand. One thing in common that I noticed was that, they both had emphasized the importance of sparing time in one's life towards getting fit and healthy. Ultimately, how would one be able to serve the nation if one is not fit!! With this in mind, Pune branch shall also focus on organizing programs related to stress management, practice management and health management.

Do not forget to share your ideas, views and thoughts on any and every matter related to the branch. Assuring you that we shall definitely take cognizance of each and every email, message and verbal communication.

Warm Regards,
CA. Ruta Chitale

Code Of Ethics— A Few Disciplinary Cases---

Contributed by :- CA. Shashikant Barve
Email :- shashikantbarve@gmail.com

Following is a compilation of a few Disciplinary Cases,(in respect of certain Professional and Other Misconduct), under Section 21, read with Section 22, of The Chartered Accountants Act, 1949(as duly amended from time to time).

1. Chartered Accountant found Guilty of Misconduct for not carrying Out Audit properly—external confirmation of a few bank balances not obtained.—

The Appellant while admitting that he did not obtain the balance confirmation from a bank (KCCB), submitted that out of total 18 banks he had obtained the balance confirmation of the 14 Banks and only 4 banks were remaining with which the dealings and balances were small. He also submitted that it was general practice that banks do not issue the balance confirmations despite reminders. He further submitted that he had placed reliance on bank statement given to him by the company, which was ultimately found to be fake. He also submitted that it was impossible to detect the fraud as he was carrying out the statutory audit and not an investigation. The Learned Counsel of the Appellant admitted that the Appellant committed mistake in not obtaining the external confirmation from KCCB, but it was not gross negligence.

It was held that –" In our view, it is clear that the scope of clause (7) has been widened by the Parliament of India by way of inserting the words "does not exercise due diligence" and therefore the said judicial pronouncements are not relevant for the present case. Thus, it is evident that the Appellant did not exercise due diligence expected from him and also did not obtain sufficient information for expression of opinion on the Financial Statements of the Company. We are of the considered view that the Disciplinary Committee was justified in holding the Appellant guilty under Clauses (7) & (8) of Part-I of the Second Schedule of the Act"

(BEFORE THE APPELLATE AUTHORITY, (Constituted under the Chartered Accountants Act, 1949); APPEAL NO. 09/ICAI/2018; IN THE MATTER OF: Mahavir Jain, Appellant versus Disciplinary Committee of the Institute of Chartered Accountants of India (ICAI) ..Respondents No.1 and Relationship Manager, State Bank of India, Mumbai, ..Respondents No.2).

2. Different Balance Sheets for different purposes –

It was held that—"The balance-sheet and profit and loss accounts of an assessee accompanied by a certificate as to its fairness, notwithstanding the caveat as noticed in paragraph 2(A) thereof, cannot be tailor-made to suit a particular purpose or window-dressed to make it attractive for bankers to rely thereupon and all the gloss and sheen removed thereafter when it was the time to pay tax. The doctrine of pari delicto would apply and preclude the appellant herein from detracting from the figures contained in the balance-sheet and profit and loss accounts certified on July 18, 2005 at any subsequent stage.

The purpose of the tax audit is to ensure that the balance sheet and profit and loss account gives the correct information as per the books of accounts maintained by the assessee. A party or an auditor cannot be permitted to get away from the consequence of the information which he has given by way of a certificate subsequently when he has been caught merely by stating that the information was simply estimates for getting the bank loan. The assessing officer is bound to rely on the certificate issued by a professional whose profession is regulated by certain conduct rules.

In our opinion, it is a fit case where the revenue must have taken the action even against the chartered accountant for issuing the false certificate, what to talk of making the addition.

The Registrar, Original Side will forward a copy of this order to the Institute of Chartered Accountants of India for appropriate steps, if thought fit, to be taken against Roy Ghosh and Associates of NTE-206, Chandini Chowk, Golebazar, Kharagpur in accordance with law and upon due notice to such firm of Chartered Accountants."

(ITAT No.22 of 2015; GA No.436 of 2015; IN THE HIGH COURT AT CALCUTTA; Special Jurisdiction (Income Tax); ORIGINAL SIDE; BINOD KUMAR AGARWALA versus COMMISSIONER OF INCOME TAX, W.B. – XIX)

3. Other misconduct-- Clause (2) of Part-IV of the First Schedule to the Act is wide, and would include within its scope, any conduct that would tend to bring disrepute to the profession or the Institute

It was held that—"This Court is unable to accept the contention that the Board of Discipline does not have the jurisdiction to examine the alleged misconduct on the part of the petitioner. Clause (2) of Part-IV of the First Schedule to the Act is wide, and would include within its scope, any conduct that would tend to bring disrepute to the profession or the Institute. If a Chartered Accountant is found to have been guilty in outraging the modesty of a woman and/or other offences involving moral turpitude, it would not be inapposite for the Board of Discipline to also conclude that the conduct did, in fact, lower the dignity of the profession. In this view, this Court is not able to accept that the proceedings before the Board of Discipline are without jurisdiction.

It was also contended on behalf of the petitioner that the Board of Discipline could not return any finding as to whether the petitioner was guilty of any of the offences alleged in the FIR, as the said matters were pending trial before the concerned Court. In this regard, it is relevant to mention that the standards of proof as required in Disciplinary Proceedings and Criminal proceedings are different. Whereas, the standard of proof as required in the criminal proceedings is beyond reasonable doubt, the standard of proof as required in Disciplinary proceedings is preponderance of probability. Whilst, it is correct that the Board of Discipline has no jurisdiction to sentence the petitioner, it would be erroneous to contend that the Board of Discipline does not have the jurisdiction, to examine the allegations made against the petitioner, in the context of determining whether the petitioner is guilty of other misconduct as defined under Part-IV of the Schedule-I to the Act. Having stated the above, there may be cases where it may be apposite to await the decision in a trial, and the Board of Discipline has the power to defer the consideration of the complaint in such cases. However, that is a matter of exercising discretion and cannot be considered as denuding the Board of its jurisdiction."

(IN THE HIGH COURT OF DELHI AT NEW DELHI; Judgment delivered on: 11.02.2019; + W.P.(C) 10020/2016 & CM Nos. 39730/2016, 35843-, 35844/2018; LALIT AGRAWALPetitioner; versus THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA & ANR.....Respondents)

4. Section 21 / 22—Other misconduct— an act although not in professional capacity if brings disrepute to the profession ---

"The present appeal arises out of a complaint dated 16.03.2005 against Gurvinder Singh - Respondent No.1, who is a Chartered Accountant, relating to sale of 100 shares in 1999,

which were transferred to the Chartered Accountant's own name. What has been pleaded before us is that the matter has ultimately been settled between the Complainant and the Chartered Accountant, despite which the Disciplinary Committee took up the case and ultimately found that the conduct of the Respondent No.1- Chartered Accountant, was derogatory in nature and highly unbecoming and held him guilty of 'Other Misconduct' under Section 22 read with Section 21 of the Chartered Accountants Act, 1949 (hereinafter referred to as 'the Act').

The Disciplinary Committee has, on facts, found the Chartered Accountant guilty of a practice which was not in the Chartered Accountant's professional capacity.

This, it was entitled to do under Schedule I Part-IV sub- clause(2) if, in the opinion of the Council, such act brings disrepute to the profession whether or not related to his professional work."

(IN THE SUPREME COURT OF INDIA; CIVIL APPELLATE JURISDICTION; CIVIL APPEAL NO. 11034 OF 2018; (Arising out of SLP (C) No. 19564/2017); COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ---Appellant(s) VERSUS SHRI GURVINDER SINGH & ANR.- Respondent(s))

5. The ignorance while submitting the Auditors Report of certain new reporting requirements, notified by the Central Board of Direct Taxes (CBDT), can amount to Professional Misconduct.

An Auditor was required to report instances where tax was deductible by the auditee but not deducted by him. The CBDT vide Notification No. 208/2006 dated 10th August, 2006 had widened the reporting requirements of Form 3CD. This Form came into effect for all audit reports signed on or after 10th August 2006. Admittedly in this matter the audit was carried out for the year ended on 31.3.2007 and audit report of the same was signed on 23.10.2007. Thus, it was the duty of the Appellant to report such transactions in the Form 3CD, which he failed to do.

It was held that the Appellant did not exercise due diligence in carrying out his professional duties, which is expected from him. He is guilty of the violation of Clause (7) of Part-I of Second Schedule.

(BEFORE THE APPELLATE AUTHORITY (Constituted under the Chartered Accountants Act, 1949); APPEAL NO. 10/ICAI/2018; IN THE MATTER OF: Ishaq Esmail Lakkadghat ...Appellant Versus Income Tax officer, 11(3)-1 Mumbai ...Respondents No. 1 and The Disciplinary Committee, Institute of Chartered Accountants of India (ICAI) ...Respondents No. 2)

6. The incorporation of a Company by C.A. with 90% Shares (and being a Director involved in its business activities) without the prior permission of the ICAI can be professional misconduct.

It was held that – "A line has to be drawn between a Director Simplicitor and a Director actively involved in the business activities of a company and we consider that a Director who attends Board Meetings for taking policy decisions, advising a company on the issue of compliance of laws and even signs only those statutory documents which he is duty bound to sign as a director, would not be a director involved in the business of the company but would be a director performing statutory duties but not a Director who has incorporated the Company with 90% of

equity held by himself, authority to act on behalf of the Company as a signatory to Annual Reports, resulting into promotion of the business of the Company and corresponds with different persons on behalf of the Company, would be a Director involved in the business affairs of the Company, even if he was not a whole time director or managing director. We, therefore, are of the view that the Appellant in this case was actually involved in the business of the Company and he formed this Company along with his family members in order to venture into a new business apart from the profession of chartered accountancy. The Appellant did indulge in the business without the permission of the Council. He was, therefore, rightly held guilty of professional misconduct by the Board of Discipline. Under these circumstances, we firmly believe that the Company was promoted and run by the Appellant as his business though he was not designated as MD/Whole-time Director in terms of Sec.2 (26) of the Companies Act, 1956 and thus engaged in business and since he has not taken the prior permission of the ICAI for engaging in such business, is guilty of professional misconduct under item (11) of Part I of First Schedule. Thus, we affirm the decision of the BOD in holding the Appellant guilty of professional misconduct under Item (11) of Part I of First Schedule."

(BEFORE THE APPELLATE AUTHORITY (Constituted under the Chartered Accountants Act, 1949); APPEAL NO. 05/ICAI/2019; IN THE MATTER OF: Yogendra N.Thakkar Appellant Versus Board of Discipline, ICAI Respondent No.1 and Vinay D. Balse, MumbaiRespondent No.2).

1. Other Misconduct —

The petitioners in these Writ petitions are partners of a firm of Chartered Accountants. They had taken lease of the premises belonging to the fourth Respondent. It appears that while taking the lease, the petitioners herein had represented that the lease premises will be utilized only for residential purposes. But contrary to the assurance held out to the fourth Respondent, the building in question was used for running the firm.

As a result, the building that belongs to the fourth Respondent came to be categorized as commercial. Therefore, the fourth Respondent initiated Rent Control proceeding against the Writ petitioners herein. While allowing the R.C.O.P. filed by the fourth Respondent, the Rent Controller had made some caustic observations against them. Parallely, the fourth Respondent had also lodged a complaint against the Writ petitioners under Section 21 of the Chartered Accountants Act 1949.

The Institute took cognizance of the said complaint and decided to proceed further in the matter. It was submitted that Respondents 1 to 3 will not have any jurisdiction in the matter because the dispute between the Writ petitioner and the fourth Respondent is purely civil in nature and would not fall within the frame work of professional or any other misconduct as provided in the Chartered Accountants Act 1949.

It was held that Respondents 1 to 3 are very much having the jurisdiction to go into the complaint given by the fourth Respondent against the Writ petitioners.

(BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE: 21.02.2019, CORAM THE HONOURABLE MR.JUSTICE G.R.SWAMINAT W.P.(MD)Nos.15314 & 15315 of 2017 and W.M.P.(MD)Nos.12123, 12124, 16729 & 16730 of 2017;R. Sridharan...Petitioner, in W.P.(MD)No.15314 of2017.P.Suriyanarayanan Petitioner in W.P. (MD) No.15315 of 2017 vs. 1. The Director, DC, 2.The Deputy Secretary, DC, 3. The Assistant Secretary, DC of ICAI, 4.T.Raja Meyyappan, Respondents, in both petitions)

8. Lending the name to the Prospectus for public issue and misleading the investors —

The charges were that the Chartered Accountant described himself as having over all control of the management of Brahaspati Finance Limited (in short BFL) in its prospectus even though he had resigned as its Director prior to opening of the public issue; ii) He has lent his name to the prospectus issued in connection with public issue of BFL thereby misleading investors and inducing them to subscribe to its shares;

It was held that—"we are of the opinion that the Chartered Accountant Satish Kumar Gupta had resigned as Director of BLF before opening of the public issue of BLF irrespective of the fact that his resignation was allegedly accepted on 9.9.1997, in respect whereof no material was brought on record. Having resigned before the commencement of the public issue, his name could not have appeared in the prospectus which in fact was there. This was nothing but lending his name to the prospectus to the aforesaid public issue and misleading the investors. It is immaterial whether any investor was actually misled. However, the Act of mis-conduct gets completed. In view of the above, we find that the Disciplinary Committee has rightly held him guilty for "other misconduct" under Section 22 read with 21 of the Act.

(HIGH COURT OF JUDICATURE AT ALLAHABAD; A F R; Case: - REFERENCE AGAINST MISC. ACTS No. - 1 of 2014; Applicant: - In The Matter Of the Chartered Accountants Act, 1949 & 2 Ors)

9. Modus operandi — merely book entries —

A complaint dated December 26, 2000 was received by the Council from the Assistant General Manager, State Bank of India, New Delhi against G.S. Jauhar & Co. of which the respondent was a partner alleging that acting on behalf of the partnership firm which was the Statutory Auditor of M/s. Pertech Computers Ltd. (hereinafter referred to as PCL), while carrying out the audit, the respondent was guilty of various acts of commission and omission and thus action needs to be taken against the respondent for professional misconduct. Respondent admitted being in charge of the audit team.

The Committee perused the financial statements of the years under question, the working results of the Company and the background note circulated by IDBI and observed that a major portion of the Company's profit flowed from increase in stock. Further, in the later years, namely, from 1988-89 onwards that the increase in stock was always higher than the net profit. The modus operandi which was adopted by M/s. Pertech Computers Ltd. and M/s. Altos India Ltd. was booking as sales of a software reportedly developed by M/s. Pertech Computers Ltd. to an outsider party which in turn would be passed on to M/s. Altos India Ltd as purchaser which again would be supplied to Pertech Computers Ltd. as sales. In this process, this loop getting repeated many times, but there was no cash flow while the sales and stock/receivables kept on increasing. However, the Company was required to pay the difference in the process booked by M/s. Pertech Computers Ltd. to the party and the party to M/s. Altos India Ltd.

It was held that—"Suffice it to highlight that in paras 26 and 27 of the report the Committee highlighted the modus operandi adopted by M/s. Pertech Computers Ltd. and M/s. Altos India Ltd. to form a loop with no cash flow coming in, but sales, stocks and receivables increases. The obligation of the auditor concerning transactions which are merely book entries, was highlighted i.e. the duty of the auditor to enquire whether the transactions were prejudicial to the interest of

"The hardest moment in life is not when you lose something and tears come out of your eyes. It is when you know you are losing something and you are forced to smile."

the company being not discharged by the auditors. The Committee also highlighted that as an auditor it was the obligation of the respondent to comment about the internal control procedures of the company. With reference to AAS-3 and AAS-4, the Committee further brought out the obligations of the auditor to be discharged in the course of the audit. The Committee has also highlighted the duties of the auditor to maintain the working papers and documents and noted that in spite of repeatedly directed to do so, the respondent did not produce the papers and took the plea that since the year 2003 he had surrendered the certificate of practice, therefore he was not keeping the past record. The respondent has chosen not to file any counter affidavit. The report of the Disciplinary Committee is based on the accounting standards to be followed and breach thereof. Indeed, the respondent is guilty of committing professional misconduct falling within clauses 5, 6, 7 and 8 of Part 1 of the 2nd Schedule to the Chartered Accountants Act, 1949." (IN THE HIGH COURT OF DELHI AT New Delhi; CHAT.A.REF 2/2013: COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA ...Petitioner versus CA G S JOHAR & ANR.).

Disclaimer of liability:--The information contained in this article is for general information purposes only. You should not rely upon the information as a basis for making any business, legal or any other decisions. There are no representations or warranties of any kind, express or implied about the completeness, accuracy, reliability, suitability or availability with respect to the information for any purpose. Any reliance you place on such information is therefore strictly at your own risk.

-----*****-----

Seminar on Intricacies in GST & Interactive session with Office bearers of WIRC of ICAI



Press Conference



Dignitaries



CA. Priti Savla
Chairperson – WIRC of ICAI



CA. Umesh Sharma
Vice Chairman – WIRC of ICAI



CA. Rakesh Alsli
Secretary – WIRC of ICAI



CA. Yashwant Kasar
Treasurer – WIRC of ICAI



CA. Dilip Phadke - Speaker



Participants

Summary of 25 Important Income-tax Amendments in Finance Bill (No. 2), 2019

Contributed by :- CA. Aalhad Deshmukh

Email :- aalhad.deshmukh@drbm.in

Preface

India's Finance Minister Smt. Nirmala Sitharaman presented Union Budget (Finance Bill No. 2 of 2019) on July 05, 2019. It was overall an aggressive budget from the point of view of promotion of Green Initiative and Start-up Ecosystem in the country. This write-up aims to highlight 25 major Income-tax amendments.

Major Income-tax amendments

1. Inter-changeability of Aadhar and PAN

It has been proposed to use PAN and Aadhar as interchangeable inputs for filing ITRs by individual assesseees. Taxpayers who do not have PAN, can quote their Aadhar. Onus has also been placed on collectors like banks for receiving documents for verifying the authenticity of the same.

2. Consequences of non-linking of PAN and Aadhar

If PAN and Aadhar are not interlinked, the allotted PAN shall be marked as inoperative. As such, if you have not linked your PAN and Aadhar, it is a high time to do so.

3. No changes in tax rates and slabs for normal individuals

The basic tax exemption limit has been retained at Rs. 2.5 lakhs for individuals up to the age of 60 years. For senior citizens, the same has been kept intact at Rs. 3 lakhs and for super senior citizens, the basic tax exemption limit has been kept at Rs. 5 lakhs.

4. Robinhood Tax for Super Rich

For individuals having total taxable income above Rs. 2 Crores but up to Rs. 5 Crores, additional surcharge of 3% has been introduced; bringing the total effective tax rate to 39% approximately. For individuals having total taxable income in excess of Rs. 5 Crores, additional surcharge of 7% will be levied, making the effective tax rate of 42.7% approximately.

5. Incentives for buying e-vehicles

Government has proposed reduction in GST rate on e-vehicles to the GST Council. To incentivise the car owners, additional income tax deduction of Rs. 1.5 lakhs under section 80EEB has been provided on interest paid on loan taken for purchase of e-vehicles. The loan should have been taken from a bank or NBFC from April 01, 2019 to March 31, 2023 and as on the date of sanction of loan, taxpayer should not own any other e-vehicle.

6. Boosting Affordable Housing

To boost affordable housing, additional deduction up to Rs. 1.5 lakhs will be provided for interest paid on loans borrowed up to March 31, 2020 for purchase of house valued up to Rs. 45 lakhs. Affordable houses have been defined to have maximum area of 60 Sq. Mt. for metro cities and 90 Sq. Mt. in non-metro cities.

7. Faceless Income Tax Assessments

Online Tax Assessments by way of e-proceedings were introduced couple of years back. It has been proposed to introduce faceless tax assessments in order to curb malpractices during tax scrutinies. All cases shall be allotted by central registry to specialised officers. The identity of the assessing officers shall not be revealed to the assesseees.

8. Mandatory Filing of Return on Income for certain persons

Currently, return of income is required to be filed by individuals only if their total income exceeds maximum amount not chargeable to tax. In addition to it, following persons now will be required to file Income Tax Return irrespective of their income:

- a. Persons having deposited sum of more than Rs. 1 Crore in one or more Current Accounts with Banks; or
- b. Persons having total foreign travel expenses of more than Rs. 2 lakhs for self or for others; or
- c. Persons having total electricity expenditure of more than Rs. 1 Lakhs; or
- d. Other conditions as may be prescribed.

9. Pre-filled Income Tax Returns

Currently, simplification in filing ITRs is limited up to salary returns. Government aims to collect more and more information by way of Annual Information Returns and Statement of Financial Transactions in order to make ITR filing simple for taxpayers. Amounts of Salary Income, Interest Income from Banks, Capital Gains etc. would be prefilled in the ITR form which would save the time of the taxpayers and would make tax assessments simpler and faster.

Accordingly, more and more people will be required to file AIRs and SFTs with the Income-tax Department to facilitate better information sharing.

10. Introduction of New Section 194M

TDS @ 5% will have to be deducted on payment of professional fees (194J) or contractual charges (194C) more than Rs. 50 Lakhs in the case of individuals or HUFs not subject to tax audit. Such TDS can be made by way of PAN. TAN may not be required.

11. Introduction of New Section 194N

Cash Withdrawals in excess of Rs. 1 Crores during the year will be subject to TDS @ 2% by Banks and Post-offices with effect from September 01, 2019. This will help curb cash transactions.

12. Amendments to section 194IA

Section 194IA is applicable on sale consideration of immovable property @ 1%. Section 194IA has been amended in order to include Club Membership Fees, Car Parking, Electricity and Water Utilities Fees, Maintenance Fees, Advance Fees etc. which are incidental to transfer or sale of immovable property.

13. Relaxing the provisions of section 201 and section 40

In respect of payments made to a resident person, if tax has not been deducted at source; however, the deductee pays the tax applicable and files his income tax return u/s 139(1), and also obtains a certificate in prescribed format from CA, then the deductor shall not be held as assessee in default. Similar benefits have now been extended to NRIs.

14. Relaxation from Angel Tax issue

In order to provide relief to the start-ups from the Angel Tax issue, it has been proposed to not to initiate scrutiny assessments for valuation of equity shares issued at premium if such start-ups produce required documents. Furthermore, the ongoing assessments on account of valuation issues shall be discontinued in a phased manner.

It has also been proposed that investment in start-ups by Category II AIFs (in addition to Category I AIFs as allowed currently) shall not be subject to any kind of scrutiny with respect to valuation of shares.

15. Capital Gains Exemption under section 54GB

Section 54GB deals with exemption of capital gains if proceeds of sale of residential property are invested in eligible start-up. This investment period has been extended up to March 31, 2021. Furthermore, lock-in period for investment in IT related products in a start-up has been reduced to 3 years from 5 years and promoter's shareholding criteria is relaxed to 25%.

16. Benefit of lower corporate tax rate

Currently, the benefits of lower corporate tax rate of 25% are enjoyed by the companies having total turnover not exceeding Rs. 250 Crores. This turnover limit has now been extended to Rs. 400 Crores. This will help cover approximately 99% companies in the country.

17. National Pension Scheme

NPS is being used as an attractive tax saving investment tool by many. To further attract investments in National Pension Scheme, the Government has decided to allow 60% exemption in the place existing 40% at the time of withdrawal.

18. Resolution of Distressed Companies

In order to provide relief to the distressed companies, the conditions of continuity of shareholding for carry forward and set-off of loss have been relaxed for the companies where board of directors has been suspended by NCLT and new directors have been appointed as per the recommendation of the Central Government.

Furthermore, for the purpose of calculation of MAT liability under section 115JA / 115JB, aggregate of brought forward losses and unabsorbed depreciation shall be allowed as deduction.

19. Online filing for deduction of tax at source u/s 195

In respect of deduction of tax at source on payments made to Non-residents, online filing is introduced for persons seeking tax to be deducted.

20. Mandatory low-cost e-payment options

Businesses having total turnover of more than Rs. 50 Crores are now required to introduce low-cost e-payment options like BHIM / UPI etc. to their customers.

21. Gifts to Non-Residents

Gift of any sum of money or property situated in India to a Non-Resident from July 05, 2019 shall be deemed to have accrued in India and accordingly, shall be taxable in India.

22. Buy-Back Tax even for listed companies

Buy-back tax under section 115QB is currently applicable only for unlisted companies. The same has also been made applicable for listed companies.

23. Relaxation for Demerger

In case of demerger, the resulting company is required to record the assets and liabilities at book value as appearing in the books of demerged company. This condition has been relaxed for companies following Ind-AS which can record the assets and liabilities at fair value.

24. Relaxation of STT

In respect of Securities Transaction Tax in the case of exercise of an option, levy shall be made only on the difference between settlement price and strike price.

25. Deeming of fair valuation under section 50CA and section 56(2)(x)

Existing provisions of section 56(2)(x) provides for taxation of transactions of receipt of property without consideration or for inadequate consideration. Section 50CA provides for calculation of fair market value of unquoted equity shares in certain circumstances for the purpose of capital gains. Deeming fair value as per prescribed rules may cause genuine hardship where the person transferring the shares have no control over such valuation. It has been proposed to amend section 56(2)(x) and section 50CA to exclude certain types of persons from the applicability of these provisions.

Closing Remarks

As per the tradition, the union budget 2019 did not put forth lucrative tax amendments for middle-class salaried taxpayers. No tax limits were amended for individuals. Whereas, super rich class was burdened with additional tax. The government has tried to simplify taxation system for corporates; allowing benefits of lower taxation to around 99% companies. Specific provisions for start-ups will help development of start-up ecosystem in the country. Incentives for e-vehicles, revival of NBFCs and focus on measures to curb cash transactions were true highlights of this budget. Overall it was a good budget.

-----*****-----

Call us at [8448512714](tel:8448512714)

Send an email at helpdesk.cmib@icai.in

Post your queries on 'HelpDesk' log on to <https://cmib.icai.org/>

Help Desk of CMI&B

One Stop Solution to Queries for Members in Industry

Committee for Members in Industry & Business

The Institute of Chartered Accountants of India

ICAI

Setting up of an entity in USA from India

Contributed by :- CS Dhaval Gusani

Email :- dvg.pcs@gmail.com

Many investors and business firms are keen to set up a Company in United States of America to expand the horizon of their products and services in other developed regions like US, Europe, and South America. Setting up of an entity in US offers several advantages like enhanced credibility in international market, attraction of angel investors, taxation benefits etc.

Any Indian or foreign national can set up either **C-Corporation** (Company) or **LLC** (similar to that of LLP) in USA. There's another entity type called an 'S-Corporation' but that entity requires all shareholders to be US Citizens. There is no restriction on the number of owners for a US Corporation or LLC, which country the owners are from or whether they are individuals or other companies.

Key considerations before setting up of a Company or LLC in US by Indians

• **Choosing an entity**

Indian business should ask themselves first following questions before setting up of an entity in USA:

1. Whether the entity would be set up in USA, but the operation would be carried out in India.
2. Whether the entity would be set up in USA for marketing and brand building exercise and the rest of operation is carried out in India.
3. Whether the entity would be subsidiary of an Indian business firm, but would carry out full-fledged operations in USA.

You can opt for LLC in case for first two situations and C-Corporation. Both entities offer big benefits to your business. Incorporating a business allows you to establish credibility and professionalism. It also provides limited liability protection.

• **Choosing a state**

In the United States, you can form a Corporation or LLC in any of the 50 States. Some US states are more **"business-friendly"** or **"international-friendly"** than others, especially **Delaware, Nevada and Wyoming**. Delaware, Nevada and Wyoming banks are more familiar with dealing with international clients without a local office, than other states. This can make opening a bank account much easier. Moreover, after forming your company in these states, if you would like to operate from other states of US, it is still possible to do so through foreign qualification process.

If you simply want to form a US company because you need to open a US bank account and will not be opening a US branch or have a physical presence, then you might choose Wyoming which has lower annual state fees than other states. But if you want to form a company for the purpose of obtaining US investment or venture capital, you may consider a Delaware Corporation as this is the entity that is required by the vast majority of US investors and venture capitalists.

Differences between Corporation and LLC

There are differences in Corporation and LLC. However, both have limited liability protection. Same like Company and LLP in India, Corporation and LLC in US works. Choosing an entity depends upon many things like your business structure, scalability, turnover, requirement to set up physical office in US etc. Major consideration before choosing an entity is given below:

- **Taxes**

Corporations are responsible for paying tax on their profits and on dividends the entity distributes to its shareholders. Since dividends are not tax deductible, dividends are taxed twice. This is referred to as double taxation. While **double taxation** is seen as a disadvantage for businesses choosing to file as a corporation, this additional tax responsibility can often be offset by federal deductions that are only available only to corporations like advertising costs, operating expenses, employee fringe benefits such as medical and retirement plans etc.

As of 2018, corporations pay a flat tax of 21% on their profits, which is lower than the top five individual tax rates. While this is largely offset by double taxation, any income the corporation chooses to retain at the end of the year will be taxed only once at the new 21% rate. This allows the owners of the corporation to save on taxes by investing some profits back into the business.

An LLC is taxed as a pass-through entity by default. This means that the profits of the business are "passed through" to the owners (called members). Profits and losses are reported on the individual tax returns for the owners, and not at the business level. As a result, filing taxes is often simpler for owners of an LLC. Any losses or operating costs of the business can be deducted on personal tax returns, which can help offset other income. However, an LLC may elect to be taxed as Corporation while it is an uncommon choice but it may make financial sense for some businesses.

- **Compliances**

Corporations are required to hold an **annual shareholder meeting** each year and the proceedings and discussions must be recorded and prepared called **corporate minutes**. A corporation is generally required to file an annual report. Any actions or changes in the business will require a **corporate resolution** to be voted on at a meeting with the board of directors.

LLC is not required to keep minutes, hold annual meetings, or have a board of directors. While some states still require LLCs to file annual reports, others do not.

Process to incorporate a Corporation or LLC in the USA from India

Once you've decided what type of company you'd like to form and which state you will be forming the company, there are only a few basic requirements we need to form your company for you.

1. Appoint a Registered Agent

To incorporate an entity in USA, you first need to appoint a 'Registered Agent' who is a person or company that must have a physical address in the state of formation, be available during business hours, and will accept and sign for official legal and state documents for the company. Registered Agent is the link between you and US Government. They will accept documents, scan them and email them to you, and if necessary, forward documents via International Mail that cannot be scanned or require a physical signature.

2. Choose a Company Name

Registered Agent will search the name whether it is available in your chosen state or not, same like here we do.

3. Provide Names and Addresses of the Directors, Members etc

You should provide details of Directors, Members of proposed Company/LLC along with its KYC documents like Passport, Address Proof, ID Proof etc. After successful documentation and form filing, your company or LLC can get incorporated in 1-2 days.

4. Federal Employer Identification Number

The Federal Employer Identification Number (FEIN) also known as an "EIN" or simply "Tax ID Number" is a number issued by the United States Internal Revenue Service (IRS) that is somewhat like an identification number for companies. Once your company is formed, Registered Agent assists you in obtaining this number from the IRS. The EIN will be needed to open a US bank account.

5. Apostille or Certificate of Authentication (Optional)

If you intend to open a bank account in India or if a local company or government office will require proof of the formation of your US Corporation or LLC, you may need to have the company formation documents certified with an "Apostille". You can ask your registered agent to send apostille certificate of formation through international courier.

6. Open a US Bank Account

US Bank Account is compulsory for following:

- To accept US payments;
- To open a US merchant account;
- To open a physical branch office in the US.

Most banks will require you to have physical address in the United States and which must not be your Registered Agent's address. Some banks may accept your Registered Agent address for opening the bank account, but you will need to arrange to have your bank statements etc. routed through either a mail forwarding service or have them delivered electronically.

You should open an account in the bank that has presence in both US and in India like City Bank has branches in India and in US.

7. Open a Bank Account in Your Home Country

If you need to open a bank account in your home country, the bank will more than likely require the above-mentioned "Apostille" certificate of formation. Contact your local bank for more details on what is required to open a bank account in your country.

8. Get a US Phone Number, Website etc.

Getting a US Phone number and creating a website provides digital space in US. People nowadays visit your website instead of your physical office. So, create professional looking website and arrange for local US phone number. There are many phone number providers in US who will provide routing to forward your calls to any Indian number you wish as well as VOIP service where calls can be routed over the internet instead of standard voice lines.

Annual Compliances

Maintain a Registered Agent

You must have a Registered Agent in US to fulfill the requirements of laws. Registered Agent is the middle man between us and the US Govt.

"Time is free, but it's priceless. You can't own it, but you can use it. You can't keep it, but you can spend it. Once you've lost it, you can never get it back."

File an Annual Report

The "Annual Report" is simply a document that updates the state on the owners, addresses and Registered Agent for your company. In many states it can be filed online. Your Registered Agent will receive and forward the required report to you before it is due. Failure to file this report can result in your company becoming inactive, being assessed with late fees and eventually be administratively dissolved.

Pay US Taxes

Your company or the individual owners may have to pay taxes on any US-based income. There are 2 types of taxes - one is state level and another is federal level. In addition, many states are charging franchise tax. You should be in touch with your registered agent for tax compliances.

Franchise tax

A franchise tax is charged by a state to businesses for the privilege of incorporating or doing business in that state. Franchise taxes, like income taxes, are usually imposed annually. Failure to pay franchise taxes can result in a business becoming disqualified from doing business in a state. Different states have different rates. You should comply accordingly.

Business Income Taxes

All businesses must pay income taxes. These income taxes are based on the profit of the corporation. Corporations may pay both federal income tax and state income tax if the state has an income tax. Some states require businesses to pay both income tax and franchise tax.

The USA is the globe's largest national economy. It offers clear policies and regulations for encouraging startups and at the same time attractive taxation system too. In their market-oriented economy, private individuals and businesses make most of the decisions, and the federal and state governments buy needed goods and services predominantly in the private marketplace. US business firms enjoy greater flexibility than their counterparts in Western Europe and in decisions to expand capital plant, to lay off surplus workers, and to develop new products. Any business man if wants to enter into global scenario, then setting up an entity in USA is must.

-----*****-----

5 Days GST Audit Gyansatra



CA. Pritam Mahure - Speaker



CA. Amit Agarwal - Speaker



CA. Swapnil Munot - Speaker



CA. Sandeep Sachdeva - Speaker



CA. Ravi Kumar Somani - Speaker



Participants

Celebration of 5th International Yoga Day



Seminar on "GST Annual Return"



CA. Umesh Patwardhan - Speaker



Participants

Seminar on Company Compliances Practice & Law



CS. Mandar Jog- Speaker



CA. V. L. Jain - Speaker



Participants

Get Together of All Past Managing Committee Members of Pune Branch of WIRC of ICAI & Programme on Art of Laughing



Current Managing Committee Members



All Managing Committee Members



Mr. Makarand Tiloo
Laughteryoga Trainer & Motivational Speaker

GST



Finance (No. 2) Bill 2019 Publications

- ▶ **GST Ready Reckoner**
V.S. Datey

- ▶ **GST Manual with GST Law Guide & Digest of Landmark Rulings**
Set of 2 Vols.

- ▶ **GST Tariff with GST Rate Reckoner**
Set of 2 Vols.

- ▶ **GST Case Laws Digest**
A Section-wise Case Book of Judgments/Orders of High Courts/AAAR/AAR/NAA

- ▶ **GST - How to Meet Your Obligations** (Set of 3 Vols.)
S.S. Gupta

- ▶ **GST Law & Practice**
CA Divya Bansal

- ▶ **GST Compliance Manual**
Aditya Singhania/Aditi Singhania

- ▶ **GST Made Easy**
Answer to all Your Queries on GST
CA Arpit Haldia

- ▶ **GST Refunds**
Aditya Singhania/Aditi Singhania

- ▶ **GST Input Tax Credit**
V.S. Datey

- ▶ **GST E-Way Bill**
V.S. Datey

- ▶ **GST on Works Contract & Other Construction/EPC Contracts**
Sudipta Bhattacharjee/
Abhishek Garg/Rishabh Prasad

- ▶ **GST on Works Contract & Real Estate Transactions**
V.S. Datey

- ▶ **GST Audit & Annual Return**
Aditya Singhania/Aditi Singhania

- ▶ **GST on Builders & Real Estate Transactions**
CA Sandesh Mundra

- ▶ **GST Audit Manual with Annual Return**
Vivek Laddha/Shailendra Saxena/
Pooja Patwari

- ▶ **GST Practitioners' Question Bank with Quick Exam Guide**
CA Divya Bansal

- ▶ **GST Acts with Rules & Forms**
(Also available Pocket Edn.)

Mumbai

35, Bodke Building, Ground Floor, MG Road, Opp. Mulund Railway Station, Mulund (W), Mumbai - 400080 (INDIA)
Phone : 022-25934806/07/09, 91-9619668669,
91-9322247686
Email : sales.mumbai@taxmann.com

Pune:

Mobile : 9822411811, 9834774266, 9322293945
Email : sales.pune@taxmann.com

Nagpur

Mobile : +91-9372452573
Email : sales.nagpur@taxmann.com

Pune Branch of WIRC of ICAI

Plot No.8, Parshwanath Nagar, CST No. 333,
Sr.No.573, Munjeri,Opp. Kale hospital,
Near Mahavir Electronics,Bibwewadi, Pune 411037
Tel: (020) 24212251 / 52
Web: www.puneicai.org
Email: admin@puneicai.org

ADVERTISEMENT TARIFF

FOR PUNE BRANCH NEWSLETTER WEF NOVEMBER 2015

1) Back Page (19x15) Color	: ₹ 16,500/-
2) Inner Page of Front/Back Page (A4) Color	: ₹ 16,000/-
3) Full Page (A4) Color	: ₹ 15,000/-
4) Half Page	: ₹ 8,000/-
5) Quarter Page	: ₹ 4,500/-

Discount: *3 to 6 Insertions - 10%
*7 to 12 Insertions - 15%
*Adissional GST - 18%

Disclaimer: The ICAI and the Pune Branch of WIRC of ICAI is not in any way responsible for the result of any action taken on the basis of advertisement published in the newsletter. The members, however, may bear in mind the provision of the Code of Ethics while responding to the advertisements. The views and opinion expressed or implied in the Newsletter are those of the authors / contributors and do not necessarily reflect of Pune branch. Unsolicited matters are sent at the owners risk and the publisher accepts no liability for loss or damage. Material in this publication may not be reproduced, Whether in part or in whole without the consent of Pune branch. Members are requested to kindly send material of professional interest to editor@puneicai.org the same may be published in the newsletter subject availability of space and editorial editing.