



NEWSLETTE NOIDA BRANCH OF CIRC OF THE ICAI The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

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No. – 01 (2016-2017)

March -2016



From the desk of Chairman

At the outset, It is my great pride and privilege to serve as the Chairman of Noida Branch of CIRC of ICAI for the year 2016-17. I reverentially acknowledge the contribution of my predecessors, for sculpting the branch functioning to its present stature. I am highly indebted to my colleagues in the past managing committee, Past Chairmans, torch bearers of Noida branch, other stakeholders, close friends and fraternity for reposing utmost faith in my leadership abilities for the profession's forward path. Srimad Bhagavad Gita states: Man is made by his belief. As he believes, so he is.

I promise to keep up the traditions of the accountancy profession predominantly when it comes to upholding the objectivity, integrity and excellence to enhance the image of our branch, profession and to play a significant role in rendering selfless service to the nation.

On account of extraneous factors the participation of members in the branch activities is limited, we will try our best level to increase the participation by way of quality seminars, group discussions, monthly students CICASA seminar, seminar of professional subject having interest for practicing and members in industry both.

Friends, the month of March is of utmost important being, conducting seminar on Budget analysis, Bank Audit seminar. We will try to provide quality seminar on the subject for professional better development.

I pledge my greetings to all the members and their family on the auspicious occasion of HOLI festival. We all celebrate the festival of colour with joy, happiness and blessed with the festival sweets and

Mantra to success: work speaks louder than words.

With Warm Regards
CA Sanjay Sharma
Chairman
Noida Branch
CIRC of ICAI

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Photo	Name and designation	Phone Number	Email Id
	CA SANJAY SHARMA Chairman	+91-9899709954	ssanjay2002ca@hotmail.com
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**Respected
Professional
Colleagues**

The first issue of E Newsletter for F/Y 2016-17 is hitting

your mail. I am indeed delighted to thanks Team Noida to take initiative in coming out with this issue. It is necessary for all my colleagues to participate by giving articles for this newsletter as it is truth that nobody can be strong in knowledge until they spread their knowledge. However whom so ever are providing their articles in E newsletter, articles are very informative. In future, the team Noida shall further come out with other innovative ideas. My wishes are with team Noida.

THANKS,

CA SUDHIR KUMAR,
SECRETARY
NOIDA BRANCH
CIRC OF ICAI

FORTH COMING PROGRAM

1. TALK ON BUDGET
ON
09TH MARCH, 2016
VENUE- HOTEL PARK
ASCENT PLOT NO. 126,
OPP-IIM LUCKNOW
CAMPUS, SEC-62, NOIDA
2. WORKSHOP
ON
INTERNAL AUDIT
11TH MARCH, 2016
VENUE- TO BE DECIDED
SOON
3. HOLI MILAN
ON
18 MARCH, 2016
VENUE- INDIRA GANDHI
KALA KENDRA, SEC-6,
NOIDA
4. SEMINAR ON BANK AUDIT
ON
26TH MARCH, 2016

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FROM THE DESK OF CICASA CHAIRMAN



CA. PRAVEEN KUMAR SINGHAL
M. COM., LL. B., FCA, ACWA, MBA (FIN), DISA (ICAI), CS

Dear Members,

Welcome and Hearty Congratulations to be a part of this Prestigious and

Noble Profession of CA.

It's a matter of great pleasure for me to interact with you as a CICASA Chairman of Noida Branch of CIRC of ICAI. I am glad and express my gratitude and thanks to all my colleagues who bestowed this onerous responsibility on my shoulders.

Growth and future of our profession depends on excellence, exposure and integrity. I assure you of my best services to serve the students by ways of best faculty, study material, information technology along-with the best infrastructure facilities for overall development. At the branch level various technical workshops and orientation programmes are also held to keep oneself updated and confident.

We along-with the student association, will perform the following activities:

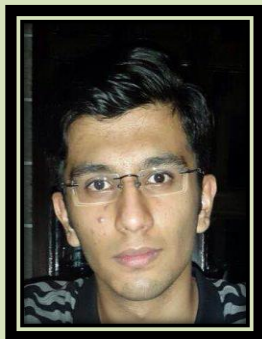
1. Develop social and fellow feeling among the students.
2. Promote social, cultural and intellectual development of the students.
3. Educate the students about the recent developments in the Trade, Commerce and Industry.
4. Organize Lectures, Meetings, Debates, Seminars, and other activities to make the education of students more meaningful.
5. Organize trips and tours to important factories and industrial Organizations and also to places of historical and educational importance.
6. Such other functions as the Regional/Central Councils may prescribe for the attainment of the aforementioned objectives.
7. I would appreciate the suggestions from students as well as respected members of our profession for conduct of any other activity or program for betterment of our future professionals.

Looking forward to a very encouraging and inter active participate

Yours Sincerely,

CA. PRAVEEN KUMAR SINGHAL
CICASA CHAIRMEN
NOIDA BRANCH OF CIRC OF ICAI

PROCEDURE FOR SETTING UP OF EXPORT ORIENTED UNIT



The need for higher level of technological and industrial progress has made the Government devise a series of export promotional schemes. EOU Scheme is one among them, which provides an internationally competitive duty free environment for competing on a global level.

Export Oriented Units (EOUs) constitute a very important sector in the country's export production scenario. This can be substantiated by the fact that EOUs have contributed significantly towards Country's export performance and have grown consistently at double digit level.

The EOU scheme was introduced by the Ministry of Commerce in the year 1980, its purpose being basically to boost exports by creating additional production capacity.

Over the years, the EOU Scheme has undergone various changes and its scope has also expanded substantially as compared to the initial Scheme. These units may be engaged in the manufacture, services, development of software, repair, remaking, reconditioning, re-engineering including

making of gold/silver/platinum jewellery and articles thereof, agriculture including agro-processing, aquaculture, animal husbandry, bio- technology, floriculture, horticulture, pisciculture, viticulture, poultry, sericulture and granites.

The setting up of an Export Oriented Unit is a step by step process which includes the following 5 steps:

I. Eligibility to become an EOU

Projects having a minimum investment of Rs 1 Crore and above in plant and machinery shall be considered for establishment as EOUs.

However, the aforesaid investment criterion shall not apply to existing units, units in EHTP/STP/BTP, and EOUs in Handicrafts/ Agriculture/ Aquaculture/ Floriculture/ Animal Husbandry/ Information Technology, Services, Brass Hardware and Handmade jewellery sectors.

Board of Approval (BOA) may allow establishment of EOUs with a lower investment criterion.

Setting up of "Trading Units" is not permitted under EOU scheme.

Existing DTA units, may also apply for conversion into an EOU unit by making an application to DC/ Designated Officer concerned in same manner as applicable to new units, but no concession in duties and taxes would be available under scheme for plant, machinery and equipment already installed.

II. Prior to Applying for Approval

Before applying for approval, the unit must take into considerations a variety of factors which includes:

- (a) Whether the venture will be own or with a foreign/Indian participant. The limit of FDI as has been formulated by the Ministry must be taken in due regard if foreign participation will be involved.
- (b) Whether the technology to be used will be imported or procured indigenously.
- (c) Whether raw materials, spares and parts to be used will be imported or procured indigenously.
- (d) A feasibility report should be prepared taking into account all the ancillary costs to the business.
- (e) The production capacity and spare capacity.
- (f) The manner in which the effluents and waste materials, that will be discharged, will be treated.
- (g) Whether power will be adequately supplied from the normal power grid or there will be need for a captive power plant. The cost of a power plant, in case of latter.
- (h) Mandatory clearances from State Government which includes Pollution Clearance Certificate, Approvals of Building Plans, Registration under Factories Act, Registration as Small Scale Industrial Unit (if applicable), etc.

III. Applying for Approval

- For setting up of an EOU, three copies of the application as in ANF 6 A of Appendices & ANFs are required to be submitted to the Development Commissioner along with a crossed Demand Draft of Rs 5,000/- drawn in favor of the Pay & Accounts Officer, Ministry of Commerce and Industry, Department of Commerce, payable at the Central Bank of India, Udyog Bhavan, New Delhi.
- A Project Report including a write up on the background of the promoters establishing their credentials and standing should be submitted along with the application.

- Following documents shall be submitted along with the application to the Development Commissioner:
 - (a) Residence proof in respect of individual/partnership firms of all Directors/Partners. (Passport/ration card/driving license/voter identity card or any other proof to the satisfaction of Development Commissioner);
 - (b) Income Tax return of all the promoters for the last three years;
 - (c) Experience of the promoters;
 - (d) Marketing tie-ups;
 - (e) In case of EOUs, inspection of the project site by an Officer;
 - (f) A report from other DCs as to whether any case under EOU Scheme in regard to diversion of goods etc. is pending.Wherever necessary, the above may be verified through personal interview with the promoters of the project.[Refer Appendix 6 A of Appendices & ANFs]
- Certain Sector specific conditions have been laid down in Appendix 6B of Appendices & ANFs for sectors like:
 - Coffee
 - High Grade Iron Ore
 - Polyester Yarn
 - Sale of Surplus Power
 - Guidelines for the Existing Plastic Units
 - Textiles
 - Tea
 - Spices
 - GEMS & Jewellery products
- Registration –cum-Membership Certificate (RCMC) should be obtained from the office of the concerned Development Commissioner by making an application in prescribed form (ANF-2C of Appendices & ANFs). Any firm applying for an authorization to import/export or avail any other benefits/concession under FTP is required to furnish valid RCMC.
- Import Export Code: If the unit does not have an Import Export code (IEC), it will apply in the prescribed form (ANF 2A of Appendices & ANFs) to the Zone Administration for the same.

IV. Granting of Approval

- Applications for setting up of units under EOU scheme shall be approved or rejected by the Units Approval Committee (UAC) within 15 days provided application is complete in all respects and accompanied with prescribed documents.
- On approval, a Letter of Permission (LoP)/ Letter of Intent (LoI) shall be issued by DC/designated officer to EOU unit. Such LoP/LoI shall have initial validity of 2 years. In case the unit is not able to commence production in initial validity of 2 years, extension may be granted for valid reasons to be recorded in writing.
- Unit shall execute a Legal Undertaking (LUT) as in Appendix 6E of Appendices & ANFs with the DC concerned.

No LUT for new units shall be executed unless unit has its permanent e-mail address and digital signature on said e-mail I.D.
- A Green Card shall be issued automatically after execution of LUT.

V. Post Approval

- After approval by DC concerned has been granted, the manufacturing and other operations can be undertaken by obtaining the required permission under Section 65 of Customs Act, 1962. EOUs execute a general purpose B-17 bond along with surety or security covering the duty foregone on goods imported/procured for use in manufacture or in connection with production or packaging of goods for export.

The aforesaid application is made and the Bond is executed with the jurisdictional Assistant Commissioner/ Deputy Commissioner of the Customs/ Central Excise.

The Application is accompanied with:

- (a) Copy of notification where under the place (proposed location of unit) has been declared as warehousing station under section 9 of the Customs Act.
 - (b) Copy of LOI/LOP issued by Development Commissioner concerned and LUT accepted by the Development Commissioner
 - (c) .
 - (d) Details of the premises including ground plan, purchase/rent/lease deed, and allotment letter from Industrial Development Corporation/ Authority.
 - (e) Details about the constitution of the firm/company including its Proprietor/Partners/Directors etc.
 - (f) Project Report indicating stage wise manufacturing process.
 - (g) List of raw material, consumables and capital goods etc. required.
 - (h) Undertaking that cost recovery and other charges shall be paid.
- The unit has also to take a Central Excise Manufacture Code No. from the Superintendent, Central Excise to enable them to sell in the domestic market.
 - The unit has to secure various approvals from State Government authorities which includes:
 - Approval for its wiring and electrical plan from the Electrical authorities.
 - Approval for power allocation and wiring from the State Electricity Board.
 - Registration under the State Government Sales Tax Act and Central Sales Tax Act.
 - Small Scale Industry (SSI) Registration from the District Industries Center to apply for State Government's Investment Subsidy.
 - Approval from the Pollution Control Board.

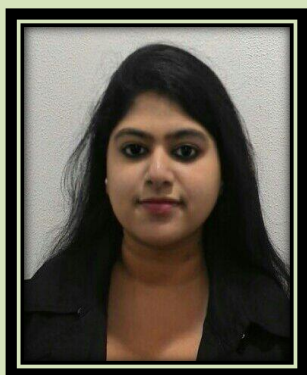
The Export Oriented unit shall be a positive Net Foreign Exchange (NFE) earner except for sector specific provisions, where a higher value addition shall be required. NFE Earnings shall be calculated cumulatively in blocks of five years starting from the Date of Commencement of Production.

Further, the EOU is required to realize and repatriate the export proceeds within a period of Nine months from the date of export in terms of RBI Master Circular No.14/2015-16 dated July 01/2015.

With effect from Assessment year starting from 1st April 2010 i.e. Financial Year 2009-2010, the Income Tax exemption available for EOUs under section 10B has been withdrawn.

Best Regards:-

Kshitij Sharma
Contact No.: 9999221044
kshitij55555@gmail.com



MARK TO MARKET ACCOUNTING

BACKGROUND

The term “**mark to market (MTM)**,” is the practice of updating the value of derivative asset or a liability to reflect its real market value rather than its initial cost. The goal of using the mark-to-market process is to provide a realistic summary of a company’s financial situation by accurately accounting for the changes in the price of assets and liabilities on a daily basis.

MARK TO MARKET CONVERGENCE

The mark-to-market method got official recognition in April 2009 by the Financial Accounting Standards Board (FASB). The requirement was put in place in order to prevent inaccurate measurements of value, which was a common occurrence during the Great Recession of 2008-09.

Although companies use mark-to-market accounting for all assets and liabilities, it is frequently used with futures accounts to help clarify that margin requirements are met.

PURPOSE OF MARK TO MARKET ACCOUNTING

The primary purpose of mark-to-market accounting is to give managers, shareholders, regulators and other stakeholders the most accurate and timely information regarding the financial health of a company.

For example, if management is negotiating with a lender for a new line of credit that will be secured by real estate the company owns, it is important for both the company and the lender to know the current value of the property. If it is valued too low, based on historic cost, the line of credit might be lower than it could be or could carry a higher interest rate.

CALCULATION OF MARK TO MARKET ACCOUNTING

Mark to market accounting is the difference between Contract Price and Market Price at a specific future date of a contract



Example:

Purchase Contract:

Contract Price: 400 USD

Market Price: 500 USD

MTM: Market Price-Contract Price
: $500-400 = 100\text{USD}$

Sales Contract:

Contract Price: 400 USD

Market Price: 500 USD

MTM: Contract Price-Market Price
: $400-500 = -100\text{USD}$

ABUSES TO MARK TO MARKET ACCOUNTING

While mark to market makes financial reports more accurate and provides management with important information, it can be abused. A number of corporate fraud cases over the last decade have been perpetrated by management teams that used mark to market accounting to artificially inflate the value of their assets or deflate their liabilities.

CA MEENU GOEL

Membership no.: 529211

E-mail id: meenugoel88@gmail.com

Contact no: 9958308265



ROADMAP FOR CONVERGENCE TO IND-AS

On 16th February 2015, the Ministry of Corporate Affairs (MCA) notified the Companies (Indian Accounting Standards) Rules 2015 laying down the roadmap for application of IFRS converged standards (Ind-AS) to Companies other than Banking and Insurance Companies and Non Banking Finance Companies. The Government has also notified Ind- AS standards (know as “ Indian Accounting Standards “) for application by these Companies.

The adoption of Ind-AS will substantially bridge the gap and bring India at par with the world at large that has adopted/ converged with IFRS. India has gone for conversion approach as against the adoption of IFRS. Consequently, financial statements prepared in accordance with Ind- AS.

Applicability of Ind-AS

1. **Mandatory Phase 1:** Application of Ind-AS is mandatory for the accounting periods beginning on or after 1 april 2016, for the companies specified below:
 - (i) Companies whose equity and/or debt securities are listed or are in the process of listing on any stock exchange in India or outside India and have net worth of INR 500 crores or more.
 - (ii) Companies other than those covered in (b)(i) above and have net worth of INR 500 crores or more.
 - (iii) Holding, subsidiary, joint venture or associate companies of companies covered under (b)(i) and (ii) above.

2. **Mandatory Phase 2:** Application of Ind-AS is mandatory for the accounting periods beginning on or after 1 April 2017, for the companies specified below:
 - (i) All companies whose equity and/or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and were not covered in the earlier phase of Ind-AS application.
 - (ii) All companies having net worth of INR 250 crore or more and were not covered in the earlier phases of Ind-AS application.
 - (iii) Holding, subsidiary, joint venture or associate companies of companies covered under paragraph (c)(i) and (ii) above.

3. However, companies whose securities are listed or in the process of listing on the SME exchanges will not be required to apply Ind-As. Such companies can continue applying with accounting Standards notified under the Companies (Accounting Standards) Rules 2006 [hereinafter referred to as '2006 AS'], unless they choose to apply Ind-AS on voluntary basis.
4. All companies applying Ind-AS are required to present comparative information as per Ind-AS for one year. To comply with this requirement, companies will need to start applying Ind-AS from the beginning of the previous period. For example, a company covered under mandatory phase needs to apply Ind-AS for accounting periods beginning on or after 1 April 2016. In addition, it also needs to give Ind-AS comparatives for the year ended 31 March 3, 2016. Consequently, its date of transition to Ind-As will be 1 April 2015.
5. Any company, which is required to comply with Ind-AS, will apply the same set of standards, viz., Ind-AS, to both standalone financial statements (SFS) and consolidated financial statements (CFS).
6. Companies to which Ind-AS are applicable will prepare their first set of Ind-AS financial statements in accordance with the Ind-AS effective at the end of its first Ind-AS reporting period. For example, a company prepares financial statements applying Ind-AS for the accounting period beginning on 1 April 2016. It should apply Ind-AS effective for the financial year ending on 31 March 2017.
7. Overseas subsidiary, associate, joint venture and other similar entities of an Indian company may prepare their standalone financial statements in accordance with the requirements of the specific jurisdiction. Provided that such Indian company will prepare its consolidated financial statements in accordance with Ind-AS either voluntarily or mandatorily if it meets Ind-AS applicability criteria.
8. Indian company which is a subsidiary, associate, joint venture and other similar entities of a foreign company will prepare its financial statements in accordance with Ind-AS either voluntarily or mandatorily if it meets Ind-AS applicability criteria.
9. Any company opting to apply Ind-AS for its financial statements will prepare its financial statements as per Ind-AS. If Ind-AS are applied voluntarily, this option will be irrevocable and such companies will not be required to prepare another set of financial statements in accordance with 2006 AS.
10. Once a company opts to follow Ind-AS either voluntarily or mandatorily, it is required to follow Ind-AS for all the subsequent financial statements. This is despite the fact that the company no longer meets any of the Ind-AS applicability criteria.
11. A company which follows Ind-AS will follow such standards only. A company which follows 2006 AS will comply with those standards only.

12. The net-worth will be computed as per the separate balance sheet of the company as at 31 March 2014 or the first audited balance sheet for accounting period which ends after that date. The net worth will be computed as per section 2(57) of the companies Act 2013. The section defines the term as below:
- “Net worth means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.”
13. For companies which are not in existence on 31 March 2014 or an existing company falling under any of Ind-AS applicability thresholds for the first time after 31 March 2014, the net worth will be calculated on the basis of the first audited financial statements ending after that date in respect of which it meets the Ind-AS applicability threshold. These companies will apply Ind-AS from the immediate next accounting year onward. For example, companies meeting threshold for the first time as on 31 March 2017 will apply Ind-AS from financial year 2017-18 onward. Companies meeting threshold for the first time as on 31 March 2018 will apply Ind-AS from the financial year 2018-19 onward.
14. The insurance companies, banking companies and non-banking finance companies (NBFCs) will not be required to apply Ind-AS for preparation of their financial statements either voluntarily or mandatorily.

Regards:-

CA Manish Agrawal (FCA)

M.No.:- 515354

Email-Id:- manishagrwal.ca@gmail.com

Contact No.:- +91-9999318313

RECENT CHANGES IN SERVICE TAX



Introduction: Service Tax is a levy on Provision/rendition of service in India. Chapter V of Finance Act, 1994 introduced Service Tax in India and it came into force from July'1994.

Service Tax since its introduction is in the process of evolution and is undergoing changes every year. Amendments/changes are brought in to effect through Circulars, Notifications, case laws etc.

CHANGES BY BUDGET 2015

Service tax rate increased from 12.36% (including Education Cess and Secondary and Higher Education Cess) to flat 14%. The revised rate came into effect from

1st June'2015.

Additional cess known as SWACHH BHARAT CESS was introduced @ 0.5% to be levied additionally on all taxable Services from 15th Nov'2015. Credit of such cess paid on input services shall not be allowed to be used for payment of the proposed Cess on the service provided by a service provider.

Some Exemptions were withdrawn as well as some new Exemptions were introduced by the Budget to take effect from 1.4.2015 as follows:

Scope for Exemption Enlarged:

All Ambulance Services provided to Patients are exempted, previously only the Transportation services provided to Patients from and to Clinical Establishment by a clinical Establishment was exempt from Service Tax.

- Goods transport agency service provided for transport of export goods by road from the place of removal to an inland container depot, a container freight station, a port or airport is exempt from Service Tax vide notification No. 31/2012-ST dated 20.6.2012. Scope of this exemption is being widened to exempt such services when provided for transport of export goods by road from the place of removal to a land customs station (LCS).
- Life insurance service provided by way of Varishtha Pension Bima Yojna is made exempted along with the following exempted at present:
 - a) Janashree Bima Yojana,
 - b) Aam Aadmi Bima Yojana and
 - c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees.

Scope for Exemption Restricted:

- Services provided to the Government, a Local authority or a Governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, shall be restricted only to:
 - a) Historical monument, archaeological site or remains of national importance, archeological excavation or antiquity;
 - b) canal, dam or other irrigation work;
 - c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal

Whereas earlier Exemption as granted under this Entry is withdrawn for following:

- a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

- b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment
- c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act.
- Exemption to Services provided by a performing artist in folk or classical art form of (i) music, or (ii) dance, or (iii) theatre, has been restricted only to such cases where amount charged is not exceeding Rs. 1,00,000/- for a performance (except brand ambassador)
- Exemption to Services provided by way of transportation of food stuff by rail or vessels from one place in India to another will be limited to milk, salt and food grains including flours, pulses and rice. Earlier foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages.
- Exemption for Services provided by a goods transport agency, by way of transport in a goods carriage of, milk, salt and food grain including flours, pulses and rice. Earlier foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages]

New Services included in List of Exempted Services:

- Services by operator of Common Effluent Treatment Plant by way of treatment of effluent;
- Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labeling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables;
- Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo;
- Service provided by way of exhibition of movie by an exhibitor to the distributor or an association of persons consisting of the exhibitor as one of its members;
- Services by way of right to admission to:
 - a) exhibition of cinematographic film, circus, dance, or theatrical performances including drama or ballet;
 - b) recognized sporting events;
 - c) Award function, concerts, pageants, award functions, musical performances or any sporting events other than recognized sporting event, where the consideration for such admission is up to Rs. 500 per person.

Some of the Exemptions withdrawn:

- Services provided by:
 - a) Mutual fund agent to a mutual fund or asset management company;
 - b) Distributor to a mutual fund or asset management company;
 - c) Selling or marketing agent of lottery tickets to a distributor or a selling agent;
- Service tax on the above stated services shall be levied under Reverse Charge Mechanism**
- Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port stands withdrawn.
 - Exemption on Services such as:
 - a) Departmentally run public telephone;
 - b) Guaranteed public telephone operating only local calls;
 - c) Free telephone at airport and hospital where no bill is issued.

CHANGES BY BUDGET 2016:

Krishi Kalyan Cess is proposed to be levied with effect from **1st June, 2016** on any or all the taxable services at the rate of 0.5% on the value of such taxable services.

Credit of Krishi Kalyan Cess paid on input services shall be allowed to be used for payment of the proposed Cess on the service provided by a service provider.

Some Proposed changes in the Negative List (Section 66D):

- Presently, clause (l) of section 66D of the Act covers specified educational services. These services are proposed to be omitted from the Negative List but the service tax exemption on them is being continued by incorporating them in the general exemption notification (Notification No. 25/2012-ST as amended by notification No. 09/2016-ST, dated 1st March, 2016. This amendment in the notification shall come into effect from the date of enactment of Finance Bill, 2016.
- Service of transportation of passengers, with or without accompanied belongings, by a stage carriage" is proposed to be omitted with effect from 1.06.2016.
The service of transportation of passengers by air-conditioned stage carriage is being taxed at the same level of abatement (60%) as applicable to the transportation of passengers by a contract carriage, with same conditions of non-availment of Cenvat credit.
- Services by way of transportation of goods by an aircraft or a vessel from a place outside India up to the customs station of clearance [section 66D (p)(ii)] is proposed to be omitted with effect from 1.06.16.

Section 66E Declared Service:

Assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof is proposed to be declared as a service under section 66E of the Finance Act, 1994 so as to make it clear that assignment by Government of the right to use the spectrum as well as subsequent transfers of assignment of such right to use is a service leviable to service tax and not sale of intangible goods.

Restoration of certain exemptions withdrawn last year for projects, contracts in respect of which were entered into before withdrawal of the exemption.

- Exemption from Service Tax on services provided to the Government, a local authority or a governmental authority by way of construction, erection, etc. of –
 - a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
 - c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;was withdrawn with effect from **1.4.2015**. The same is being restored for the services provided under a contract which had been entered into prior to 01.03.2015 and on which appropriate stamp duty, where applicable, had been paid prior to that date. The exemption is being restored till 31.03.2020.
[Notification No. 25/2012-ST as amended by notification No. 09/2016-ST dated 1st March, 2016] The services provided during the period from 01.04.2015 to 29.02.2016 under such contracts are also proposed to be exempted from service tax.

Some of Exemptions Withdrawn:

- Services provided by a senior advocate to an advocate or partnership firm of advocates, and
- A person represented on an arbitral tribunal to an arbitral tribunal;
Service tax in the above instances would be levied under forward charge w.e.f 1.4.16
- Services provided by way of transport of passengers, with or without accompanied belongings, by ropeway, cable car or aerial tramway.
- Services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, in respect of contracts entered into on or after 1st March 2016.

New Services included in List of Exempted Services:

- The services of life insurance business provided by way of annuity under the National Pension System (NPS) regulated by Pension Fund Regulatory and Development Authority (PFRDA).
- Services provided by Securities and Exchange Board of India (SEBI) set up under SEBI Act, 1992, by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.
- Services provided by Employees' Provident Fund Organization (EPFO) to employees.
- Services provided by Biotechnology Industry Research Assistance Council (BIRAC) approved biotechnology incubators to the incubates. Services provided by Insurance Regulatory and Development Authority (IRDA) of India are being exempted from service tax.
- Services of general insurance business provided under "Niramaya Health Insurance scheme" launched by National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability in collaboration with private/public insurance companies.
- Services provided by way of skill/vocational training by Deen Dayal Upadhyay Grameen Kaushalya Yojana training partners are being exempted from service tax.
- Services of assessing bodies empanelled centrally by Directorate General of Training, Ministry of Skill Development & Entrepreneurship are being exempted from service tax.
- Services by way of construction, erection, etc., of original works pertaining to low cost houses up to a carpet area of **60 sq.m** per house in a housing project approved by the competent authority under the "**Affordable housing in partnership**" component of PMAY or any housing scheme of a State Government.

Returns:

Service tax assessee above a certain threshold will also be required to file an annual return. This change shall come into effect from 1st April, 2016.

CA RUCHIKA BANSAL
MEMBERSHIP NO:535287
MOB. NO.: 9718655229
BANSALRUCHIKA06@GMAIL.COM



First Name: SANJIV TANDAN
Occupation: Advocate
DOB 10-07-1960
 B2-302, Stellar Sigma Apartments
 Sigma IV, Greater Noida 201310
Mobile : +91 9818241191
sanjiv.tandan@gmail.com

Sanjiv Tandan is a professional with diversified experience of over 28 years in the field of business, finance, taxation, corporate laws and general management.

Tandan is practicing as an Advocate at District and Sessions Courts, Gautam Budh Nagar, Uttar Pradesh. Tandan specializes in taxation, civil, economic offences and consumer laws. He also has considerable experience in drafting and formatting JV agreements, memorandum of understanding, scheme of arrangements to small and medium sized enterprises and semi autonomous government bodies. As the head of the taxation department in Jubilant Organosys, Tandan has domain knowledge of pharma and biotech industry. In Xerox Modicorp, Tandan was responsible for corporate advisory and taxation matters.

Tandan was Chief Executive Officer of Global Advisors Limited, a corporate finance and business advisory services company. Tandan has worked on assignments in Oman, Dubai and Singapore.

Past Experience:

(1) CEO-Global Advisors Ltd. (2005- Dec 2014)

Team Leader in many prestigious consultancy assignment's such as :

Project name: Government Financial Systems Project, Ministry of Finance, Government of Oman.

Sanjiv is well versed with the culture and business environment of Oman after working on prestigious projects such as advising the Ministry of Finance, Government of Oman.

Project Description:

Suggesting structure of Chart of Accounts, Preparation of Fixed Assets Register and Strategy to migrate to Accrual System of Accounting.

Project name: Restructuring of Prasar Bharati (Broadcasting Corporation of India)

Project Description:

Review and suggest improvements in the entire organizational structure of Indian Broadcasting Corporation (Prasar Bharati) Assist in the financial, managerial and organizational restructuring.

Key Team member in many notable Corporate Finance and M&A transactions such as:

Equity arrangement for E-Learning company, Fund syndication for Mall, Multiplex & Hotel Project, Auto Component company, Fertiliser company and many others. Ad for Equity for retail and telecom companies, M&A of food retail and auto component companies.

(2) Head Direct Taxation – Jubilant Organosys Ltd. (2001-2005)

Looking after the direct tax matters of the listed company, its subsidiaries and associate companies in India and abroad. Achievements include settlement of old disputes, sizeable refunds of tax along with interest, savings in tax due to tax planning.

(3) DGM-Taxation Xerox India (1997-2001)

Looking after the direct/indirect tax matters of Modi Xerox Ltd., Modi Xerox Software Services Ltd., and Modi Xerox Financial Services Ltd. Achievements include implementation of tax planning, adjudication, appeals etc. Handling Amalgamation matters at Registrar of Companies, Regional Director etc.

(4) Controller of Accounts- Modi Rubber Ltd.(1994-1997)

Handling the Tax, Legal and Secretarial matters of more than 50 miscl. companies of Dr. B K Modi Group.

(5) Private Practice as Chartered Accountant. (1987-1994)

Accounts, Audit, Taxation, Legal, Secretarial and Finance matters of clients ranging from individuals to

listed companies.

Arbitration : Sole Arbitrator in Arbitration matters of few Public Limited Companies.

Education : Sanjiv Tandan holds a degree in Bachelor of Law. He is a fellow member of The Institute of Chartered Accountants of India.

Professional/Social Engagements: Member Bar Council of Delhi, Member- Indian Council of Arbitration. Past-General Secretary-Kanpuria Samaaj Welfare Association, Vice President, Secretary and Treasurer-Noida Management Association.

FEMA- An Overview

Foreign Exchange Management Act, 1999 (FEMA) replaced Foreign Exchange Regulation Act, 1973 (FERA) with effect from 1st June, 2000. The replacement was a welcome change for the business community as FERA was stringent with its criminal provisions whereas FEMA is a civil law and positive in its outlook compared to FERA. The focus of FEMA is to “manage” foreign exchange resources of the country rather than to “regulate” as under FERA. FEMA has, 49 Sections of which 9 Sections (Sections 1 to 9) are substantive and the rest are procedural.

Under the scheme of the Act, Adjudicating Authority appointed by Central Government issues a Show Cause Notice (SCN) to person who is alleged to have committed the contravention, indicating nature of contravention. Time shall be given to the accused to reply to the notice. After considering the reply, if Adjudicating Authority is of the opinion that enquiry should be held, a notice fixing date of enquiry shall be issued. The accused may attend proceedings personally or through his legal representative. He will be given opportunity to produce any document or evidence in order to defend his case. Adjudicating Authority can summon and enforce attendance of person acquainted with facts and circumstances of the case to give evidence. If the person fails to attend, adjudication proceedings can continue ex parte. After hearing and evidence, adjudicating authority can pass order with reasons, duly signed. He can impose penalty if person is found to have contravened the provisions of FEMA. Enforcement of orders of Adjudicating Authority

Person on whom penalty is imposed is required to make payment within 90 days of receipt of notice. If such payment is not made, he is liable to civil imprisonment u/s section 14(1). Such civil imprisonment can be up to 6 months, if demand is for less than Rs. one crore. If demand exceeds Rs. one crore, civil imprisonment can be up to three years u/s 14(11).

Compounding of Contravention

Any contravention can be compounded if person, who has committed contravention, makes an application. Compounding can be done within 180 days by officers authorized by Central Government u/s 15. ‘Compounding’ is a concession, where the person agrees to pay certain amount as compounding fee and the authority agrees to drop further proceedings in the matter after payment of compounding fees.

Compounding is permitted even when the matter is pending before Adjudicating Authority. However, compounding is not permitted if adjudication is complete and appeal has been filed by the person. Procedure has been prescribed in Foreign Exchange (Compounding Proceedings) Rules, 2000. Central Government will appoint 'Compounding Authority', who will be Officer of Directorate of Enforcement not below rank of Deputy Director or officer of RBI not below rank of AGM.

RBI has clarified that provision of compounding is to provide comfort to citizens and corporate community while taking a serious view of the wilful, mala fide and fraudulent transactions. Offences like money laundering, national security concerns and/or involving serious infringements will not be compounded and will be informed to Directorate of Enforcement for further investigation.

Application for compounding shall be made in format given in the rules to RBI along with prescribed fee. Only one compounding is permissible in a period of three years.

Compounding authority will hear the applicant and will pass order of compounding within 180 days. After the order, sum involved shall be paid within 15 days, if complaint was already filed with adjudicating authority, further proceedings will be dropped. However, if adjudication is over and appeal is pending, compounding is not permissible.

If contravention was due to absence of proper approval or permission of concerned Government or Statutory Authority, first such approval will have to be obtained and only then offence will be compounded.

The orders passed by the Adjudicating Authorities are appealable. The appeals may lie with Special Director (Appeals) or to the Appellate Tribunal, as the case maybe. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order. The High Court is empowered to entertain an appeal after sixty days if the High Court is satisfied that the appellant was prevented by sufficient cause from appealing earlier- Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement, AIR 2010 SC 2239.

CA. Sanjiv Tandan, Advocate



SERVICE TAX LAWS- AN INSIGHT ON RECOVERY OF DUES

In the present year of globalization, international trade is the driving force of the modern world. There is growing recognition that no economy can survive and flourish in isolation but will have to compete and live up to worldwide expectations. There is also an increasing awareness that good tax law and best tax administration are essential for all modern economies. This will develop an environment of trust of positive investment scenario.

It is also an accepted reality that modern tax laws especially tax on service sector are very multifaceted and intricate in nature. In view of their apparent complexity, taxpayers would like to be sure of the tax implications of their proposed transactions and in that context and in continuation to constant efforts from the CBEC the facility of “Advance Rulings” as introduced in the last budget would go a long way in making up their mind for investment in a particular country. Further, to this the daily changing nature of service tax laws in the country and their startling burdensome impact has created plentiful ambiguity in the service industry. The penal/recovery provisions with regard to mis-compliance of the service tax laws can be understood well from the below iterated facts:

The recovery of Service Tax not levied or paid or short-levied or short-paid or erroneously refunded is provided under Section 73 of the Finance Act, 1994. The Central Excise Officer may, within “eighteen months” from the relevant date, serve a show cause notice on the person or assessee for recovery of Service Tax and in case of fraud or collusion, or willful misstatement or suppression of facts or contravention of the provisions or rules made there-under, the period of “eighteen months” shall be substituted as “five years”.

Section 73 is confined to the situation when the person who has neither paid service tax nor collected the same from the service receiver but disputed the payment of service tax or short paid service tax then central excise officer shall start proceedings of recovery of service tax by issuance of show cause notice to the person or assessee under Section 73 of Finance Act, 1994.

Apart from the above cited recovery procedure of service tax dues as provided in Finance Act, 1994 there are certain provisions which enable the Central Excise Office to prosecute such an assessee, when the demand raised against the assessee is more than rupees One Crore (w.e.f. 23.10.2015). The provisions of prosecution are provided under Section 89 and 90 of the Finance Act, 1994.

Section 91 of Finance Act, 1994 deals with the provisions regarding arrest of a person. Section 89 to 91 of Finance Act, 1994 were omitted in the year 1998 and were reintroduced by the Government in the Finance Act, 2013 to prosecute such an assessee who has evaded Service Tax to the extent of more than rupees fifty lakhs now changed to Rs One Crore (w.e.f. 23.10.2015). Section 103(K) of the Finance Act, has introduced Section 90 and 91 in the Finance Act, 1994. The Commissioner through an officer of the Central Excise, not below the rank of superintendent, can launch an arrest only when he has reasons by believe that an offence has been committed under Section 89(1)(i) or (ii) of the Finance Act, 1994.

The very objective of reintroduction of provision of prosecution in sections 89 to 91 in Finance Act, 2013 is to control offences and tax evasion in Service Tax by taking route of Code of Criminal Procedure, 1973, to arrest a person, who has violated the provisions of the Act and avoided payment of taxes. Prosecution is a means to tackle certain specified serious violations of service tax laws and provisions. But the power of arrest must be exercised with utmost care and caution and only when the exigencies of the situation demand arrest. Thus, C.B.E. & C. has notified guidelines and clarifications to bring attention of the field formation officials, for arrest and bail under Service Tax.

Guidelines for arrest and bail in relation to offences under Finance Act, 1994: C.B.E.& C. Circular No. 171/06/2013-ST. dated 17-09-2013 [2013(32) S.T.R. C3], specifies that in terms of Section 89(1)(ii) shall be cognizable and all other offences shall be non-cognizable and bailable. In terms of Section 91(1)ibid read with Section 89(1)(i) and (ii) ibid, as amended, the power to arrest has been introduced in cases involving evasion of service tax covered under section 89(1)(i) and (ii) ibid, as amended, and where the amount of Service tax evaded exceeds rupees fifty lakhs now Rs. One Crore (w.e.f 23.10.2015).

The following points may be noted for strict compliance cases are covered under Section 89(1) (i):-

- (a) Where a person knowingly evades the payment of Service Tax.
- (b) Where a person avails and utilizes credit or taxes or duty without actual receipt of taxable service or excisable goods either fully or partially in violation of the rules, and
- (c) Where a person maintains false books of account or fails to supply any information which he is required to supply or supplies false information, and where the amount to service involved is more than fifty lakh rupees.

In the above cases, the Assistant Commissioner or the Deputy Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer in-charge of a police station has, and is subject to, under Section 436 of the Code of Criminal Procedure, 1973 (2 of 1974). This is in terms of Section 91(3) of the Finance Act, 1994, as amended.

The following cases are covered under Section 89(1)(ii):

- (a) Where a person has collected any amount exceeding fifty lakh rupees now changed to Rs. One Crore (w.e.f. 23.10.2015) as Service Tax but fails to pay the amount as collected to the credit of the Central Government beyond a period of six months from the date on which such payment becomes due.

The recovery procedure of Service Tax dues and the prosecution to be exercised by field formations officials with utmost care. Accordingly, the procedure of arrest to be initiated against an assessee as last resort of recovery of Service Tax dues and exercised competently, judiciously, impartially otherwise may lead to misuse of powers and harassing the poor assessee, it will enhance Service Tax evasion cases rather help to generating Service Tax revenues to the Government exchequer.

Abhinav Kalra

Memb no. 520350

9899446444

Email d: abhinavkalra@ymail.com

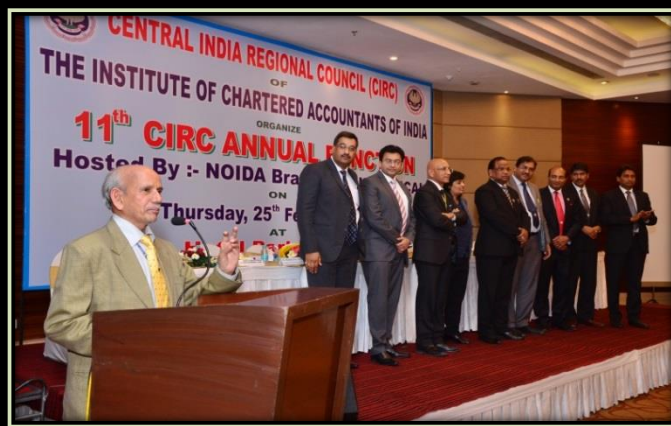
SNAPS DURING SPORTS DAY PROGRAMME 2015



SNAPS DURING ANNUAL FUNCTION PROGRAMME - 2015







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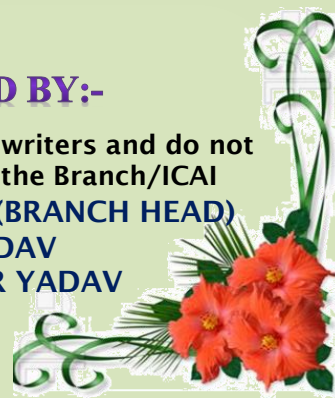
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Designed By:- MRS. MEERA KISHORE (BRANCH HEAD)

MR. OM PRAKASH YADAV

MR. JITENDRA KUMAR YADAV



NOIDA BRANCH OF CENTRAL INDIA REGIONAL COUNCIL OF
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