e-NEWSLETTER

APRIL 2016 | VOLUME 1

Gurgaon Branch of NIRC of ICAI

CHARTERED ACCOUNTANT NEWSLETTER

Key Contents

Standing from Left to Right:

CA. AMIT GUPTA– Executive Member, **CA. LALIT AGGARWAL**- Executive Member, **CA. VIPUL JAIN**– Executive Member, **CA. MANISH GOYAL**– Treasurer, **CA. ARUN AGGARWAL**- Secretary, **CA. NAVEEN GARG**– Chairman, **CA. SANDEEP GARG**-Executive Member, **CA. RAKESH K. AGARWAL**– Vice-Chairman

Ex– Officio Members

CA. Sanjeev K. Chaudhary
Central Council Member

CA. Alok Jain
NIRC Member

CA. Nitin Kanwar
NIRC Member

CA. Yogita Anand
NIRC Member

From Chairman's Desk ....

CA. Naveen Garg
Chairman
Email: nvn_garg@yahoo.com
Mob: 9911283111

Dear Professional Colleagues

Greetings,

Indeed I feel privileged and honoured as Chairman of our esteemed Gurgaon Branch of NIRC of the ICAI.

At the outset, let me express my sincere gratitude to our professional fraternity of Gurgaon for having elected me as Managing Committee Member of Gurgaon Branch. I sincerely thank my colleagues in the Managing Committee for reposing confidence in me to take up the position of Chairman of our one of the dynamic and active Branch in the country.

We have at the helm of affairs of ICAI, the experienced, energetic and intellectual personalities CA. M. Devaraja Reddy as President and CA. Nilesh Shivji Vikamsey as Vice -President. I am sure these legendary personalities will lead ICAI to greater heights of glory. Furthermore, I am pleased to inform that only our Branch from northern India have four ex-officio members- CA. Sanjeev Chaudhary (Central Council Member), CA. Yogita Anand (NIRC member), CA. Nitin Kanwar (NIRC member) and CA. Alok Jain (NIRC Member). Gurgaon Branch extends its full support to ICAI for taking forward its initiatives, which have been outlined by the action plan of ICAI for the year 2015-16, which focus on the professional development.

For the past month i.e. March is known for its festival of colors. Gurgaon Branch celebrated the Holi festival (Holi Milan) with great fun, excitement and participation from the members and family. We also organized Group Discussion, Budget seminar, Bank Audit Seminar for members, Budget seminar & Bank Audit Seminar for CA students in this month, which was well attended in large numbers.

With the motive of finding in-house faculties, Gurgaon branch desires to give podium to the upcoming faculties to speak jointly with other esteemed and renowned speakers in various seminars & workshops. For this, I request all my fellow members to please come forward and show your willingness for the same. To promote more members as speakers, I would request all other members to support them in seminars/ workshop and encourage their enthusiasm.

Coming together is a beginning, keeping together is progress, working together is success (Henry ford)……… By this note, I would request all our members to participate, come together and derive maximum benefit out of these programmes. Any type of suggestions, grievances, participation is always welcome from all our fellow members.

I seek blessings from God the Almighty, and guidance & support from all of you to discharge my duties diligently enabling me to serve members and aspiring CA students as per their expectations and to sustain the high standards set by my predecessors and reach your expectations for the progress of our beloved branch. The road ahead is challenging and of course this great opportunity given to me has to be turned to great challenges rendering selfless service paving way for professional growth of our members there by enhancing the economic well-being of our great nation – '*Incredible India'*.

Once again let me thank all our members for having given me an opportunity to project my potential in the right perspective to serve our most vibrant Gurgaon Branch.

With warm regards,

Naveen Garg

(CA. Naveen Garg)

Chairman

From Secretary's Desk ....

CA. Arun Aggarwal
Secretary
Email: arunaggarwalca@gmail.com

Dear Professional Colleagues,

It gives me great pleasure to communicate as secretary of Gurgaon Branch of NIRC of ICAI. Representing the members of a noble profession like ours in a millennium city like Gurgaon, is an honor and we will try and ensure that the baton be kept and handed over to the successors in transparent and professional manner.

For the upcoming year, our efforts will be to work towards development of a better ecosystem for both the members and the students by resorting to multipronged approach including,

a) Facilitating professional and personality development programs for Members and Students;

b) Facilitating better connect amongst members and students respectively;

c) Trying offbeat social connect programs for the members and students.

With above in mind, we plan to organize below programs in the coming quarter:-

For Members

- Certificate courses on important topics conducted by ICAI;
- Workshops for members for in-depth study and clarity of concepts;
- Residential refresher course for members and their families;
- Regular group discussions to facilitate sharing practical problems amongst members;
- Social connect and health related programs like yoga sessions, sports tournament, marathon etc.

Apart this, the website of the branch is currently being overhauled to make it more user friendly and useful for the members and students.

For Students

- Programs on personality development and communication skills
- Seminars on key topics of interests in line with seminars for members
- Mock tests and guidance cell for the upcoming examinations

Apart this, branch will be actively looking to open a few reading rooms for the benefit of students.

Feedback and suggestions

"Feedback is a gift. Ideas are the currency of our next success. Let people see you value both feedback and ideas." – **Jim Trinka and Les Wallace**

While there is lot that we will to do, success and effectiveness of our efforts will depend upon active participation from the members and students. Further, your feedback and suggestions will help us prioritize the work. In a short while, our website will have a dedicate space for dropping any feedback or suggestions. By then, you can keep them coming to arunaggarwalca@gmail.com at icaigurgaon@gmail.com or gurgaon@icai.org

Jai Hind!

Thanks,

CA. Arun Aggarwal
Secretary

From Vice-Chairman's Desk ....

CA. Rakesh Kumar Agarwal
Vice-Chairman
Email: rakeshaggrawal@yahoo.com

Dear Professional Colleagues,

I am grateful to almighty for showering blessing on me because of which I am able to interact with esteemed professional colleagues and beloved student fraternity in the capacity of vice chairman of managing committee of Gurgaon Branch.

Last month, we all had seen immense enthusiasm among members to come forward and exercise their rights to elect members of managing committee of Gurgaon branch. We heartily congratulate all members for the active participation. Such enthusiasm entrusts additional responsibilities on elected members to fulfill expectations of all professionals in taking the profession to new heights.

I wish to convey my special thanks to all members for considering my worthiness as member of management committee and to all my colleagues in committee for reposing the confidence and electing me as vice chairman.

We assure you that under the leadership and guidance of Mr. Devaraja Reddy, President of ICAI, Mr. Nilesh Vikamsey, vice president of ICAI and newly elected members of NIRC, we shall endeavor our best to accomplish the vision of making Gurgaon Branch as exemplary and outstanding branch of ICAI by following famous saying of "coming together is beginning, keeping together is process and working together is success".

Financial year 2015-16 has just concluded and we are entering in New Year. This month would also mark beginning of New Year as per Hindu Tradition. We all should take resolution that this is not just addition of a year in our life. We may have to look back in past to see where we lacked and what all we need to do at professional and personal fronts to make this year as memorable. I wish you all a fruitful and promising year ahead, set new goals, grab new opportunities and work harder.

For students appearing in May 2016 exams, my message is to forget all other occupations and to engross themselves with full dedication in preparing for exams. Most of them would be in the revision stage. There should be planned approach to study aimed at making best utilization of limited time so that you may come out with flying colors.

Last month the committee had organized various programs/ seminar on various topics of professional interests. There was overwhelming response especially in "Analysis on Union Budget 2016-17" and seminar on bank audits. Similar programs were organized for students also who had also taken very active participation. We shall continue to organize similar programs on different topics and it is my earnest request from all members continue to participate in great strength. Members are also requested to motivate their students also to take part in programs intended for benefit of students.

Members and students are backbone of the profession. Their support, involvement and feedback are must for successful implementation of any professional and/or academic activities of Branch. I earnestly solicit valuable suggestions from all of you to guide and support us for taking new initiatives aimed at betterment of branch.

We believe that there should be open and transparent system in branch functioning. We shall work tirelessly for achieving the same. We are also open to hear any concerns or grievances of members or students for resolution.

At the end, I request all members who are not registered with Gurgaon Branch to submit their postal and email address registered with the Branch to ensure that you get the newsletter and other correspondence.

With warm regards,

(CA. Rakesh K. Agarwal)
Vice-Chairman

GLIMPSES - Seminar on Union Budget 2016

Topic :

UNION BUDGET

Audience :

Members and Students

Guest Speaker :

Dr. Girish Ahuja
CA. Ashok Batra
CA. Sanjeev K.Choudhary
CA. Atul Gupta

Guest of Honour :

Sh. Suraj Bhan Nain (CIT)
Sh. D. S. Kalyan CIT (A)
Sh. Jagdeep Goyal CIT (A)

Date & Day :

3rd MARCH 2016,

Thursday

Registration under excise by jeweler: A Thoughtful Decision

CA. ASHISH CHAUDHARY
Email: ashish@hiregange.com

Background

Registration with tax authorities is first step for any assesse to make compliance with the law and similar is the case for jewelers who have been brought within excise ambit in Budget 2016-17. But it is very interesting that special provisions have been made for registration of person engaged in manufacturing of jewellery under excise and these provisions could sometime offer tremendous planning opportunities to optimize the tax liability. The paper writers have discussed few of such aspects in the article.

Provisions for registration under central excise:

Section 6 of the Central Excise Act provides that every person engaged in the production or manufacture or any process of production or manufacture of any excisable goods shall get him registered with the proper officer of excise. Rule 9 of the Central Excise Rules prescribes specified categories of person liable to take registration and also provides power to issue notification to exempt certain categories of persons. Notification No. 35/2001- CE (NT) provides detailed procedure for taking registration while Notification No 36/2001 -CE (NT) exempts certain categories of persons from taking registration.

Special provisions for manufacturers of articles of jewellery

It may not be feasible for a jeweler to obtain separate registrations for multiple workshops. Hence, exemption has been granted to take separate registration and the concept of centralized registration has been introduced vide Notification No 5/2016-CE (NT). Following options have been provided for registration:

Facility of Centralized Registration:

The scheme of centralized registration is as below:

The registration is limited to person engaged in manufacturing of jewellery falling under chapter heading 7113 only. If a person is manufacturing articles falling under chapter heading other than 7113, then he is not entitled to take centralised registration. Registration can be taken for premise which has **centralised billing or centralised accounting** system in respect of goods falling under 7113 manufactured or produced by different factories or premises.

In addition to centralised billing or centralised accounting system, it is necessary to maintain accounts/records showing receipts of raw materials and finished excisable goods and received from job workers at such premise.

There is no need to have these units within one Commissioner ate. Factories falling anywhere in the country may be registered within single registration. Details need to be given for each of the premises/factories in the application for centralised registration. However, there is no need to give details of job work premises.

Centralized registration is not compulsion

It is to be noted that facility of centralized registration is an option not compulsion. A manufacturer may take separate registration for all factories or premise where accounts/records showing receipts of raw materials and finished excisable goods manufactured or received back from job workers are kept. (no need of centralized accounting/billing system). Though above options appear to be very simple but it is very important to understand the implications arising under each of the options to take final call as to which option to be chosen.

Registration under excise by jeweler: A Thoughtful Decision

Practical illustration for decision making:

A jeweler has corporate office at Gurgaon. It has regional back offices in 10 states to maintain the track of inventory within respective state and for internal controlling purpose. Each State has 5-6 showrooms and multiple workshops. The jewellery is manufactured through job workers also. Software is maintained at Gurgaon office which records movement of inventory across the country. The software also records inventory movement at each of the back offices and showroom level also. What are the options for taking registration?

Option 1:Take registration at Gurgaon covering all the workshops in the country. Showrooms would be only trading office. The duty needs to be paid at the time of sending of goods from each of the workshop to showroom at the price prevalent at showroom. There is no duty liability when goods are sold from the showroom to customer. In respect of goods lying at the showroom on 29.2.2016, there is no duty liability as these have already been removed from place of manufacture.

Option 2: Take registration at each of the back office in each state covering all workshops in that state. The liability to pay duty shall be in the same manner as discussed above under option 1.

Option 3: Take registration at each of the showroom from where jewellery is sold to customers giving details of work-shops linked to that showroom. Record is maintained at such place for goods sent to and received from different workshops. It is suggested to avoid registering the showroom as there could be complexities in cases of trading, goods sent for approval, exhibition, repair etc. The showroom should be maintained as duty paid warehouse so that excise complexities could be minimized.

Option 4:Take separate registration at each of workshop. All the goods removed from such premise would be duty paid. But this option may not be feasible as it involves huge compliance cost at large number of workshops.

Option 5: Workshops to be treated as job work units: Under options 1 to 3, there is need to mention each of workshops where manufacturing process are undertaken in the registration application. A manufacturer could otherwise consider each of the workshops as job work premise and if done so there is no need to mention the workshops in the registration certificate and neither can officer of central excise make visit to such job work units.

Registration as Input Service Distributor (ISD): Under each of the option, the manufacturer need to decide as to if any of the unit needs to be registered as input service distributor to distribute the credit on input service to each of the registered premise. This become very critical to decide in light of the fact that the many of the showrooms may be doing trading activities also and there could be need to reverse the credit under Rule 6 of Cen vat Credit Rules on common input services attributable to trading turnover/other exempted turnover (silver jewellery etc.) Incorrect planning could lead to denial of huge credit.

Registration under service tax for reverse charge liability:

There could be service tax liability on jeweler under reverse charge i.e. rent a cab, sponsorship, import of service, security, works contract etc. There is option of taking separate registration for each of the premise or centralized registration. The registration needs to be taken in light of the options evaluated for taking registration under excise and ISD registration.

GLIMPSES - Student Seminar on Analysis of Union Budget

Topic :

UNION BUDGET

Audience :

Students

Guest Speaker :

CA. Lalit Aggarwal

CA. Amit Rustagi

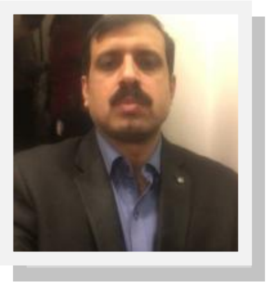
CA. Ashish Chaudhary

Date & Day :

5th MARCH 2016,

Saturday

Internal Finance Control – Decode the mandatory compliance for Companies



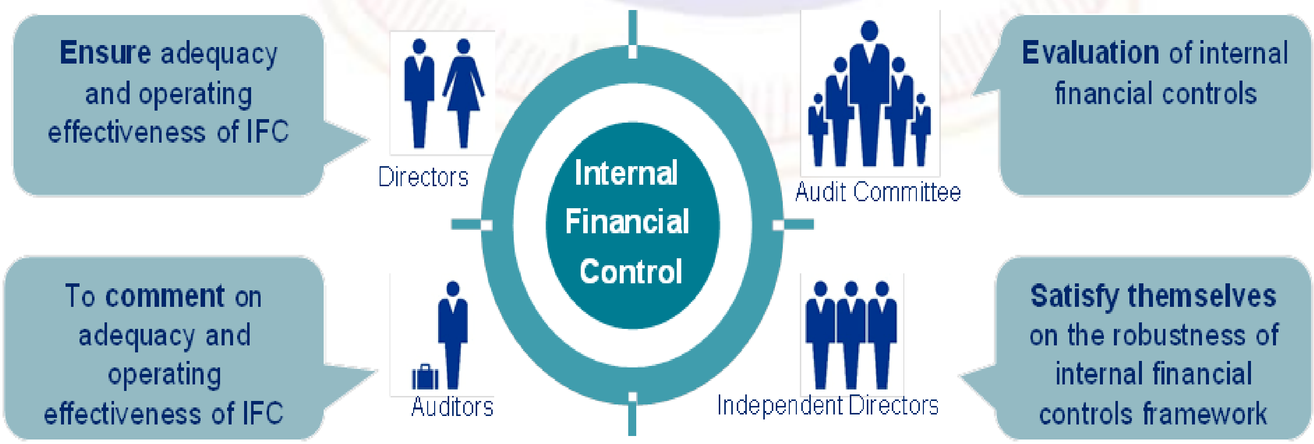
CA. Ashok Ahuja
Email : ashok@finsq.in

The Companies Act 2013 (The 2013 Act or The Act), threw open a new set of reporting requirements for the auditors and the management of companies in India. Section 143(3)(i) of the Act requires the statutory auditor to state in his audit report whether the company has adequate internal financial controls (IFC) system in place and the operating effectiveness of such controls. Explanation to Sec134 (5)(e) of the Act defines Internal Finance Control (IFC) as "the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information." The act casts duties and responsibilities on the Directors, Auditors, Audit Committee and the Independent Directors towards ensuring existence and operating effectiveness of Internal Financial Controls.

Fig 1:- Requirements on Internal Finance Controls (IFC) as per the Companies Act 2013

- **Sec 134** — As per Section 134(5)(e), directors to make an assertion in **Directors Responsibility Statement** that they have laid down internal financial controls to be followed and that such IFCs are adequate and operating effectively
- **Sec 143** — Under Section 143(3)(i), **Statutory Auditors** are required to make a statement in their Auditors Report, whether the company has adequate IFC system in place and the operating effectiveness of such controls
- **Sec 177** — Under Section 177(4)(vii), the duties of the **Audit Committee** include evaluation of internal financial controls and to make a report to the board
- **Sch IV** — The roles and functions codified in **Schedule IV** of The Companies Act 2013 clearly state that **independent directors** shall satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible
- **Rule 8(5) (VIII)** — Requires the Board of Directors' report of all companies to state in details the adequacy of internal financial controls with reference to the financial statements

Fig 2:- The Companies Act 2013 casts responsibility to ensure existence and operating effectiveness of Internal Financial Controls for various stakeholders



Internal Finance Control – Decode the mandatory compliance for Companies

Auditor's Reporting requirement limited to the control over Financial Reporting

The auditor's objective in an audit of Internal Financial Controls over Financial Reporting (IFCoFR) is to express an opinion on the effectiveness of the company's internal financial controls over financial reporting and the procedures in respect thereof are carried out along with an audit of the financial statements. While the directors are required to state the details in respect of adequacy of IFCs with reference to the financial statements

The Institute of Chartered Accountants of India has issues a Guidance Note by the name "**Guidance Note on Audit of Internal Financial Controls Over Financial Reporting**". It defines IFC as

"A process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal financial control over financial reporting includes those policies and procedures that

- *pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company;*
- *provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and*
- *provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements."*

When does this Apply?

The auditors will have to report whether a company has an adequate IFCoFR system in place and whether the same was operating effectively as at the balance sheet date of 31 March 2016. This means that while forming its audit opinion on IFCoFR, the auditor will test transactions during FY16 and not just as at the balance sheet date (though the extent of testing at or near the balance sheet date may be higher). If control issues/ deficiencies are identified during the interim period and are remediated before the balance sheet date, then the auditor may be able to express an unqualified opinion on the IFCOFR. In addition, reporting on IFCoFR will not apply to interim financial statements, such as quarterly or half-yearly, unless such reporting is required under any other law or regulation**.**

How to Audit IFCOFR?

The Guidance Note issued by ICAI provides the supplementary procedures that would need to be considered by the auditor for planning, performing ad reporting in an audit of IFCOFR. The audit procedure would generally include below four steps

1. **Planning –** This stage involves identification of significant account balances/disclosure items, identification and understanding significant flow of transactions, identification of Risks of material Misstatements (RoMM), identification of controls which will address RoMM including applications associated IT environment and general controls.
2. **Design and Implementation –** The Auditor should test the design effectiveness of controls by determining whether the company's controls satisfy the company's control objectives and can effectively prevent or detect errors or fraud that could result in material misstatements in the financial statements.
3. **Operating Effectiveness –** This step includes determining whether controls are operating as designed and whether the person performing the control possesses the necessary authority and competence to perform the control effectively. Testing of operating effectiveness involves planning the nature, timing and extent of procedures to be performed, assessing findings and concluding on operating effectiveness.
4. **Reporting –** Where there are deficiencies that, individually or in combination, result in one or more weakness, the auditor should evaluate the need to express a modified opinion i.e. qualified or adverse on the company's IFCoFR. The auditor should determine the effect of modified opinion on IFCoFR.
5. **Our View** – The onset of IFCoFR is a great professional opportunity for the CA fraternity as audit professionals apart from the stated benefits and duties/responsibilities of the auditors and management. Audit Professionals can help companies set up the IFCoFR systems in the interim so as to remediate any potential deficiency before the audit takes place.

Collaborations & Joint Development Agreement and Capital Gains Tax

CA. Lalit Aggarwal
Executive Member
Email : lalit.agrwal@gmail.com

A joint development agreement is an executory agreement between a land owner or owners and the builder/promoter regarding any real estate joint venture project. A joint venture is one where a land owner with a vacant land or land with building enters an agreement with the builder to construct new projects. The Builder puts up a building. Thereafter, the land owner and builder share the constructed area. The builder delivers the `owner's share' to the land-holder and retains the `builder's share'. This way, the capital, construction and legal work will be carried out by the builder whereas the land will be provided by the land owner.

The scope of Capital Gains in Joint Development Agreement is a vast one and is made with an eye on the tax consequences of the transaction.

Important Considerations/issues:

Whether the profit is taxable under the head capital gain or business income in the hands of land owner?

When does the Capital gain Tax arise for the land owner and developer? Is it at time of signing the joint development agreement, at the time of receiving the constructed buildings, or at the time of selling the buildings?

What will be the full value of consideration received on transfer of the capital asset?

The Joint Development Agreement between the Landowner and Developer breaks down and the project is not completed, then whether Landowner is liable to pay capital gains tax?

The point by point detailed analysis is as under:

Whether the profit is taxable under the head capital gain or business income in the hands of land owner?

Whether the profit is taxable under the head capital gain or business income in the hands of land owner is depend on the complete fact and the circumstances of the case. In the case of **Sathappa Textilers (P) Ltd. Vs. CIT, 263 ITR 371(Mad.)** court held that there should be genuine case of stock in trade otherwise profit will be taxed only in capital gain head. Merely passing of resolution for conversion of land into stock in trade is not treated as genuine case. As per sec 45(1) any profit/gains arising from transfer of capital asset is taxable under the capital gain head **in the previous year in which the asset is transferred**. As per sec 45(2) if a capital asset is converted into stock in trade, the capital gain is taxable in the year in which such asset is sold. Thus still taxable as capital gain.

Merely passing of resolution for conversion of land into stock in trade is not treated as genuine case.

As per sec 45(1) any profit/gains arising from transfer of capital asset is taxable under the capital gain head **in the previous year in which the asset is transferred**.

As per sec 45(2) if a capital asset is converted into stock in trade, the capital gain is taxable in the year in which such asset is sold. Thus still taxable as capital gain.

When does the Capital gain Tax arise for the land owner and developer? Is it at time of signing the joint development agreement, at the time of receiving the constructed buildings, or at the time of selling the buildings?

Relevant provisions of income tax act:

As per sec 45(1) any profit/gains arising from transfer of capital asset is taxable under the capital gain head **in the previous year in which the asset is transferred**.

Collaborations & Joint Development Agreement and Capital Gains Tax

As per sec 2(47)(v) **transfer includes** any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 1 (4 of 1882).

Transaction involving possession to be handed over in part performance of a contract in the nature referred to in Section 53A of Transfer of Property Act, it amounts to transfer. Section 53A clearly explains the concept of part performance of a contract of sale of immovable property. If a buyer is put in possession of a property in part performance of the obligations under the agreement on the buyer paying a substantial portion of the sale consideration, the contract of sale is treated to be in part performance.

Where the agreement for transfer of immovable property by itself does not provide for immediate transfer of possession, the date of entering into the agreement cannot be considered to be the date of transfer within the meaning of sub clause (v) of section 2(47) of the Income tax Act.

Where the agreement for transfer of immovable property by itself provides for immediate transfer of possession, the date of entering into the agreement **shall** be considered to be the date of transfer within the meaning of sub clause (v) of section 2 (47) of the Income tax Act.

Summary with conclusion:

S.No.	Case	When does the Capital gain Tax arise	Explanation
1.	Where possession is transferred at the time of agreement	At time of signing the joint development agreement	Once it is held that the transaction is treated as transfer as per Sec 2(47)(v), the actual date of taking physical possession will be irrelevant.
2.	Where possession is not transferred at the time of agreement	At the time of receiving the constructed buildings	Such transactions will not be covered under sec 2(47)(v).
3.	if a capital asset is converted into stock in trade	At the time of selling the buildings	Sec 45(2)

What will be the full value of consideration received on transfer of the capital asset?

S.No.	Case	Sale consideration	Explanation
1.	Where possession is transferred at the time of agreement	FMV of assets	Fair market value of the capital asset on the date of transfer to be taken as sale consideration, in cases where the consideration is not determinable. (Sec 50D)
2.	Where possession is not transferred at the time of agreement	FMV of flats received by Land owner	Such transactions will not be covered under sec 2(47)(v).
3.	if a capital asset is converted into stock in trade	FMV of assets as on Date of conversion	Sec 45(2)

Joint Development Agreement between the Landowner and Developer breaks down and the project is not completed, then whether Landowner is liable to pay capital gains tax?

In the case of **K.R. Srinath v. Asst. CIT,[2004] 141 Taxman 268 (Mad.)**, Where the assesse initially paid advance under an agreement for the purchase of a property, reserving right to specific performance of the agreement, and later received consideration under another agreement under which the earlier agreement was cancelled and the vendor was allowed to sell the property to any person at any price, there was a relinquishment of right by the assesse which amounted to 'transfer', and the resulting gain was assessable as capital gains. Since the assesse had paid a sum for acquiring the right to acquire the sale deed, it could not be said that there was no cost of acquisition so as to take the view that there could be no assessment to capital gains. Hence, even if the Joint Development Agreement between the Landowner and Developer breaks down, if the landowner has acquired due to Joint Development Agreement, then what landowner has acquired will come under the definition of "capital asset" and Income Tax department can levy capital gains tax on that capital asset.

Conclusion :

Thus there are three main propositions to be considered while deciding the tax proposition on Joint Development Agreement:

a. Possession and General Power of Attorney and development agreement has been executed further fact that the payment has been postponed to future date is irrelevant. Follow Bombay High Court's decision in Chaturbhuj Dwarkadas Kapadia's.

b. Possession has been handed over but from the facts it can be demonstrated that the developer has not performed or not intended to take any efforts which may result in breach of contract- consequently does not amount to transfer u/s 2(47)(v).*Binjusaria Properties (P.) Ltd.'s* case *(supra)*, *Fibars Infratech (P.) Ltd.'s*

Caution: Any one should take care while preparing collaboration agreement. Clause of possession in agreement is vital.

GLIMPSES - Seminar on Bank Audit

Topic :

Bank Audit

Audience :

Students

Guest Speaker :

CA. Ajay Jain

CA. Abhinav Aggarwal

Date & Day :

20th MARCH 2016,

Thursday

Overview on Prudential Norms on Asset Classification of Project Loans

CA. Abhinav Aggarwal
Email : abhinav_21sep@yahoo.co.in

The economy of India has been progressing steadily and one of the factors which have played an important role in the Indian economy is a number of projects set up in India like manufacturing units, power generation units, Highway projects, Hotels, Hospitals etc. A number of projects are under implementation and will further come up under 'Make in India' initiative.

To set up a project the capital required is funded by either equity or debt and equity. The banks have been funding the since past many years and every year RBI updates the Prudential Norms for monitoring and classification of these project loans For an auditor it is necessary to understand the concept of Project Loans and prudential norms issued by RBI with regard to project loans so as to enable him to properly check the project loans while doing the Bank Audits.

What is a Project Loan?

Any term loan which has been extended for the purpose of setting up of an economic venture will be treated as Project Loan.

Categories of Project Loans

Project loans for Infrastructure sector (Infrastructure Loans)

Project loans for non - infrastructure sector (Non-Infrastructure Loans)

Prudential Norms for Projects under implementation

Particulars	When an account becomes NPA?	
	Infrastructure Loans	Non-Infrastructure Loans
Any time before Commencement of commercial Operation	As per records of Recovery (90 days overdue)	
Fails to commence Commercial Operations (refer exception below)	within 2 years from the DCCO	within 1 year from the DCCO

Exception:

Change in Ownership (Explained below)

The loan is restructured, by extending the DCCO beyond the period of 2 / 1 year allowed above, when it was a standard asset as per the records of recovery and the application for restructuring (i.e., for extension of DCCO) is received within the above stipulated time (i.e., 2 years / 1 year from original DCCO)

Sector as defined in extant Harmonized Master List of Infrastructure of RBI (Refer RBI circular No. **DBOD.BP.BC.No.66/08.12.014/2013-14** dated November 25, 2013) DCCO is Date of Commencement of Commercial Operation of the project, clearly spelt out at the time of financial closure and should be formally documented. It is also sometimes referred to as Scheduled Commercial Operation Date (SCOD).

Overview on Prudential Norms on Asset Classification of Project Loans

How much extension is allowed?

Reasons for delay	Extension Allowed	
	Infrastructure Loans	**Non-Infrastructure Loans**
Involvement of Court cases	Another 2 years (total 4 years from original DCCO)	Another 1 year (Total 2 years from Original DCCO) (Restructuring benefit is not available to Commercial Real Estate Exposures)
Other than Court Case, reasons beyond control of promoters	Another 1 year (Total 3 years from original DCCO)	

<u>Note:</u>

In case restructuring by extension in DCCO is done when the Asset was NPA as per the records of recovery, the asset shall remain NPA and shall not be upgraded to standard Asset.

If the DCCO is extended within 2 years / 1 year from the Original DCCO in Infrastructure / Non-Infrastructure Loan respectively, **mere extension of DCCO and consequential shift in Repayment Schedule of equal or shorter duration shall not be treated as Restructuring.**

What is Consequential Shift in repayment schedule?

Generally, the Repayment in a project loan is scheduled to start after DCCO of the project. In case the DCCO is extended and the Repayment start date is not extended accordingly, the repayment shall fall due as per original repayment schedule and the account may become NPA if it does not serve the dues on due date. Therefore, the repayment start date is also extended consequent to shift in DCCO. This shift in repayment schedule (i.e., shift in start and end date) without changing the installment amount, mode and period, upon extension of DCCO is referred as consequential shift in repayment schedule.

Project under implementation – Change in Ownership

In order to facilitate revival of the projects stalled primarily due to inadequacies of the current promoters, if a change in ownership takes place any time during the period of 2 years / 1 year from the original DCCO for Infrastructure Loans / non-infrastructure Loans respectively or before the original DCCO, banks may permit extension of the DCCO of the project up to two years (Considered as extension in Original DCCO), without any change in asset classification of the account, subject to the conditions stipulated in paragraph 4.2.15.4 of the **Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances** (Circular No. DBR.No.BP.BC.2/21.04.048/2015-16 dated 1 July 2015).

Banks may also consequentially shift/extend repayment schedule, if required, by an equal or shorter duration.

Overview on Prudential Norms on Asset Classification of Project Loans

Let us understand the concept by way of an example. Let us assume the Original Date of Commencement of Commercial Operations (DCCO) as 01.01.2014

<table>
<tr><th>Particulars</th><th>Infrastructure Loan</th><th>Non-Infrastructure Loan</th></tr>
<tr><td>NPA if Fails to commence Commercial Operations by</td><td>31.12.2015</td><td>31.12.2014</td></tr>
<tr><td colspan="3">Provided, Restructured when it was standard asset as per records of recovery and</td></tr>
<tr><td>Application for restructuring is received (for extension of DCCO) up to</td><td>31.12.2015</td><td>31.12.2014</td></tr>
<tr><td colspan="3">To retain standard Asset Classification upon restructuring due to extension in DCCO beyond 2/ 1 year from original DCCO, DCCO can be extended up to:</td></tr>
<tr><td>Reason for Delay:
Involvement of Court cases</td><td>31.12.2017</td><td rowspan="2">31.12.2015
(Restructuring not allowed for Commercial Real Estate Exposure, and it becomes NPA if it fails to commence operation by 31.12.2014)</td></tr>
<tr><td>Other than Court Case, reasons beyond control of promoters</td><td>31.12.2016</td></tr>
<tr><td>Not to be considered as Restructuring if there is consequential shift in repayment schedule of equal or shorter duration and the DCCO is extended up to</td><td>31.12.2015</td><td>31.12.2014</td></tr>
</table>

Conclusion :

Recently, due to slowdown in a number of Industries, majority of the projects are not able to achieve the Scheduled Commercial Operation Date and the DCCO is being extended in such cases. Therefore, following 2 points are very important to check:

- Whether the shift is beyond the initial period of 1 / 2 years, if yes, the account needs to be classified as Restructured Asset and accordingly higher provision as per RBI Guidelines is required to be made.
- Where the shift is within initial period of 1 / 2 years, the consequential shift in repayment schedule should be of equal or shorter duration otherwise the account stands restructured and accordingly higher provision as per RBI Guidelines is required to be made.

GLIMPSES - Seminar on Bank Audit

Topic :

Bank Audit

Audience :

Members

Guest Speaker

CA. Amarjit Chopra

CA. Ajay Jain

Date & Day :

27th MARCH 2016,

Thursday

Benefits of Implementation of GST across India

CA. Pravendra Rana
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From Europe to the rest of the world, the Goods and Service tax (globally VAT) quickly spread and became what has been described as an unparalleled tax phenomenon. This is the most important event in the evolution of tax structure in the second half of the 20th century. Thus, due to its overwhelming popularity and its undeniable appeal in its pure form, GST (globally VAT) has been applied around the world to the different degrees.

Following the same, the Finance Ministry of India has placed the 122nd (One Hundred and Twenty Second) Constitutional Amendment Bill in the Lok Sabha on 19th December, 2014. This Amendment Bill is hugely significant as it is to introduce the Goods and Service Tax (GST) in the Indian taxation system. Introduction of GST in Indian taxation system marks the most significant taxation change as well as economic reform in India.

GST in India will be a 'destination based consumption tax' levied on goods and services consumed in Indian economy. It will be livable on each point of sale and provision of service which would be called as taxable supply in GST regime against the manufacture, sale or provision of service. GST will have its two components in the Indian taxation system i.e. Central GST (CGST) and State GST (SGST). The CGST and SGST will be levied and collected by Central and State Governments respectively. GST will subsume all the major indirect taxes in India. Through this article, we are trying to understand the benefits/advantages of GST in the Indian taxation system i.e. to the Central, State Governments, traders, manufacturers and the consumers.

The same can be discussed as under:

Benefits of GST to the Central and State Governments

Increase in the Gross Domestic Product (GDP): As per the report of the Task Force on Goods and Services Tax Thirteenth Finance Commission, the study shows that implementation of GST across goods and services is expected, ceteris paribus, to provide gains to India's GDP somewhere within a range of 0.9 to 1.7 per cent. It is estimated that India will gain around USD1 billion a year by implementing GST.

Increase in the Exports of the country: It is expected that after implementation of GST across India, the cost of production will reduce significantly and when the cost of production falls in the domestic market due to continuous chain of set off from producer's point to consumer's point Indian goods and services will be more price-competitive in foreign markets. This can bode well for exporters, who compete with manufacturers abroad facing a lower cost structure.

Results in widening of tax base and increased revenue to the state governments: The tax base of the state government will increase widely with the inclusion of the tax on services and manufacturing. State may impose additional levy on transmission fuel as well as sumptuary goods and also have authority to levy temporary cusses and surcharges in case of emergencies. State can also continue to levy user charges for services provided to the citizens. This will result in increase in the revenue of the state governments many times.

Size of 'Divisible Pool' will increase:

The model GST will accommodate the concerns of the State Governments i.e. State Governments will get benefit from the abolition of the cess and surcharge levied by the Centre because the size of the divisible pool due to introduction of GST will definitely rise. Presently this amounts to about 15% of the divisible pool which is expected to rise in the GST regime.xc

Benefits of Implementation of GST across India

Reduction in the 'Administration cost':

Presently in our indirect tax structure the assesse has to follow lot of compliances along with the government which is imposing lot of taxes with various ways of compliance. As GST will subsume all the major indirect taxes the administration would become easier because the assesse has to comply with a single tax structure and this is similar for the government as well. The government would manage with a single national level network as e-governance will replace the age old conventional system of tax management.

Improved Tax Policies:

There is a saying that good tax policy is good tax administration. As discussed, there are different indirect taxes which are imposed by the State Governments and Central Government. Further, for these taxes, an assesse has to follow various complex compliances. Hence, there are significant scope of improvisation in the tax policies which would ultimately help in tax collection efficiency and this improvisation is expected through implementation of GST in India. In other words, GST in India will help in increase collection efficiency of State Governments and improve tax administration across India.

<u>GST benefits for 'Traders & Manufactures</u>

Subsuming of various taxes into one tax: Implementation of GST in India will subsume several central taxes and state taxes which will enable traders and manufacturers to give one tax rather than giving about 16 taxes. As a result of the same, various traders and manufactures need not to follow different compliances under different tax laws.

Common market for the Products: At present, goods are being sold mostly within the state in order to avoid paying the Central Sales Tax (CST) which is not eligible for input credit at the stage of manufacture or in course of trading. As a result of the same, good quality products being manufactured in one part of the country not find more market in the farthest part of the country. After introduction of GST, there will be a common market in the absence of Central Sales Tax (CST) and entry tax as CST and entry tax will subsume in the GST.

Economies of scale in manufacturing sector: Currently the manufacturing sector is the highly taxed sector in India which makes the products more expensive. It is said that the manufacturing cost of most products in India is very low as compared to various developed country but still our products are less competitive internationally because of high taxation of the manufacturing sector. This scenario will get changed in GST regime, as a result of the same, there will be reduction in the cost of production.

Reduced inventory costs: Another major benefit especially to FMCG and consumer durables companies would be the reduction in their inventory costs. Currently, the CENVAT is included in their inventory costs, which has to be financed by them. Under the new structure, the GST paid on inventory would be fully recoverable immediately as input tax credit, reducing the inventory financing costs.

Cash flow benefits for dealers: GST will offer cash flow benefits to dealers and distributors. They would be collecting GST from their customers as they make sales, but would be required to remit it to the government only at the end of the month or the quarter, when they file their returns. This extra cash float would allow them to achieve scale and invest in making their operations more efficient.

Common exemptions between Centre and states: Now the exemptions given by the Centre and the states Governments being different which leads to different prices of single goods in the different states. In the GST regime, common exemptions list will be introduced i.e. exemptions will be common between the Centre and the states which will make the rates of duty same all over India ultimately help creating a common national market.

Benefits of Implementation of GST across India

Abolition of Manufacturing Concept: Manufacture is a highly complicated concept. It is defined mostly by judgments of the Supreme Court and high courts of the different states. It is a den of controversy. The concept of manufacture will be replaced by the concept of value added which is numerically measureable and is not controversial.

Reduction in the cost of production: GST would lead to efficient allocation of factors of production. The efficient and affective allocation leads to the reduction in the prices of inputs and the overall price level would go down. It is expected that the real returns to the factors of production would go up.

End of Product identification problem: At present, identifying the commodities is a big problem as the rates of duty are applied according to the products like whether it is rubber or resin, paper or board, ash, or dross as the rates of duty are different according to the product. This practice will over after implementation of GST in India.

Doctrine of undue enrichment will abolish: At present, there is a law of 'Doctrine of Unjust Enrichment' in Central Excise Act and Service tax law which provides refusing of refund, if incidence of duty has been passed to the other person. This is actually a highly litigated law point which will end after introduction of GST. Moreover, if the unjust enrichment of law is made to apply to GST as a whole, the purpose of seamless movement of goods and services will be defeated.

Benefit of Credit to all: Under GST, there will be no distinction amongst the manufacturers, traders or service providers. At present, traders don't get credit for anything other than state VAT. After implementation of GST, there would be change in scenario and all the traders would be eligible to get benefit of input credit. Thus, the purpose of zero rating will be more comprehensive and easier.

<u>GST benefits for Consumers</u>

Reduction in prices of the products: Presently lot of taxes are imposed on the products and input credit for the taxes imposed available in case of some goods only i.e. input credit of taxes is not available in each and every case. Due to this practice, there is increase in cascading effect thereby increasing the cost of production as well as price for the consumers. In GST there will be enhanced transparency as well as rationalization of tax structure because of the continuous chain of set off, this leads to reduction in the prices of the products at consumer level. In case of primary food articles under prevailing tax structure purchase tax as well as sales tax have been levied which consequently increase the prices of primary goods but in GST it is proposed that there will be a merit rate for essential goods which makes the prices of the essential goods fall.

Employment opportunities: It is expected that after implementation of GST, the manufacturing sector of India would definitely get benefit from the economies of scale which in turn will increase the employment opportunities. The implementation of GST will also witness the increase in the real return from factors of production land, labour and capital because of efficient allocation of the factors. This real return would in turn increase the return of small and landless farmers which not only increase employment opportunities but also leads to reduction in the poverty level.

Low cost of Housing: The GST provides for the inclusion of the real estate sector in GST which means the taxes paid on inputs by the industry will be available as tax credit which leads to transparency as well reduction in the cost of inputs to the real estate sector. Consequently it is expected that the cost of housing would get reduced to the extent of embedded taxes.

GLIMPSES - Holi Milan

HOLI MILAN SAMAROH

20th MARCH 2016

Money Market: Functions and Instruments

CA. Dheeraj KS Sharma
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Money Market:

Money Market is the part of financial market where instruments with high liquidity and very short-term maturities are traded. It is the market where short term investible funds are demanded by borrowers comprising companies and government. Money market instruments have maturity period of less than one year.

According to the *Reserve Bank of India*, "The money market is the center for dealing mainly of short term character, in monetary assets; it meets the short term requirements of borrowers and provides liquidity or cash to the lenders. It is a place where short term surplus investible funds at the disposal of financial and other institutions and individuals are bid by borrowers, again comprising institutions and individuals and also by the government."

In India, money market consist two sectors:

Organized sector: comprising Reserve Bank of India, State Bank of India and its associated banks.

Un-Organized sector: comprising indigenous bankers and Non Banking Financial Institutions (NBFCs)

Functions of Money Markets:

Money market is an important part of the economy. It plays very significant functions. As mentioned above it is basically a market for short term monetary transactions. Thus it has to provide facility for adjusting liquidity to the banks, business corporations, non-banking financial institutions (NBFs) and other financial institutions along with investors.

The major functions of money market are given below:

To maintain monetary equilibrium. It means to keep a balance between the demand for and supply of money for short term monetary transactions. By providing profitable investment opportunities for short term funds it helps to profit of investors. To promote economic growth. Money market can do this by making funds available to various units in the economy such as agriculture, small scale industries, etc.

Money Market helps to avoid wide fluctuations in interest rates. To provide help to Trade and Industry. Money market provides adequate finance to trade and industry. Similarly it also provides facility of discounting bills of exchange for trade and industry. To help in implementing Monetary Policy. It provides a mechanism for an effective implementation of the monetary policy. To help in Capital Formation. Money market makes available investment avenues for short term period. It helps in generating savings and investments in the economy. Money market provides non-inflationary sources of finance to government. It is possible by issuing treasury bills in order to raise short loans. However this does not leads to increases in the prices. Apart from those, money market is an arrangement which accommodates banks and financial institutions dealing in short term monetary activities such as the demand for and supply of money.

Money Market Instruments:

Call/Notice Money:

Call/Notice money is an amount borrowed or lent on demand for a very short period. If the period is more than one day and up to 14 days, it is called '*Notice money*' otherwise the amount is known as *'Call Money'*. Call money participants include, those who can both borrow as well as lend in the market-RBI(through LAF) Banks, PDs and those who can only lend Financial Institutions- LIC, UTI, GIC, IDBI, NABARD, ICICI and mutual fund etc.

Money Market: Functions and Instruments

Treasury Bills:

Treasury Bills are one of the safest money market instruments as they are issued by Central Government. They are zero-risk instruments, and hence returns are not that attractive. T-Bills are circulated by both primary as well as the secondary markets. They come with the maturities of 3-month, 6-month and 1-year. The Central Government issues T-Bills at a price less than their face value and the difference between the buy price and the maturity value is the interest earned by the buyer of the instrument. The buy value of the T-Bill is determined by the bidding process through auctions.

At present, The Government of India issues three types of treasury bills through auctions, namely, 91-day, 182-day and 364-day.

Term Money

Term Money market is an inter-bank market for deposits of maturity beyond 14 days. Desire for fixed interest rate and declining spread in lending operations are playing major role in development of the term money market. The Discount and Finance House of India Ltd. (DFHI) is putting an all efforts to activate this market.

Ready Forward/Repos and Reverse Repos:

Ready forward or Repos or Buyback deal is a transaction in which two parties agree to sell and repurchase the same security. Under such an agreement, the seller sells specified securities with an agreement to repurchase the same at a mutually decided future date and a price. Similarly, the buyer purchases the securities with an agreement to resell the same to the seller on an agreed date in future at a prefixed price.

Inter Corporate Deposits:

An Inter Corporate Deposit is an unsecured loan extended by one corporate to another. Corporate having surplus funds lend to another corporate. Reserve Bank of India permits Primary dealers to accept Inter Corporate Deposits up to fifty percent of their Net Worth and that also for a period not less than 7 days. Primary Dealers can not lend money in the Inter Corporate Deposit Market.

Commercial Papers:

Commercial Paper is the short term unsecured promissory note issued by corporate and financial institutions at a discounted value on face value. They come with fixed maturity period ranging from 1 day to 270 days. These are issued for the purpose of financing of accounts receivables, inventories and meeting short term liabilities.

The returns on commercial papers are higher as compared to T-Bills so as the risk as they are less secure in comparison to these bills. It is easy to find buyers for the firms with high credit ratings. These securities are actively traded in secondary market.

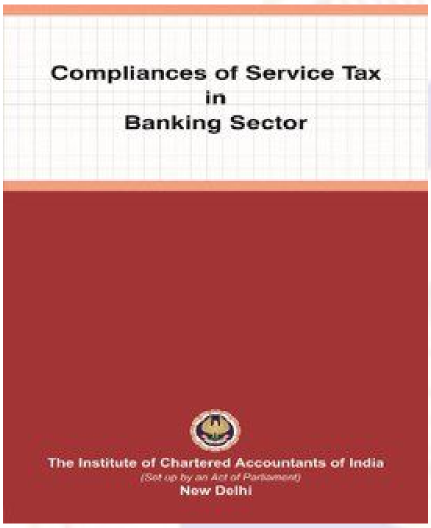
Certificate of Deposit:

Certificate of Deposit is like a promissory note issued by a bank in form of a certificate entitling the bearer to receive interest. It is similar to bank term deposit account. The certificate bears the maturity date, fixed rate of interest and the value. These certificates are available in the tenure of 3 months to 5 years. The returns on certificate of deposits are higher than T-Bills because they carry higher level of risk.

NEW / REVISED PUBLICATION- INDIRECT TAXES COMMITTEE

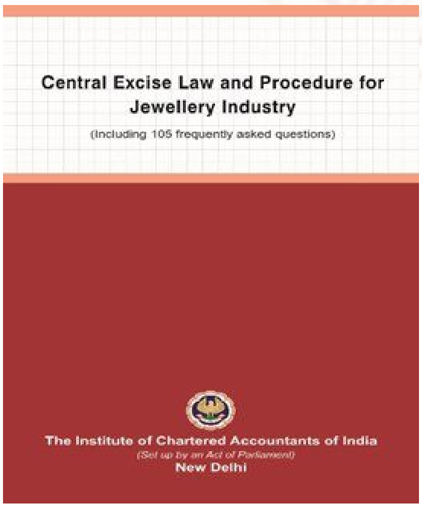
The Indirect Taxes Committee of ICAI keeps the members updated with the changes through its updated publications which member may subscribe at their choice. The following publications have been published by the Committee:

- ***Compliances of Service Tax in Banking Sector***



The Chartered Accountants conducting bank audit would find support for smooth compliance with various provisions of service tax laws in banking. This publication provides a detailed Questionnaire for Service Tax compliances of Banks. In addition to the questionnaire, the publication further highlights major incomes & expenditures of banks liable for service tax, CENVAT Credit provisions, procedural checks for banks etc.

- **Central Excise law and procedure for jewellery industry**



We are glad to inform you that Indirect Taxes Committee of ICAI has come out with a new publication on ***Central Excise Law and Procedure for Jewellery Industry*** with a view to support and acquaint the Jewellery industry with the fine nuances of excise law and procedures and the implications of the amendments. It would also help our members, trade & industry and other stakeholder to understand the intricacies involved in taxation of Jewellery. For ease of understanding the concept of levy, valuation, payment, exemption, registration, invoicing, return etc. have been briefly explained in the form of frequently asked question (FAQ).

- **Ordering Information**

The Publication can be purchased directly from the sales counter at the ICAI's Regional Offices / Branches or at the Head Office. Member may also download these Guides from Indirect Taxes Committee Website: http://idtc.icai.org/publications.html. To order by post, requisition may be sent to the Postal Sales Department of the ICAI at **postalsales@icai.in** or can be order online at **https://icaionlinestore.org/indirect-taxes-committee**

Your Comments/ Suggestions are welcome at ***idtc@icai.in***

Secretary

Indirect Taxes Committee

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- For the Financial Year 2016-17 the branch has constituted a Study Group for conducting the programs. The details of membership fee for which are as follows:

Particulars	Fee Per Member
For Individual Member	Rs.5000/-*
For five or more declared members from any organization i.e. names of the Members to be declared **at the time of payment** with the fee. (payment will be made with a single cheque only) with a **single cheque** only)For Two to Twenty declared members from any organization i.e. names of the Members to be declared at a time payment with the fee. (payment details)	Rs.4500/-*

*** Fee is applicable for the period April 2016 to March 2017**

Please note that Study Group members shall not be required to pay any fee for attending the seminars organized by the Branch during the financial year 2016-17.

Members are requested to enroll for the Membership of the Study group by sending a cheque in favour of "**Gurgaon Branch of NIRC of ICAI**" at Plot No. 60 - A, Sector-18, 3rd Floor, Gurgaon.

- ***Feedback & Suggestions***

Gurgaon Branch will be happy to hear from you regarding the seminars/workshops or other activities.

Please drop a mail as below

Reference	Email	Subject
Seminars/Workshops	icaigurgaon@gmail.com	Sub: Seminar- - -
Others	icaigurgaon@gmail.com Or arunaggarwalca@gmail.com	Feedback

- Gurgaon Branch of NIRC of ICAI requests the members & students to come forward & share the articles (Professional & otherwise) to be published in the upcoming newsletter. The submissions may be sent to icaigurgaon@gmail.com with the subject line (Article Newsletter).

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