



ICAI MANGALORE

INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

e- Bulletin

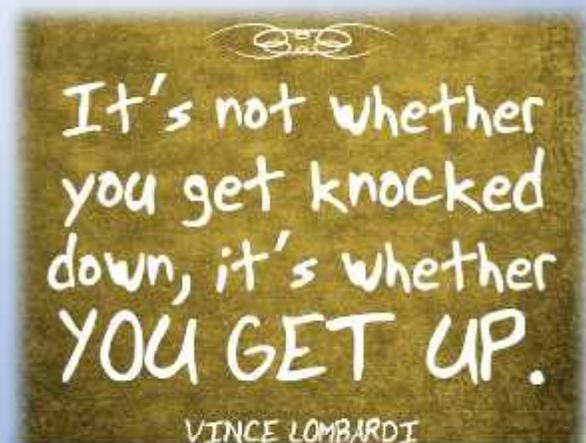


Volume 09 | September 2015

The Bulletin Board

- *Chairman's Message*
- *Branch Activities carried out in the month of September 2015*
- *Branch Activities Gallery*
- *Professional Updates*
- *Tips on Tally*
- *Managing Committee*

Thought for the Month:



Chairman's Message



CA Shivakumar K
Chairman
Mangalore Branch of SIRC of ICAI

Dear Esteemed Members,

Greetings! Generally it is April and May, being in the peak of summer that makes us perspire profusely. However, the most heated month on a CA's calendar surely is September, the month earmarked for Tax Audit! With the extension of the due date for e-Filing Returns of Income from 31st July 2015, initially to 31st August and then to 7th September 2015 in respect of all taxpayers who were required to e-File their returns by 31st July 2015, and due to the time spent on analysing the amendments of Companies Act, 2013, the 30th September due date for Tax Audit seemed too close and daunting!

Considering all these points writ petitions were filed by CAs and CA Associations praying for the extension of the due date. While the Karnataka High Court directed the Central Board of Direct Taxes to consider the same, the President of ICAI also made a request to the Finance Minister requesting the extension. But the CBDT did not extend the due date before 30.09.2015. The announcement of the extension of time came only on the afternoon of 01.10.2015. The irony here is that none of the assesses or the trade associations, being the ones directly affected by the challenges of e-filing and audits, had made any appeal for the extension of the due date.

Though 'Tax Audit' was the stealer of lime light in September, we at Mangalore ICAI tried to make the month more eventful with the following activities and programmes: All want to be successful, but not all get the right guidance to make right decisions at the right time. If they have a pre-planned guidance for their career, it can make a lot of difference. With this view, we had a Career Guidance programme, at Govt. Ist Grade College, Haleyangady, by CA. Prasanna Shenoy on the 9th of September .

.....Contd

Chairman's Message



Contd.....

On the 12th of September we had an awareness programme on IND-AS and IFRS. A good number of members and students benefited from the discussions. Thanks to C.A. VenkataSubramani and C.A. Mohan R. Lavi for their brilliant sessions.

On the same day, being concerned citizens, we also had an awareness programme led by CA. Giridhar Kamath on 'Environmental Hazards' that could be caused by the Yethinahole River Diversion Project.

On the 21st we started yet another batch of Orientation Programme, under the guidance of the Coordinator of the course C.A. M.N. Pai and his team.

Bearing the thought in mind that Development cannot be sacrificed due to the fear of possible deprivation for the generations to come and due to the Government of India legalizing CSR by bringing amendments to the Companies Act, 2013, On the 23rd we conducted a Joint Seminar with St. Philomena College, Puttur (UGC Sponsored National Seminar) on the Topic "Sustainable Development and Corporate Social Responsibility – Issues and Challenges". Thanks to CA. Jagannath Kamath for coordinating the same.

On the 25th of September a Crash Course for CA Final commenced in the Institute for the subjects - ISCA, Corporate and Allied laws, SFM and Advanced Management Accounting, with the objective of helping the students to prepare better and face the exams with more confidence.

On the 25th we also installed and inaugurated a KIOSK(computer with internet facility) in the reception area of ICAI Bhavan, at Padil, which is supplied by SIRC as a part of Capital Budget sanction. The KIOSK – with www.icai.org as default website - is meant for enabling the Members, Students and general public to clarify online on any doubts with respect to Memberships, Firms, Board of Studies, Examination etc.,

I would like to take this opportunity to inform all our members about the upcoming ICAI Council elections to be held on 4th and 5th of December 2015. I urge all the members to cast their precious votes and help in electing the best candidates to the Councils.

....Contd

Chairman's Message



Contd.....

I would like to conclude with the words of a leader par excellence, Pandith Dean Dayal Upadhyaya, whose birth anniversary we celebrate on the 25th of September-"Human Knowledge is common property. "Human knowledge can be common property only when the arch of knowledge opens unto all in the form of intellectual debates, enlightening educational sessions and progressive awareness programmes. This precisely has been our endeavour at ICAI. Warm Wishes for the Festival Season.

With warm regards,

Yours in Professional Service,

CA Shivakumar K

Branch Activities August 2015



| SI No | Date | Activity at Branch | CPE Hours/ Number of Participants |
|-------|--------------------------------|--|------------------------------------|
| 01 | 09.09.2015 | Career Guidance workshop at Govt First Grade College, Haleyangadi By: CA. Prasanna Shenoy, Mangalore | Students: 175 |
| 02 | 12.09.2015 | One Day Awareness Programme on Ind AS (IFRS) Topics Covered: <ul style="list-style-type: none"> • Overview of IFRS-converged Indian Accounting Standards (Ind AS), • Convergence Process, Roadmap for implementation of Ind AS • Carve-outs made in Ind AS • Ind AS 1, Presentation of Financial Statements • Ind AS 8, Accounting Policies, Changes in Accounting Estimates and Errors, • Ind AS 115, Revenue from Contracts with customers, • Ind AS 101, First-time Adoption of Indian Accounting Standards, • Major Differences between Ind ASs and existing Accounting Standards | Members: 32 CPE Credit: 6 hours |
| 03 | 12.09.2015 | Programme to create awareness about Environment Hazards- “ Yettina Hole Project” – Netravathi river diversion Leader: CA. Giridhar Kamath | Members: 30 Public: 110 |
| 04 | 25.09.2015 to 12.10.2015 | Crash Course for ISCA, Corporate and Allied Laws, Strategic Financial Management, Advance Management Accounting | Students: 14 |
| 05 | 21.09.2015 to 25.09.2015 | 47th Batch of Orientation Programme for IPCC Students | Students: 48 |
| 06 | 23.09.2015 | Joint seminar with St. Philomena College, Puttur (UGC sponsored National seminar) | Students: 70 |
| 07 | 25.09.2015 | Inauguration of KIOSKS | Students : 48 |



Branch Activities Gallery September 2015



Left: Career guidance workshop at Govt First Grade College, Haleyangadi by CA Prasanna Shenoy on 09th Sep 2015
Right: Speaker CA R Venkata Subramni 's session during one day awareness programme on Ind AS(IFRS) held on 12th Sep 2015



Left: Speaker, CA Mohan R Lavi' session during one day awareness programme on Ind AS(IFRS) held on 12th Sep 2015
Right: 47th Batch of Orientation



Left: Programme for IPCC Students Programme to create awareness about Environment Hazards- " Yettina Hole Project" - Netravathi river diversion lead by CA Giridhar Kamath



Professional Article



Base Erosion & Profit Shifting

- CA. Amar Sharma
amarsharmam@gmail.com

Introduction

A wide range of cross border tax planning techniques that are used by multi-national corporations and global conglomerates to reduce their global tax liability have in fact, been fairly successful. Such techniques are collectively referred to Base Erosion and Profit Shifting (BEPS). Base Erosion and Profit Shifting is a key concern among countries due to the hindrances and impact it can create because of ambitious tax regimes of various countries. In this article, I have tried to throw some light on techniques used by corporations to shift profits to tax friendly countries, resulting in tax base erosion of the residence country.

Every country with a forward looking tax regime is ideally looking to (a) generate greater tax revenues, (b) increase the number of tax payers in the country, or in other words, widen the tax net or the tax base and (c) maintain the existing number of taxpayers as they are, or in other words, prevent erosion of the tax base. Tax base erosion, would ideally mean a reduction in the number of tax payers, or, without a reduction in the number as such, reduction in the incomes chargeable to tax within the juridical powers of a country by way of aggressive tax planning, or shifting of profits to a more tax friendly country.

It is neither a new thing, nor a surprising revelation to us that technology has advanced at a very rapid pace in the past decade or two. With the advancement in technology, the concept of “global village” seems a lot more realistic than what it was when first coined. It is a matter of great interest to learn that companies like Google pay a meager 2.4% of their global profits as tax!

Some of the ways in which Base Erosion and Profit Shifting occurs is

(a) Mobile capital

In cases where the primary revenue generating component of the business is a freely movable asset, like for example intellectual property rights (IPR), or servers taking decisions based on algorithms, they are very mobile, and their movement may not necessarily be physical.

Unlike the traditional revenue generating components like plant and machinery whose movement is not only difficult, but also impractical only from a tax planning perspective, intellectual property rights or decision making algorithms are relatively easier to move.

Domestic tax laws of a large number of countries generally establish their taxing rights over corporations based on their registered office, or place of effective management. With the advent of movable capital, in the form of IPR or servers, software and algorithms, or even the domicile of the key managerial personnel of the corporation, establishment of taxing rights over corporations for countries becomes elusive.

On the one side while it makes it elusive for countries to establish their taxing rights, this makes it convenient for corporations with movable capital to establish their residency in tax havens, for example The Cayman Islands, Isle of Man, Switzerland, Luxembourg, Singapore, British Virgin Islands, and the like.

....Contd



Professional Article

(b) Transfer Pricing

While it is a continuously ongoing debate whether Transfer Pricing is an art or a science, one thing that is certain is, there is good room for profit shifting through transfer pricing, and it is a part of aggressive tax planning of many global conglomerates. Through transfer pricing, corporations resort to shifting of their profits to territories with nil or minimal taxes on corporations, so that the tax leviable for the group on a global scale is minimized. This is generally done by group companies situated in low tax territories involving themselves in very high billing to corporations of their own group in countries with higher tax rates. Transferring expenses to countries where the tax rates are high are the other side of the same coin. Countries in a high tax territory purchase equipments or receive services from companies of the same group in lower tax jurisdiction at high prices, so that profits earned in the high tax territories are shifted to the group companies in low tax territories.

In India, it is mandatory under rule 10E of the Income Tax Rules, 1962, for a Chartered Accountant to provide report in Form 3CEB relating to international transactions of the assessee. This report requires the Chartered Accountant to report on whether the transactions entered into with “associated enterprises” is at an arm’s length in comparison to other transactions of the assessee.

In many genuine cases, the assessee is forced to make purchases from enterprises associated with them for the reason that the group holds the global patent rights for the product, or the associated enterprise is the sole supplier of the required product or service. In such cases, it becomes very tough to establish that there are no comparable transactions that could be entered into with non associated enterprises, and the arm’s length price could never be established beyond scrutiny. This creates to some extent, avoidable litigation, but in the larger scheme of things, the group may eventually succeed in shifting profits to low tax territories in the guise of genuine business transactions.

(c) Thin Capitalization through Controlled Foreign Corporations (CFCs)

Thin capitalization, as the name suggests is the phenomena where a company has very little equity, in comparison to debt. Such equity is held by a foreign corporation which could probably manage the affairs of the company through control over the activities of the Board of Directors.

The advantage of having thin capitalization from the corporation’s perspective is that a large portion of the asset funding is met through debt. Consequently, the interest payable on such debts becomes tax deductible business expenditure in the territory of operation of the corporation. Thus, the entity is eventually successful in reducing its tax burden in the country of operation.

India has not yet enacted rules for Controlled Foreign Corporations. However, the same is being contemplated, and it is not far away before India implements Controlled Foreign Corporation and Thin Capitalization Rules.

....Contd



Professional Article

(d) Hybrid Instruments

Hybrid instruments are those financial instruments which may be classified as debt as per the rules and regulations of one country, and as an equity as per the rules and regulations of another country.

A corporation would issue such hybrid instruments which look like an equity instrument in the residence territory where the tax regime is mild, so that the profits of the global conglomerate would eventually pass through to the shareholders. However, the same equity instrument in the source territory of the corporation may be classified as debt, and a tax deduction could be availed for the interest payments on the same.

Either ways, the corporation would be achieving its motive of shifting profits from a high tax state to a low tax state.

(e) Hybrid Entities

Hybrid entities are those forms of business which are considered as a separate entity for tax purposes in some tax jurisdictions and in some other tax jurisdiction, not. For example, a partnership firm is a separate taxable entity in India. However, in countries such as the USA, Hong Kong and UK, a partnership is given a “pass through” status. Pass through status means, the partnership is not taxed as a separate legal entity, but the profits or losses are taxed directly in the hands of the persons who are partners in the partnership.

In such cases, for example, if a partnership is formed in India, and the partnership is taxed as a separate entity since India is a source country, the partners who are residents of another taxing state where partnership is a pass through entity could claim credit of taxes paid by the partnership firm in India, and legally end up not paying tax in the country of residence. It would appear very interesting to learn that even though they should have been taxed in their residence country because it does not provide a pass through status to partnerships and the profits of a partnership is taxed directly in the hands of the partners, the partners could get away with no tax liability in the residence country.

Base Erosion and Profit Shifting (BEPS) generally causes phenomena called the “spillover effect”. This means, that one country’s ability to collect taxes on a transaction is adversely affected by another country’s tax regime. Whether this is an intended act or not, it causes, to some extent budget shortfalls in tax revenues and avoidable tax litigation and avoidable complication of transactions. Thus, Base Erosion and Profit Shifting is, by the day, becoming more of a global problem.

India has Double Taxation Avoidance Agreements (DTAA) with over 80 countries, and as per the various clauses of the DTAA's and the domestic laws of each of the contracting states, one could be virtually certain that the income earned would either be taxed in the source country, or in the residence country, or where it is

.....Contd

Professional Article



taxed in both, suitable relief is given to the taxpayer. However, it is worth noting that whatever the share of taxes between the countries is, it can never exceed the total tax payable. More colloquially, it would be easier to understand when one says, the cake cannot get larger because each country wants a bigger share in the cake! However, the downside of the same is that DTAAs are not as simply revised as the domestic tax laws, and involve far greater negotiations in the sharing of taxing rights. This contributes vastly to the fact that tax laws have not kept pace with advancement in technology. This would indeed, boil down to countries demanding more information about their tax planning techniques from corporations resorting to profit shifting, which is in fact, avoidable.

The United Nations and the Organization for Economic Co-operation and Development, along with the G20 countries have met few times on the issue of Base Erosion and Profit Shifting. How far the outcomes of these meetings will be successful in plugging aggressive tax planning and BEPS is anybody's guess!

Summary

The impact that could be created by BEPS in terms of tax revenue is huge for various countries. Participation of more and more countries is required to reduce their vulnerability to the same, and increase co-operative and effective tax sharing rights. Fair reporting requirements on the transfer pricing front from the side of our fraternity cannot be understated too.

Professional Updates



Direct Taxes: Landing and parking charges for Aircrafts are not for 'use of land'; attract Sec. 194C TDS

Japan Airlines Co. Ltd. V. CIT [2015] (SC)

Landing and parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, landing and parking by Airlines would attract TDS under section 194C and not under section 194I

Direct Taxes: CBDT notifies Rules for the Purpose of FATCA entered into between India and USA

NOTIFICATION NO.62/2015 [142/21/2015-TPL](E), DATED 7-8-2015

Last month the India government has signed Foreign Account Tax Compliance Act (FATCA) with USA to promote transparency between the two nations on tax matters. The agreement underscores growing international co-operation to end tax evasion everywhere.

FATCA is a very important steps for the government of India, to tackle offshore tax evasion. It reaffirms the Government of India's commitment to fight the menace of black money. It is hoped that the exchange of information on automatic basis, regarding offshore accounts under FATCA would deter tax offenders, would enhance tax transparency and eventually bring in higher equity in to the direct tax regime which necessary for a healthy economy. Now the CBDT has notified rules for the purpose of FATCA.

Grant of minority status to educational institution doesn't lead to denial of trust's registration

International school of Human Resources & Social Welfare Society v. CIT [2015] (Patna-Trib.)

An educational institution could not be said to be established for benefit of the minority community, solely on the basis of it being granted the status of minority educational institution by 'National Commission for Minority Educational institutions'. Therefore its application for registration as charitable institution could not be denied solely on the ground that minority status was accorded to it.

Direct Taxes: Trust can earmark can existing fixed deposits for future to application to claim exemption under section 11(2)

Dharmodayam Co. v. ITO [2015] 59 taxmann.com 467 (Cochin – Trib.)

In order to claim deduction under section 11(2) for accumulation of income it is not necessary that deposits have to be made out of current year's income, earmarking of existing bank fixed deposits, which is free from any lien, towards accumulated would be sufficient compliance.

Direct Taxes: Even deduction of tax under wrong provision would attract disallowance

CIT v. P V S Memorial Hospital Ltd. [2015] 60 taxmann.com 69 (Kerala):

The expression "tax deductible at source under chapter XVII-B" occurring in section 40 (a)(ia) has to be understood as tax deductible under the appropriate provision of Chapter XVII-B. Therefore, if tax is deductible under section 194J but is deducted under section 194C, the requirements of section 40(a)(ia) are not satisfied. A deduction under the wrong provision of law will not save the assessee from disallowance under section 40(a)(ia).

Professional Updates

Section 234E which levies fee for late filing of TDS/TCS returns is constitutionally valid, rules High court

Lakshminirman Bangalore (P.) Ltd. V. Dy. CIT [2015] 60 taxmann.com 144 (Karnataka)

Provision for processing of TDS return, i.e., section 200A is in para material with section 143(1). While processing the return of income under section 143(1)(a) no personal hearing is provided to an assessee and as such the same is also not provided under section 200A. Thus, the doctrine of principles of natural justice is given a go by under impugned provision or its violation thereof would not be a ground available to the petitioners to challenge the impugned provision on this ground.

A person responsible for deduction of tax, namely, deductor is required to furnish periodical statements containing the details of deduction of tax within the prescribed due date. When a return of income is filed by an assessee a statutory obligation is cast on the department of process the said return of income within the specified period from the date of filing. If TDS return is not filed on time it would stall the processing of the return of income filed by the deductee. In a given case, there might be instances of where the assessee would be entitled to refund and on account of delay occurring due to non-delivery of TDS statement by the deductors, it would result in delay in extending the credit of TDS to the person whose behalf tax is deducted and consequently it would result in delayed issuance of refunds to the deductee.

Thus, it could not be held that section 234E suffers from any vices for being declared to be ultra vires of the constitution.

No denial of section 54F benefit due to no-completion of construction in all respect within 3 years

CIT v. Smt. B.S. Shanthakumari [2015] 60 taxmann.com 74 (Karnataka)

The issue raised by the revenue before the High Court was:

Whether Tribunal was right in allowing deduction under section 54F of the Income-tax Act ('the Act') to assessee though she had not completed the construction of house within three years as per section 54F?

The High Court held in favour of assessee as under

- (1) Section 54F of the Act is a beneficial provision which promotes construction of residential house. Such provision has to be construed liberally for achieving the purpose for which it has been incorporated in the Statute. The intention of legislature in inserting this provision was to encourage investments in the acquisition of a residential plot and completion of construction of a residential house in the plot so acquired.
- (2) A bare perusal of said provision does not even remotely suggest that it intends to convey that such construction should be completed in all respects in 3 years and / or make it habitable.
- (3) The essence of said provision is to ensure that assessee who received capital gains would invest same by constructing a residential house and if assessee is able to establish that he had invested the net consideration within the stipulated period, he would be entitled to get the benefit of section 54F.
- (4) Though such construction of building may not be complete in all respect that by itself would not disentitle the assessee to the benefit flowing from section 54F.

Professional Updates



Interest paid on loan taken for higher studies abroad is allowable under section 80E

Nitin Shantilal Muthiyar v. Dy. CIT [2015] (Pune – Trib.)

There is no stipulation under section 80E that education should be in India only. That, interest paid on loan taken for higher education of son in abroad would be deductible under section 80E.

Proviso to section 68 requiring closely held co. to explain source of share capital is retrospective

Subhlakshmi Vanijya (P.) Ltd. V. CIT [2015] (Kolkata – Trib.)

The burden of proof under section 68 can be different in respect of issue of share capital by closely held companies vis-à-vis loans or gifts. The intention of the legislature was always to cast obligation on the closely held companies to prove receipt of share capital to the satisfaction of the AO and it was only with the aim of setting to naught certain country judgments which 'created doubts' about the onus of proof amendment was made to proviso to section 68 by the Finance Act, 2012 w.e.f 1-4-2013 is retrospective.

TDS default made by relying upon opinion of CA was bona fide mistake; not liable to penalty

CIT v. Filter Technologies (P.) Ltd. [2015] (Karnataka)

Where assessee-company made payment to a foreign company without deduction of tax at source on basis of certificate issued by Chartered Accountant, same was a bona fide mistake and hence, assessee was not liable to penalty for concealment of income.

Acknowledgement of dues via email be deemed admission of liability

Venus Petrochemicals (Bombay) (P.) Ltd. V. Vannix Industries (P.) Ltd. [2015] (Punjab & Haryana)

Acknowledgement of outstanding dues by respondent-company via e-mail would be deemed as admission of liability. Thus, winding-up petition would be admissible against respondent-company on its failure to pay such dues.

Default in payment of service tax wasn't bona fide when service tax was levied on services of past few years

LMJ Service Ltd. v. CCE&ST [2015] (New Delhi – CESTAT)

Since service tax on maintenance and repair service was levied from year 2000 onwards, assessee could not plead bona fide belief for non-payment of tax during year 2005-06 and onwards; said non-payment was willful and non-furnishing of details in ST-3 returns amendment to 'suppression'.

Professional Updates



Delay caused in filing appeal due to lack of proper guidance to assessee-layman was condonable

Sajni Lead and Fabricators v. CCE [2015] (Gujarath)

Delay caused in filing appeal due to lack of proper guidance of was condonable, when it was shown that assessee was a semi-literate labour contractor.

Exemption to job-work service is optional; ST paid on such service can be claimed as credit by principal manufacturer

CCE v. Federal Mogul TPR India Ltd. [2015] (Karnataka)

Service tax exemption to job-work activity is optional and not mandatory; therefore job-worker may decide not to avail of exemption under Notification 8/2005-ST and pay service tax on said activity; in such a case principal manufacture can take credit of service tax.

Even State Govt. is liable to service tax on renting of immovable property

Secretary to government department of Agriculture v. Union of India [2015] (Kerala)

Renting of immovable property by state Government Department can be charged to service tax and hence, service tax is payable thereon except in cases that fall under negative list.

Premium paid on medical insurance of employees was eligible for input credit as it formed cost of product

Reliance Industries Ltd. v. CCE & ST (LTU) [2015] (Mumbai-CESTAT)

Premium paid for group insurance/insurance of employees (including retired employees) and mediclaim insurance premium are eligible for input service credit, as same form part of cost of final product on which excise duty is paid.

AO couldn't rule that input credit was based on false invoice without giving chance to assessee to prove otherwise

Sri Nanjundeshwara Traders v. State of Karnataka [2015] 301 (Karnataka)

Where Assessing Officer disallowed assessee's claim for input tax credit and arrived at a conclusion that claim was based on a false invoice even prior to extending opportunity to assessee to prove otherwise, case was to be remitted back for adjudication by extending opportunity to assessee.



Managing Committee 2015-16



Managing Committee

CA Shivakumar K, Chairman
 CA Keshava N Ballakuraya, Vice -Chairman
 CA Bhargava Tantri P, Secretary
 CA Chitra Chandramohan, Treasurer
 CA Shivananda Pai, SICASA Chairman
 CA Raviraj B, Member

Invitation for the Articles

The Managing Committee of Mangalore Branch of SIRC of ICAI invites articles, write-ups and other similar materials in the areas of Accounting, taxation or any other subject of professional interest for publishing in its e-bulletin. The articles submitted for consideration of publication should be of 2,000- 4,000 words typed double space on A4 size paper with 1 inch margin all around. Soft copy of the article may be sent to icaiebulletin@gmail.com.

A man died and went up to heaven. Upon arriving he noticed two signs One said "Men Who Are Bossed By Their wives," the other one said "Men Not Bossed By Their Wives." After closer inspection he noticed that while next to the first sign was a big line, by the second sign there was just one man. After getting even closer he realized it was his friend Harry. "Hey Harry" the man questioned "what in the world are you doing here? Your wife bosses you around more than anybody." "I don't know" Harry replied "my wife told me to stand here."



Feed back on this e-bulletin can be sent to the editorial team @

icaiebulletin@gmail.com

Editorial Team:

CA Prasanna Shenoy M | CA Gautham Nayak M | CA Madhav Shenoy S |
 CA Shravan Dota | CA Vignasha M | CA Akshay Shet | Committee Members

