

# रौद्र

continuous progress



MCA Extends deadline for Holding AGM for FY 2020-21 till 31.12.2021



Ms. Ruth Claire D'Silva from Mangalore secures AIR I in CA Final (old) Examinations

## NATIONAL MONETISATION PIPELINE



Finance Minister Nirmala Sitharaman launches the National Monetisation Pipeline (NMP) - NMP estimates aggregate monetisation potential of Rs 6.0 lakh crores through core assets of Central Government



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# CHAIRMAN'S MESSAGE

Greetings to all my dear colleagues and students.

October is the month of festivals- starting with Dussehra, which signifies the victory of good over evil. This is the occasion for which our city of Mangalore is well known for. Just like how the demon was killed, I hope that God saves us from the hands of this demon-like pandemic and brings light to all of our lives. We also have the joy of commemorating the birth of Prophet Muhammad, in the form of Eid- e- Milad. I pray that the Almighty shower us with His choicest blessings. A historical day to be celebrated in this month is Gandhi Jayanthi - a day to be remembered and honoured. A leader who fought against the British to bring freedom to our country - M. K. Gandhi worked selflessly for the betterment of all of us.



This year, the day has become even more momentous, as we are celebrating the Platinum Jubilee of our independence. To commemorate this occasion, our Prime Minister launched "Azadi Ka Amrit Mahotsav". It is a reminder to pay homage and to remain forever grateful to all the great heroes who fought for the nation, due to whose patriotic sacrifices, we have a democratic country and are living a respectful life today.

As the intensity of the deadly pandemic has reduced, I hope the audit works have caught up to speed. With completion of work within the due dates, we as professionals need to perform our duty as partners in nation building, to contribute towards the development of our country.

To all the students who are appearing for their exams in the upcoming round in December, I hope your preparations are going according to plan. Put your best efforts in and God Almighty shall surely reward your dedication. I hope your determination does not wane and that success finds its way to you all. All the best and study hard.

**Best wishes**

**CA K S Kamath**

**Chairman**

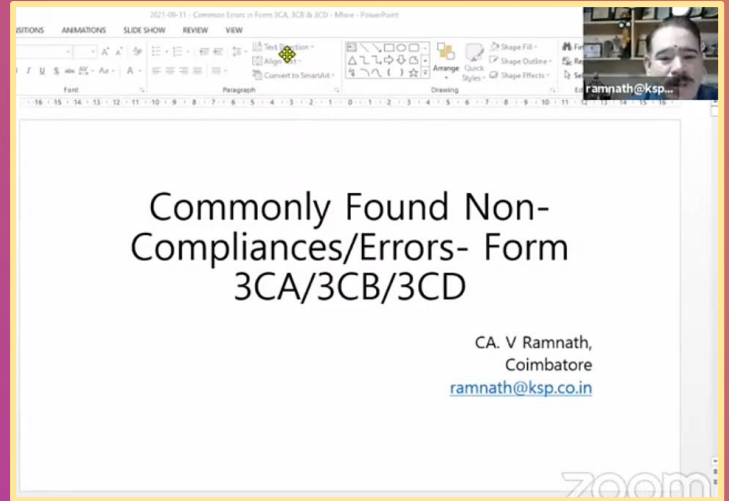
**Mangaluru Branch of SIRC of ICAI**



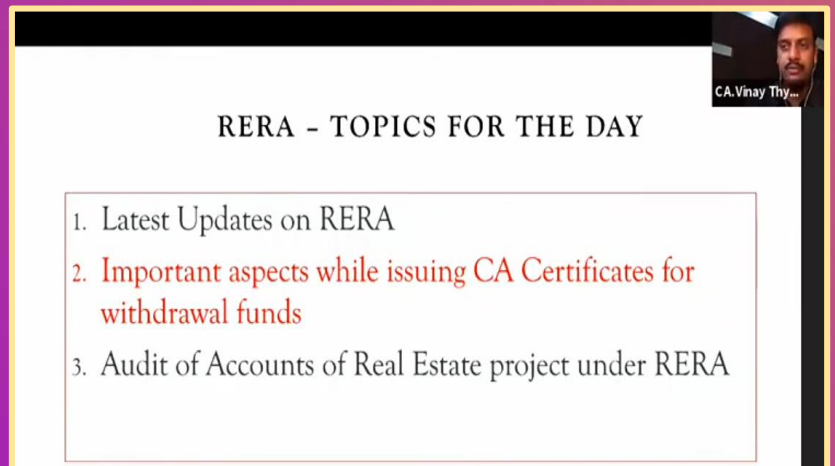
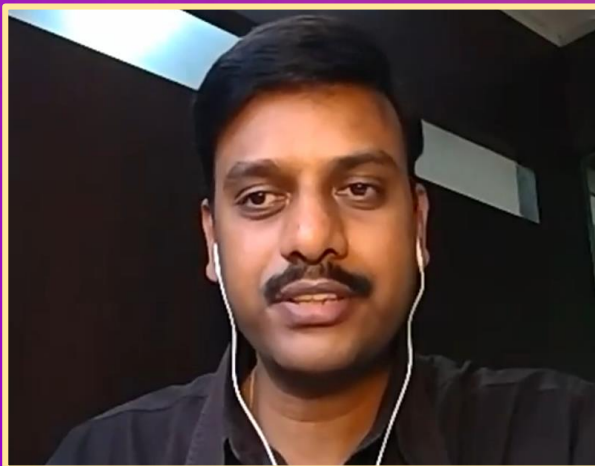
## BRANCH ACTIVITIES FOR THE MONTH OF SEPTEMBER 2021

No.	Date	Activities
01	11.09.2021	<p style="text-align: center;"><b>Webinar on</b></p> <p>Topic : <b>Common Errors Found in Form No. 3CA /3CB/3CD</b></p> <p>Resource Person: CA Ramnath Vasudevaru - Coimbatore</p>
02	18.09.2021	<p style="text-align: center;"><b>Webinar on</b></p> <p>Topics :</p> <ol style="list-style-type: none"> <li><b>1. Latest Update on RERA</b></li> <li><b>2. Important Aspects while issuing CA Certificates for Withdrawal of Funds</b></li> <li><b>3. Audit of Accounts of Real Estate Project under RERA</b></li> </ol> <p>Resource Person: CA Vinay Thyagaraj - Bengaluru</p>
03	27.09.2021	Felicitation Program for Recently Qualified CAs and Rank Holders
04	27.09.2021	<p style="text-align: center;"><b>Study Circle Meet on</b></p> <p>Topic : <b>Client Management and Professional Ethics</b></p> <p>Speakers :</p> <p>CA. Nifin J Shetty CA. Jagannath Kamath M CA. Subhashchandra Salian</p>

## BRANCH ACTIVITY GALLERY FOR THE MONTH OF SEPTEMBER 2021



Webinar by CA Ramnath Vasudevaru on 'Commonly Found Errors in Form 3CA/3CB/3CD'



Webinar by CA Vinay Thyagaraj on 'RERA'



Study Circle Meet on 'Client Management and Professional Ethics'





Felicitation Program for Recently Qualified CAs and Rank Holders



## ಸಿಎ ಉತ್ತೀರ್ಣ ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಸನ್ಮಾನ



ಸಿಎ ಪರೀಕ್ಷೆಯಲ್ಲಿ ಉತ್ತೀರ್ಣರಾದ ವಿದ್ಯಾರ್ಥಿಗಳನ್ನು ಅಖಿಲ ಭಾರತ ಲೆಕ್ಕ ಪರಿಶೋಧಕರ ಸಂಸ್ಥೆ ಮಂಗಳೂರು ಶಾಖೆ ವತಿಯಿಂದ ಆಭಿನಂದಿಸಲಾಯಿತು. ಐಸಿಎಐ ಮಂಗಳೂರು ಅಧ್ಯಕ್ಷ ಕೆ.ಎಸ್.ಕಾಮತ್, ಉಪಾಧ್ಯಕ್ಷ ಸಿಎ ಅಬ್ದುಲ್ ರಹ್ಮಾನ್ ಮುಸ್ತಾ, ಕಾರ್ಯದರ್ಶಿ ಸಿಎ ಗೌತಮ್ ನಾಯಕ್, ನಿಕಟಪೂರ್ವ ಅಧ್ಯಕ್ಷ ಸಿಎ ಎನ್.ಎನ್.ನಾಯಕ್ ಹಾಜರಿದ್ದರು.

ಮಂಗಳೂರು: ಸಿಎ ಪರೀಕ್ಷೆಯಲ್ಲಿ ಉತ್ತೀರ್ಣರಾದ 25 ಭೌತಿಕ ಬೆಳವಣಿಗೆ, ಸಾಮಾಜಿಕ ಬೆಳವಣಿಗೆಗೆ ಮಹತ್ವ ವಿದ್ಯಾರ್ಥಿಗಳನ್ನು ಅಖಿಲ ಭಾರತ ಲೆಕ್ಕ ಪರಿಶೋಧಕರ ಸಂಸ್ಥೆ ನೀಡಬೇಕು ಎಂದರು.

ಮಂಗಳೂರು ಶಾಖೆ ವತಿಯಿಂದ ಪಡೀಲಾನ್ ಐಸಿಎಐ ಭವನದಲ್ಲಿ ಆಭಿನಂದಿಸಲಾಯಿತು.

ಸಿಎ ಹಳೇ ಸ್ಕೀಮ್ ಪರೀಕ್ಷೆಯಲ್ಲಿ ರಾಷ್ಟ್ರಕ್ಕೆ ಪ್ರಥಮ ಸ್ಥಾನ ಪಡೆದ ರುತ್ ಕ್ಲೇರಾ ಡಿಸಿಲ್ವ ಅವರನ್ನು ಸನ್ಮಾನಿಸಲಾಯಿತು. ಮುಖ್ಯ ಅತಿಥಿಯಾಗಿದ್ದ ಎಕ್ಸ್‌ಪರ್ಟ್ ಶಿಕ್ಷಣ ಸಮೂಹ ಉಪಾಧ್ಯಕ್ಷ ಉಪಾಪ್ತಭಾ ನಾಯಕ್ ಮಾತನಾಡಿ ಸಿಎ ಶಿಕ್ಷಣ ವಾಣಿಜ್ಯ ವಿಭಾಗದ ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಅಧ್ಯಕ್ಷ ಸಿಎ ಎನ್.ಎನ್.ನಾಯಕ್, ಮಾಜಿ ಅಧ್ಯಕ್ಷ ಸಿಎ ಉತ್ತಮ ಭವಿಷ್ಯ ರೂಪಿಸುತ್ತದೆ. ಶಿಕ್ಷಣದ ಜತೆ ವಿದ್ಯಾರ್ಥಿಗಳು

» ಐಸಿಎಐ ವತಿಯಿಂದ 25 ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಗೌರವಾರ್ಪಣೆ

ಐಸಿಎಐ ಮಂಗಳೂರು ಶಾಖೆ ಅಧ್ಯಕ್ಷ ಕೆ.ಎಸ್.ಕಾಮತ್, ಉಪಾಧ್ಯಕ್ಷ ಸಿಎ ಅಬ್ದುಲ್ ರಹ್ಮಾನ್ ಮುಸ್ತಾ, ಕಾರ್ಯದರ್ಶಿ ಸಿಎ ಪ್ರಸನ್ನ ಶೆಣೈ, ಖಜಾಂಚಿ ಸಿಎ ಗೌತಮ್ ನಾಯಕ್, ಸಿಕಾಸ ಅಧ್ಯಕ್ಷ ಸಿಎ ಗೌತಮ್ ವೈ, ಐಸಿಎಐ ಮಂಗಳೂರು ಶಾಖೆ ನಿಕಟಪೂರ್ವ

ಅಧ್ಯಕ್ಷ ಸಿಎ ಎನ್.ಎನ್.ನಾಯಕ್, ಮಾಜಿ ಅಧ್ಯಕ್ಷ ಸಿಎ ಅನಂತಪದ್ಮ ನಾಭ ಕೆ ಉಪಸ್ಥಿತರಿದ್ದರು.

## ಸೆ. 3, 4: ಸಿಎ ವಿದ್ಯಾರ್ಥಿಗಳ ರಾಷ್ಟ್ರೀಯ ವರ್ತುವಲ್ ಸಮ್ಮೇಳನ

**ಮಹಾನಗರ, ಸೆ. 1:** ಇನ್‌ಸ್ಟಿಟ್ಯೂಟ್ ಆಫ್ ಚಾರ್ಟೆಡ್ ಅಕೌಂಟೆಂಟ್ಸ್ ಆಫ್ ಇಂಡಿಯಾ (ಐಸಿಎಐ)ದ ಮಂಗಳೂರು ಶಾಖೆಯಾದ ಎಸ್‌ಐಆರ್‌ಸಿ ಮತ್ತು ದಕ್ಷಿಣ ಭಾರತ ಚಾರ್ಟೆಡ್ ಅಕೌಂಟೆಂಟ್ಸ್ ಸೊಡೆಂಟ್ಸ್ ಯೂನಿಯನ್ (ಎಸ್ ಐಸಿಎಐಎನ್)ನ ಮಂಗಳೂರು ಶಾಖೆ ಸಹಭಾಗಿತ್ವದಲ್ಲಿ ಸೆ. 3, 4ರಂದು ಸಿಎ ವಿದ್ಯಾರ್ಥಿಗಳ ರಾಷ್ಟ್ರೀಯ ವರ್ತುವಲ್ ಸಮ್ಮೇಳನವನ್ನು ಆಯೋಜಿಸಲಾಗಿದೆ ಎಂದು ಎಸ್‌ಐಆರ್‌ಸಿ ಮಂಗಳೂರು ಶಾಖೆಯ ಅಧ್ಯಕ್ಷ ಕೆ. ಸುಬ್ರಹ್ಮಣ್ಯ ಕಾಮತ್ ತಿಳಿಸಿದ್ದಾರೆ.

ನಗರದ ಪತ್ರಿಕಾಭವನದಲ್ಲಿ ಬುಧವಾರ ನಡೆದ ಪತ್ರಿಕಾಗೋಷ್ಠಿಯಲ್ಲಿ ಮಾತನಾಡಿದ ಅವರು, 'ಅನರ್ಫು' ಎಂಬ ಘೋಷಣೆ ವಾಕ್ಯದೊಂದಿಗೆ ಎರಡು ದಿನಗಳ ಕಾಲ ನಡೆಯಲಿರುವ ಸಮ್ಮೇಳನದಲ್ಲಿ ನಾಲ್ಕು

ತಾಂತ್ರಿಕ ವಿಚಾರ ಸಂಕಿರಣಗಳಲ್ಲಿ 8 ವಿದ್ಯಾರ್ಥಿಗಳು ವಿಚಾರ ಮಂಡಿಸಲಿದ್ದಾರೆ. ಸೆ. 3ರಂದು ಅಪರಾಹ್ನ 2 ಗಂಟೆಗೆ ಉದ್ಘಾಟನೆ ನಡೆಯಲಿದ್ದು ಸ್ಮಾಲ್ ಕೇಸ್‌ನ ಸಿಇಒ ಹಾಗೂ ಸ್ವಾಪಕ ವಸಂತ್ ಕಾಮತ್, ಬೋರ್ಡ್ ಆಫ್ ಸ್ಟಡೀಸ್‌ನ ಅಧ್ಯಕ್ಷ ಜಾಯ್ ಚೈರಾ, ಎಸ್‌ಐಆರ್‌ಸಿ ಅಧ್ಯಕ್ಷ ಕೆ. ಜಲಪತಿ ಭಾಗವಹಿಸಲಿದ್ದಾರೆ. ಐಸಿಎಐನ ಕೇಂದ್ರೀಯ ಕೌನ್ಸಿಲ್ ಸದಸ್ಯ ಜಿ. ಶೇಖರ್, ಆಕ್ರಯ ಪಾತ್ರ ಘೌಂಡೇಶನ್‌ನ ಉಪಾಧ್ಯಕ್ಷ ಟ್ರಿಸ್ಟಿ ಚಂಚಲಾಪತಿ ದಾಸ್ ಮುಖ್ಯ ಅತಿಥಿಗಳಾಗಿ ಭಾಗವಹಿಸಲಿದ್ದಾರೆ ಎಂದರು. ಎಸ್‌ಐಆರ್‌ಸಿ- ಐಸಿಎಐನ ಕಾರ್ಯದರ್ಶಿ ಪ್ರಸನ್ನ ಶೆಣೈ ಎಂ., ಎಸ್ ಐಸಿಎಐಎ ಮಂಗಳೂರು ಶಾಖೆ ಅಧ್ಯಕ್ಷ ಗೌತಮ್ ವೈ ಡಿ., ಉಪಾಧ್ಯಕ್ಷ ಶ್ರೇಯಸ್ ಶೆಟ್ಟಿ ಕಾರ್ಯದರ್ಶಿ ಸುತೀರ್ ಶೆಟ್ಟಿ ಉಪಸ್ಥಿತರಿದ್ದರು.

# Input Tax Credit and Interest Applicability on Debit Notes

## **Background:**

In terms of the provisions relating to issue of debit notes in s 34(3) of the CGST Act, it shall be issued by the registered person who has supplied such goods or services or both where the taxable value and/or tax charged in the invoice is found to be lesser than the actual value/tax on the supply i.e., to say where the supplier has charged excess or wrong taxable/tax in such a case he could issue debit note with GST. The expression "debit note" would include a supplementary invoice.



CA Rakesh Kamath, Udupi

Who can issue a GST Debit note? From the above provision, one could conclude that GST debit note can be issued only by a registered supplier of goods or services or both. The recipient is not entitled to issue a GST debit note.

Whether raising GST debit note is compulsory in GST? The wordings employed in Section 34(1) are 'the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note'. A question may arise as to whether a debit note has to be compulsorily raised with GST. It is pertinent to note that section 34 contains the word 'shall', which means that debit note is a direction given to the supplier, which he could issue as a compulsion. It was held in the case of A.K Spintex Ltd versus Commissioner of Central Excise, Jaipur-II [2015 (326) E.L.T 704 (Tri – Delhi)] that Duty on debit note needs to be paid to the department as it is liable for inclusion in the assessable value even though the same has not been received from the recipient of debit note and hence the assessee is liable to pay duty on the debit note amount.

Details given above are only in relation to GST debit note. One may refer to Circular 92/11/2019 GST dt. 07th March 2019 for details in relation to financial debit note.

## **Input tax credit in relation to GST debit note:**

It is a very common practice in business to revise the prices charged for supply with a retrospective effect. Now, the question of law here is whether the input tax credit ('ITC') would be available on the tax component related to such debit notes. If yes, what will be the maximum time limit up to which such ITC can be availed by the recipient.



### **Position before Amendment:**

In terms of Section 16(4) the registered person would not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing 3B for the month of September following the end of financial to which such invoice or invoice relating to such debit note pertains or furnishing of relevant annual return, whichever is earlier.

There was an anomaly in the law, that the due date for availment of ITC was the due date of September return of subsequent financial year to which the invoice related, for example if invoice is issued in January 2020 (i.e. FY 2019-20) and debit note against such invoice is issued in October 2020, then the time limit to avail ITC w.r.t such debit note would be 20th October 2020 [last date to avail ITC] i.e. before the date of issuance of debit note itself and recipient would never be eligible to avail ITC of such debit note due to such proposition in law.

To correct this anomaly in GST law, the Law Committee in the 38th GST Council Meeting discussed the gist of the issue, that on the plain reading of the provisions suggests that, in case debit note relating to an invoice is issued beyond September of the next financial year, the same is barred from claiming ITC by the recipient. This is leading to a problem for sectors such as Automobiles, Heavy Engineering, PSUs etc. where a price revision is inbuilt in the contract, and as per the provisions, in case of escalation on this account, a debit note can be issued and corresponding tax shall be collected and deposited to the Government, but corresponding credit to the recipient is barred.

The Law Committee examined the matter and felt that credit may be allowed for debit notes irrespective of the date of issuance of the underlying invoice as anyway interest is being paid when tax liability is discharged in case of debit note. Accordingly, the Law Committee recommended amending the provisions of section 16(4) to allow ITC on debit notes by linking it to the date of issuance of the debit note by omitting the words "invoice relating to such". Consequently, the said amendment was proposed in clause 120 of Finance Act, 2020.

### **Position after Amendment:**

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

It is important to note that the amendment proposed by the Finance Act, 2020 was notified and made effective from 01.01.2021 vide NN. 92/2020-CT dt. 22.012.2020

Example: If an invoice was issued, say during Feb'19 and a debit note pertaining to such invoice is issued during Sep'19 then, prior to this amendment, the last date for taking credit in respect of this debit note would have been the due date of filing Form GSTR-3B for the month of September 2019. However, post this amendment, the last date for taking such credit would be the due date of Form GSTR-3B for the month of September 2020 as the debit note was issued in the FY 2019-20.

However, The Hon'ble Gujarat Authority for Advance Ruling in the case of M/s I-TECH PLAST INDIA PVT. LTD. GUJ/GAAR/R/10/2021 has denied the claim of ITC on debit notes issued in FY 2020-21 which pertained to the transaction of FY 2018-19, due to the following reasons:

- a. Irrespective of the fact that wordings 'invoice relating to such' is connected to 'debit note', the fact remains that a debit note is always connected to the invoice. The omission of the 'invoice relating to such' does not mean that the relation of the debit note with the invoice has been cut off.
- b. The intention of the government was not to disconnect the debit note from the original invoice so that the debit note gains an independent existence so as to entitle the applicant to claim Input Tax Credit in relation to CGST-SGST charged separately in debit notes issued by the supplier in following financial years.
- c. The amendment does not imply that the year in which the debit note was issued will be considered as the 'financial year' for the purpose of amended Section 16(4). If a debit note is issued in a different financial year than that of the financial year in which the original invoice was issued, the financial year to which the debit note pertains will always be considered to be the year in which the original invoice was issued.
- d. It was held that the financial year to which a debit note pertains, is invariably the financial year in which the original invoice (related to the said debit note) was issued.

It is important to note that Advance ruling which is issued in the above case is applicable only to the assessee who has applied for and got the ruling. In the authors view, it has limited persuasive value for other assesses. It needs to be considered if it is in line with the GST law. While this being a ruling of the AAR and this matter may be canvassed before the appellate forums in future.

However, the present AAR seems to be incorrect as it has completely overlooked the intent of the amendment and is therefore wrong in the eyes of the law and may not sustain the test of time in law. Similarly, it was held in the case of Grasim Industries Ltd v/s Commissioner of central excise, Indore [2011 (24) S.T.R 691 (Tri – Delhi)] and Ad-Manum Packing Pvt Ltd versus Commissioner of C. Ex. Indore [2017(346) E.L.T 142(Tri – Delhi)] that debit notes issued by the service provider can be treated as invoice and Cenvat credit availed on the basis of debit notes is admissible as per Rule 9 of Cenvat Credit Rules, 2004. However, under GST regime, Rule 36 recognizes debit note as one of the documents to avail the credit.



Whether the above amendment is retrospective i.e., from 1st July 2017 or prospective i.e. from 01st January 2021?

If a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. Similarly held in the case of Government of India v. Indian Tobacco Association 2005 (187) E.L.T. 162 (S.C.) – Para 27 & 28.

A retrospective meaning to a provision should only be made to correct some law to the benefit of the tax payer.

Similarly, it held by Supreme court in the case of Commissioner of Income Tax (Central) New Delhi versus Vatika township private Limited 2014 (9) TMI 576.

Where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. Similarly, it held by Supreme Court in the case of Vijay Versus State of Maharashtra & ORS. 2006 (7) TMI 648.

On combined reading of the above, it is very much clear that the said amendment would merely a declaratory of the previous law and is also beneficial to the community as a whole. The intention of the law makers is also very much clear which was discussed in 38th GST Council meeting. In the view of the author, such amendment should be treated as curative amendment and hence, should have application retrospectively w.e.f. 1st July 2017.

Whether there is any need to pay interest for the additional tax liability raised due to debit note raised?

It is important to note that when a tax invoice is issued and later a debit note is issued, supply made earlier becomes a part supply and the amount paid as per debit note is for the supply of portion covered by the debit note and vice versa.

The Supreme Court interpreted the provisions of Section 11AB of the Excise Act in SKF India Ltd. - 2009 (239) E.L.T. 385 (S.C.) and International Auto Limited - 2010 (250) E.L.T. 3 (S.C.). In the above case, the Apex Court sustained the demand of interest on differential duty payment by the assessee. However, after taking note of the aforesaid judgments, recently in the case of Steel Authority of India – 2015 (326) ELT 450 (SC), this issue has been referred to the Larger Bench of the Supreme Court.

The Supreme Court recently in the case of Steel Authority of India – 2015 (326) ELT 450 (SC), held that it would be impossible to expect the assessee to pay the excise duty, at the time of clearance of the goods, on the basis of price escalation that took place at a later date in future. Therefore, as on the date of clearance when excise duty was paid, it could not be treated as 'short-paid' on the said date. As a consequence, when the principal amount, namely, the excise duty itself was not payable (i.e., on the differential) on the date of clearance of the goods, there cannot be any question of payment of interest.

The above ruling issued by Apex court under erstwhile Central Excise Law would be having the persuasive value under GST as well.

However, the above decision was overruled by 2019 SC LB 2019 (366) E.L.T. 769 (S.C.) holding that interest needs to be paid on the supplementary invoice.

It is important to note that, unlike under Central Excise, GST law makes specific provision for issuance of debit note and do not take back the original invoice date as the Time of supply. As it clear from explanation to Section 12 and 13 which provides for time of supply which specifically provides supply is deemed to be made to the extent covered by invoice issued.

Similarly, Section 34 also provides that “the tax liability shall be adjusted in such manner as may be prescribed” via rules but no rule was made to prepone the liability to the date of the original invoice. Further, the said rule should not be taken as a license to undercharge and postpone the liability. The conjoint reading of GST law & rationale of LB in SAI also that if variation found later point of time, then only interest is not liable & not for every case. Hence, liability arises at the time of raising debit note date only. The theme of Sec 142(2)(a) of CGST Act, 2017 fortifies the above view and also the clarification given vide Circular No. 76/50/2018-GST, dated 31-12-2018.

The Law committee in the 38th GST Council Meeting while discussing the above amendment discussed that credit may be allowed for debit notes irrespective of the date of issuance of the underlying invoice as anyway interest is being paid when tax liability is discharged in case of debit note. There was completely a wrong notion made in the GST council that interest is liable in case of Debit note which was clearly discussed above. Hence, the issue is amenable to disputes. In absence of interest on interest, stand can be taken that interest is not liable in case of Debit notes.

However, where an assessee is having enough eligible credits lying in its electronic credit ledger, then the question of interest on debit note does not come into picture as amendment to section 50 has been made applicable retrospective from 1st July 2017 where in interest is applicable only on net cash liability.

### **Conclusion:**

Based on the above discussion, authors view is that the said amendment would be made applicable retrospectively i.e., from the effect of GST law w.e.f. 1st July 2017. Further coming to the part of interest applicability on Debit note, one could dispute on the basis of above discussion supra and take a stand not pay interest on liability declared through debit note.

*Disclaimer: - The views expressed in this article are personal views of the Author. This article includes general information about legal issues and developments in the law of GST in India. Such materials are for information purpose only and may not reflect the most current legal developments. These information materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. We disclaim all liability in respect to actions taken or not taken based on any or all contents of this article to the fullest extent permitted by law.*



# Foreign Companies under Company Law Regime

**Foreign Companies**, i.e. Companies from outside India, can establish business place in India. Companies Act 2013 governs the registration of Foreign companies which lays down the procedure for registering and managing a company and its affairs, Ministry of corporate affairs through [www.mca.gov.in](http://www.mca.gov.in) which is its E-Portal manages the compliance under the companies act and all company formation related formalities must be done through this e portal

A foreign company at the time of making investment in India or setting up an office is required to comply with the Foreign Exchange Management Act (FEMA). And also if the foreign company is involved in selling of goods or providing services then it is required to comply with the Indian tax laws (Direct / Indirect as the case may be).

## ● Definition of Foreign Company:

**As per definition given under Section 2 (42) of the Companies Act, 2013;**

**"FOREIGN COMPANY"** means any company or body corporate incorporated outside India which,—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

*- A foreign entity to be considered as a foreign company, has to fulfill both the criteria mentioned above in clause (a) and (b).*

On the basis of definition, it is hereby clarified that Foreign Company Should be incorporated outside India under the laws and regulations of that Country.

## ● OVERVIEW OF SOME IMPORTANT PROVISIONS RELATED TO FOREIGN COMPANY'S UNDER THE COMPANIES ACT, 2013:

Sl. No.	Provisions(s)	Particulars of the Provision(s)
1	Section 2(42)	Definition of Foreign Company
2	Section 33	Issue of Application Forms for Securities
3	Section 34	Criminal Liability for Mis-statements in Prospectus
4	Section 35	Civil Liability for Mis-statements in Prospectus
5	Section 36	Punishment for Fraudulently Inducing Persons to Invest Money
6	Section 40	Securities to be Dealt with in Stock Exchanges
7	Section 41	Global Depository Receipt

8	Section 71	Debentures
9	Section 88	Register of Members, etc.
10	Section 92	Annual Return
11	Section 128	Books of Account, etc., to be kept by Company
12	Section 134	Financial Statement, Board's Report, etc
13	Section 228	Investigation, etc., of Foreign Companies
14	Section 234	Merger or Amalgamation of Company with Foreign Company
15	Section 376	Power to Wind Up Foreign Companies, Although Dissolved
16	Section 379	Application of Act to Foreign Companies.
17	Section 380	Documents, etc., to be Delivered to Registrar by Foreign Companies
18	Section 381	Accounts of Foreign Company
19	Section 382	Display of Name, etc., of Foreign Company.
20	Section 383	Service on Foreign Company
21	Section 384	Debentures, Annual Return, Registration of Charges, Books of Account and Their Inspection
22	Section 385	Fee for Registration of Documents
23	Section 386	Interpretation (Certified, Director and place of business)
24	Section 388	Provisions as to Expert's Consent and Allotment
25	Section 389	Registration of Prospectus
26	Section 391	Application of Sections 34 to 36 and Chapter XX
27	Section 392	Punishment for Contravention
28	Section 393	Company's Failure to Comply with Provisions of This Chapter Not to Affect Validity of Contracts, etc.
29	Section 405	Power of Central Government to Direct Companies to Furnish Information or Statistics.
30	Section 447	Chapter XXIX Miscellaneous Punishment for Fraud.
31	Section 592	Documents, Etc., To Be Delivered To Registrar By Foreign Companies Carrying On Business In India
32	Chapter VI	Registration of Charges
33	Chapter XIV	Inspection Inquiry and Investigations
34	Section 196 & 197 Schedule V	Conditions To Be Fulfilled For The Appointment Of A Managing Or Whole-Time Director Or A Manager Without The Approval Of The Central Government Appointments

- Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies, **Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament.**



• **RULE: THE COMPANIES (REGISTRATION OF FOREIGN COMPANIES) RULES, 2014**

Rule	Particulars	Brief of the Rule
1.	Short Title and Commencement	Companies (Registration of Foreign Companies) Rules, 2014 applicable w.e.f. 01.04.2014
2.	Definitions	Definitions of : Act, Annexure, electronic mode, fees, "Form" or "e-Form", Schedule, section.
3.	Particulars Relating to Directors and Secretary to be Furnished to the Registrar by Foreign Companies	Every foreign company shall, within thirty days of establishment of its place of business in India, and also deliver to the Registrar for registration, a list of directors and Secretary of such company.
4.	Financial Statement of Foreign company	Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as may be possible for each financial year
5.	Audit of Accounts of Foreign Company	Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with the requirements of clause (a) of sub-section (1) of section 381 and Rule 4, <b>audited by a practicing Chartered Accountant in India or a firm or limited liability partnership of practicing chartered accountants.</b>
6.	List of Places of Business of Foreign Company	Every foreign company shall file with the Registrar, along with the financial statement, in Form FC.3 & a list of all the places of business established by the foreign company in India as on the date of balance sheet.

7.	Annual Return	Annual return required to be filed within a period of 60 days from the last day of its financial year, in Form FC.4 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.
8.	Office Where Documents to be Delivered and Fee for Registration of Documents	Documents required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in Chapter XXII of the Act i.e. Companies Incorporated Outside India and these rules shall be construed accordingly.
9.	Certification	A copy of any charter, statutes, memorandum and articles, or other instrument constituting or defining the constitution of a Foreign company shall be duly certified to be a true copy in the manner given in Rule 9
10.	Authentication of Translated Documents	Shall be translated in English language and where any such document is not in English language, there shall be attached a translation thereof in English language duly certified to be correct in the manner given in these rules. Where any such translation is made outside India, it shall be authenticated by the signature and the seal, if any. Where such translation is made within India, it shall be authenticated.
11.	Documents to be Annexed to Prospectus	Consent to the issue of the prospectus, contracts for appointment of managing director or manager, underwriting agreement, power of attorney etc.
12.	Action for Improper Use or Description as Foreign Company	If any person or persons trade or carry on business in any manner under any name or title or description as a foreign

		company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.
<b>13.</b>	Issue of Indian Depository Receipts (IDRs)	Foreign Company shall make an issue of Indian Depository Receipts (IDRs) unless such company complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India. And Foreign Company's is required to follow the guidelines as mentioned in this rule.

**● ANALYSIS OF ROC FORMS SPECIFICALLY FOR FOREIGN COMPANY: (Ministry of Corporate Affairs / Registrar of Companies)**

**1. E-Form FC-1 (Information to be filed by foreign company)**

**● Law(s) and Regulations:**

Section 380(1) (a) to (h) and Rule 3(3) of the Companies (Registration of Foreign Companies) Rules, 2014

**● Filing requirements:**

A foreign company shall file the **particulars of the principal place of business** in e-form FC-1 **within 30 days of establishment of place of business in India** along with the required documents to ROC, Delhi.

The Registrar of the corresponding state shall have access to these documents filed with the ROC, Delhi.

**● Stamp Duty Payment:**

➤ Stamp duty on E-form FC-1 can be paid electronically through the MCA portal.

➤ Payment of stamp duty electronically through MCA portal is mandatory in respect of the states which have authorized the Central Government to collect stamp duty on their behalf.



- Now e-Stamp duty payment is to be done online through MCA portal for all the states.

- **Mandatory Attachment(s)**

- ✓ Certified copy of the charter, statutes, or memorandum and articles of the company or other instrument constituting or defining the constitution of the company (Mandatory).
- ✓ List of directors and secretary of the foreign company (Mandatory).
- ✓ Power of attorney or board resolution in favor of the authorized representative(s) (Mandatory).
- ✓ Reserve bank of India approval letter (It is mandatory to attach attested copy of such approval).

- **Details of other places of business in India (if any)**

- ✓ It is mandatory to enter the date of closure of such place of business and also FCRN of such office

- **Particulars of place(s) of business in India established on any earlier occasion(s) other than above (if any)**

- ✓ Maximum seven of such offices can be entered. If more than seven then details can be given in necessary attachment(s).

## 2. E-Form FC-2 (Return of alteration in the documents filed for registration by foreign company)

- **Law(s) and Regulations:**

Section 380(3) of the Companies Act, 2013 and Rule 3(4) of the Companies (Registration of Foreign Companies) Rules, 2014

- **Filing requirements:**

Every foreign company on **alterations in the charter or statute or any other instrument governing the company, alterations in the particulars of Director/Secretaries of the foreign company , any change in the registered or principal office of the company in the country of incorporation, any change in the particulars of authorized representative(s) of the company and any change in other places of business in India of the company,** has to file **E-form FC-2 within 30 days of the alterations** made.

This e-Form is required to be filed with Registrar of Companies and a copy is routed to concerned ROC of the respective state by the system. An alert is generated at the concerned ROC to inform of the filing done at ROC, Delhi.

- **Mandatory Attachment(s)**

Copy of approval letter (it is mandatory if any approval is required for such alteration).

### 3. E- Form FC-3 (Annual accounts along with the list of all principal places of business in India established by foreign company)

#### • Law(s) and Regulations:

Section 381 of the Companies Act, 2013 and Rule 4, 5 and 6 of Companies (Registration of Foreign Companies) Rules, 2014

#### • Filing requirements:

Every **foreign company** is required to **prepare and file financial statements within a period of six months** of the close of the financial year of the foreign company to which the financial statements relate to Delhi ROC in **E-form number FC-3**. It shall **also prepare and file a list of places of business in India established by a foreign company** as on date of the balance sheet in the same form.

However, the Registrar can extend the said period to not more than three months on application made in writing.

#### • Mandatory Attachment(s)

- ✓ Copy of latest consolidated financial statement of parent company (Mandatory).
- ✓ Copy of balance sheet and profit and loss account duly authenticated under section 381(1) (Mandatory)
- ✓ In case the document is in any other language other than English, certified translation in English language is mandatory

### 4. E-Form FC-4 (Annual Return of a Foreign Company)

#### • Law(s) and Regulations:

Section 384(2) of the Companies Act 2013 and Rule 7 of Companies (Registration of Foreign Companies) Rules, 2014

#### • Filing requirements:

Every foreign company shall prepare and **file annual return of the company in e-Form FC-4 within 60 days** from the close of financial year.

#### • Mandatory Attachment(s)

- ✓ Details of Promoters, Directors and Key managerial personnel and changes therein since close of previous financial year. (Mandatory)
- ✓ Details of directors and key managerial personnel and their remuneration. (Mandatory)
- ✓ Details of the meeting of the members or class thereof, board and its various committees along with attendance details. (Mandatory)

- ✓ Particulars of members and debenture holders along with changes therein since the close of previous financial year. (Mandatory)
- ✓ Particulars of Holding, subsidiary and associate companies and firms. (Mandatory in case number of entities prescribed at serial no 6 is more than seven)

### **Conclusion:**

This article is prepared as an overview of Foreign Companies under the Company Law which includes definition, Provisions under Company Law, analysis of Rules and analysis of ROC forms specifically for Foreign Companies. Indian market becomes Investment hub for the investors. India offers companies a large, built-in and dynamic potential market to explore.



**CS Lalit Rajput**

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- ✚ **Which one of the following is NOT true about On-Line Analytical Processing (OLAP)?**
  - (A) OLAP functionality includes trend analysis over sequential time periods
  - (B) It provides slicing subsets for on-screen viewing
  - (C) It is a category of hardware technology
  - (D) It helps the end user to drill-down to deeper levels of consolidation data
  
- ✚ **The books containing the minutes of the proceedings of any general meeting of a company shall be kept at**
  - (A) Head Office
  - (B) Central Office
  - (C) Registered office
  - (D) Where the meeting was held
  
- ✚ **Which of the following are not types of listing of securities**
  - (A) Initial Listing
  - (B) Listing for Public Issue
  - (C) Listing for Sweat equity shares
  - (D) Listing for Merger and amalgamation
  
- ✚ **Original Books and papers which were seized during Search & Seizure u/s 209 of the Companies Act, 2013 shall be returned by the Registrar or Inspector to the Company from whom such documents were seized as soon as possible but not later than**
  - (A) 180 days after such seizure
  - (B) 90 days after such seizure
  - (C) 360 days after such seizure
  - (D) 30 days after such seizure
  
- ✚ **Companies Act, 2013 contemplated Penalties which are of**
  - (A) 10 types
  - (B) 5 types
  - (C) 7 types
  - (D) 3 types

# ANSWERS

FOR THE PREVIOUS EDITION

1. (B) 200
2. (B) Board Meeting
3. (A) Rs. 100 Crore
4. (A) Transparency
5. (A) Mutual trust

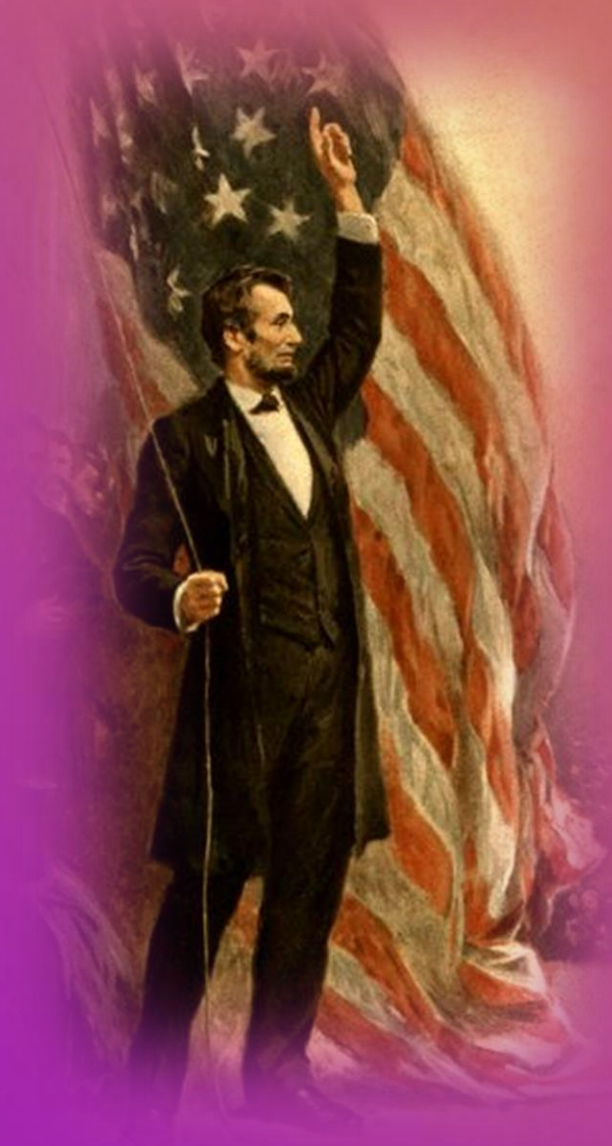
*Answers may be sent to [icaiebulletin@gmail.com](mailto:icaiebulletin@gmail.com)*

*Correct answers will be out in the next edition.*

*The names of the first five persons who give correct answers to all the questions,  
will also be published.*

## WORDS OF WISDOM

- ✓ You can fool the people some of the time and some of the people all the time. But you cannot fool all the people all the time.
- ✓ Things which are legally right need not be morally right.
- ✓ Discipline is choosing between what you want now and what you want most.
- ✓ I will prepare and someday my chance will come.
- ✓ The best way to predict future is to create it.
- ✓ Those who deny freedom to others, deserve it not for themselves.
- ✓ Mercy bears richer fruits than strict justice.
- ✓ Character is like a tree and reputation like a shadow. Shadow is what we think of but the tree is the real thing.
- ✓ When I do good, I feel good. When I do bad I feel bad and that is my religion.
- ✓ You cannot escape the responsibility of tomorrow by evading it today.
- ✓ Those who look for bad in people will surely find it.





## WORDS FROM THE HOLY BOOK



- ❖ The only way you can conquer me is via love, and there I am happily conquered.
- ❖ One who sees inaction in action and action in inaction- he is a smart man.
- ❖ Fear not. What is not real, never was and never will be. What's true, always was and cannot be destroyed.
- ❖ No one that does good work will ever come to a terrible ending, either in the world to come.
- ❖ It is much better to execute one's own duties imperfectly than to learn the responsibilities of another.
- ❖ There are three gates to self- destructive hell- Lust, Anger, And Greed.
- ❖ A guy is made by his belief. As he thinks, So he becomes.
- ❖ Change is the law of the world. In a moment, you become the owner of millions. In another, you become penniless.
- ❖ Play your obligatory duty, because the action is far better than inaction.



# Monthly Specials

Symbolizing the victory of good over evil, Dussehra is celebrated on the 10th day of the month of Ashvina (September–October), the seventh month of the Hindu calendar, with the appearance of the full moon, an event called the “bright fortnight” (shukla paksha). Dussehra coincides with the culmination of the nine-day Navratri festival and with the tenth day of the Durga Puja festival. For many, it marks the beginning of preparation for Diwali, which occurs 20 days after Dussehra.

Dussehra is celebrated with great fervour and fanfare. In North India, it incorporates Ram Lila, a gala theatrical enactment of Rama’s life story. Effigies of Ravana—often along with those of Meghnada (Ravana’s son) and Kumbhkarana (Ravana’s brother)—are stuffed with firecrackers and set ablaze at night in open fields.



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