Adukia & Associates

Chartered Accountants

Newsletter April 2015

With all new hope and enthusiasm, we are in the new financial year. This financial year 2015-16 promises a large potential of growth taking in to consideration our countries current scenarios. After a landmark election in the year 2014 and a promising budget in the month of February 2015, India is one of the few bright spots in the global economy. It is extensively forecast to grow rapidly than China in the years ahead.

Steps taken by Government in terms of policy making and implementation are progressive. The success of coal block auctions, proposal to revive gas based power plants, mining, insurance and coal mines bills and telecom spectrum auctions are few indicators of economic development.

In this newsletter we are covering articles on Arbitration and Registration under FCRA, Voting through Electronic means - Companies (Management and Administration) Rules, 2015, Net profit calculation method for CSR, TDS on purchase of software, applicability of VAT/CST on E-Commerce transactions, important notifications, recent Case Laws and circulars and due dates for statutory payment for easy reference.

We believe, this newsletter will be helpful for your knowledge updation and professional activities. We request your feedback, suggestions and recommendations for making this newsletter more effective and qualitative in the upcoming editions.

We wish all our readers a happy and wealthy financial year 2015!

INSIDE THIS ISSUE

SPECIAL POINTS OF INTEREST

- Arbitration – best mode to resolve disputes
- Registration under FCRA
- Voting through Electronic means
- Net Profit calculation methodology - CSR
- Income Computation and Disclosure Standards (ICDS)
- Applicability of VAT/CST on e-commerce transactions

ARBITRATION – BEST MODE TO RESOLVE DISPUTES

Introduction

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser – in fees, expenses, and waste of time.” - Abraham Lincoln, Notes for a Law Lecture (1850)

Alternative Dispute Resolution ("ADR") refers to any means of settling disputes outside of the courtroom. ADR typically includes

- Arbitration
- Mediation
- Negotiation
- Conciliation

The number of cases to be resolved is piling up at the courts in a maddening way. Besides, the constant rise in the costs of litigation coupled with time delays continues to plague the litigants. As a result of all this, the reliance on ADR methods is on the rise.

The two most common forms of ADR are arbitration and mediation. Arbitration is the settlement of a dispute by the decision not of a court of law but of one or more persons called arbitrators which is executable as a decree of the court. Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. At its core, arbitration is a form of dispute resolution. Arbitration is the private, judicial determination of a dispute, by an independent third party.

According to the Indian Arbitration and Conciliation Act, 1996, “Arbitration” means any arbitration whether or not administered by permanent arbitral institution.

Kinds of Arbitration

1. Adhoc arbitration:

An ad hoc arbitration is one, which is not administered by an institution, and therefore, the parties are required to determine all aspects of the arbitration like the number of arbitrators, manner of their appointment, procedure for conducting the arbitration, etc. The arbitration agreement, whether arrived at before or after the dispute arises, might simply state that "disputes between the parties will be arbitrated", and if the place of arbitration is designated, that will suffice. If the parties cannot agree on arbitral detail, all unresolved problems and questions attending implementation of the arbitration, for example "how the arbitral tribunal will be appointed", "how the proceedings will be conducted" or "how the award will be enforced" will be determined by the law of the place designated for the arbitration, i.e., the "seat" of the arbitration. Parties wishing to include an ad hoc arbitration clause in the principal contract between them, or seeking to arrive at terms of arbitration after a dispute has arisen, have the option of negotiating a complete set of rules, establishing procedures, which fit precisely their particular needs.

1. Institutional arbitration:

An institutional arbitration is one in which a specialized institution with a permanent character, intervenes and assumes the functions of aiding and administering the arbitral process, as provided by the rules of that institution. Often in such cases, the contract between the parties will contain an arbitration clause, which will designate an institution as the arbitration administrator.

In institutional arbitration, the first issue arising for agreement of the parties is choice of the institution, appropriate for the resolution of disputes, arising out of their contract. Whilst making such choice, there are various factors to be considered i.e. nature & commercial value of the dispute, rules of the institution as these rules differs, the past record and reputation of the institution and also that the institutional rules are in tune with the latest developments in international commercial arbitration practice. There are many institutional arbitration administrators, some of which are associated with a trade association and many of which are independent.

3. Contractual arbitration

In the present scenario, where the numbers of commercial transactions as well as the number of disputes are increasing, the parties entering into a commercial transaction prefer to incorporate an arbitration clause in their agreement. The arbitration clause provides that if in future any dispute arises between the parties they will be referred to a named arbitrator/arbitrators.

4. Statutory arbitration

If by operation of law the court provides that the parties have to refer the matter to arbitration it is termed as statutory arbitration. In this kind of arbitration the consent of the parties is not required. It is more of a compulsory arbitration and it is binding on the parties as the law of the land.

5. International Commercial Arbitration

International commercial arbitration is the arbitration relating to disputes arising out of legal relationship, whether contractual or not, considered as commercial under the law in force in India where at least one of the parties is:

- An individual who is a national of or habitually resident in any country other than India.
- A body corporate which is incorporated in any country other than in India.
- A company or an association or a body of individuals whose central management and control is exercised in any country other than India.
- The government of a foreign country.

6. Foreign Arbitration

When arbitration proceedings are conducted in a place outside India and the Award is required to be enforced in India, it is termed as Foreign Arbitration.

Disputes which can be referred to arbitration

Generally speaking, all disputes of a civil nature or quasi-civil nature, which can be decided by a civil court, can be referred to arbitration. Thus disputes relating to property, right to hold an office, compensation for non-fulfillment of a clause in a contract, disputes in a partnership etc. can be referred to arbitration. Thus disputes arising in respect of defined legal relationship, whether contractual or not, can be referred to Arbitration.

It is necessary that there is a defined legal relationship between persons, companies, association of persons, body of individuals etc. created or per-

However, the relationship may not be a contractual one. A dispute may arise out of quasi contracts; .e.g., the division of family property. The same may be validly referred to Arbitration.

Disputes which cannot be referred to arbitration

Section 2(3) of the Indian Arbitration and Conciliation Act, 1996 provides that: — This part shall not affect another law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

Thus if a matter is governed by any other law which excludes reference to Arbitration, this Act will not apply. Since in those cases, the law has given precise jurisdiction to specified courts or tribunals only, those cases cannot be decided through the mechanism of Arbitration. The following matters in general practice, are not arbitrable.

1. Insolvency matters; e.g., adjudication of a person as an insolvent
2. Matrimonial causes (except matters pertaining to settlement of terms of separation or divorce)
3. Testamentary matters; e.g., validity of a will
4. Pertaining to suit under section 92 of the Code of Civil Procedure, 1908
5. Pertaining to proceedings for appointment of guardian of a minor or lunatic person
6. Pertaining to industrial disputes
7. Pertaining to criminal proceedings [excepting matters relating to compoundable offences]
8. Relating to charities or charitable trusts
9. Pertaining to dissolution or winding up of a company incorporated and registered under the provisions of the Companies Act, 1956 (Haryana Telecom Ltd. vs. Sterlite Ind. Ltd.) 1999 (4) L.J. (S.C.) 389.
10. Relating to claim for recovery of octroi duty
11. Pertaining to title to immovable property in a foreign country.
12. Relating to possession of leased premises governed by the provisions of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947.

However, the above is not an exhaustive list.

Advantages of arbitration over litigation

Arbitration carries a number of advantages over usual method of dispute resolution of redressal through a court of Law. Courts in India are already burdened with the pending litigation before it which naturally increases the time frame for the disposal of a dispute before a court.

1. Arbitration promises privacy. In a civil court, the proceedings are held in public which may embarrass the parties, especially during cross-examination.
2. Arbitration provides liberty to choose an arbitrator, who can be a specialist in the subject matter of the dispute. Arbitrators who are sector specialists can resolve the dispute fairly and expeditiously as they are well versed with the usage and practices prevailing in the trade or industry.
3. The venue of arbitration can be a place convenient to both the parties. It need not be a formal platform. A simple office cabin is enough. Likewise the parties can choose a language of their choice.
4. Even the rules governing arbitration proceedings can be defined mutually by both the parties. For example, the parties may decide that there should not be any oral hearing.

1. A court case is a costly affair. The claimant has to pay advocates, court fees, process fees and other incidental expenses. In arbitration, the expenses are less and many times the parties themselves argue their cases. Arbitration involves few procedural steps and no court fees.
2. Arbitration is faster and can be expedited. A court has to follow a systematic procedure, which takes an abnormally long time to dispose off a case. It is a known fact that millions of unresolved cases are pending before the courts.
3. A judicial settlement is a complicated procedure. A court has to follow the procedure laid down in the Code of Civil Procedure, 1908 and the Rules of the Indian Evidence Act. In arbitration, the procedure is simple and informal. An arbitrator has to follow the principles of natural justice. The Arbitration and Conciliation Act, 1996 specifically states that the Arbitral Tribunal shall not be bound by The Code of Civil Procedure, 1908 and The Indian Evidence Act, 1872.
4. Section 34 of the Act provides very limited grounds upon which a court may set aside an award. The Act has also given the status of a decree for the award by arbitrators. The award of the arbitrators is final and generally no appeal lies against the award. While in a regular civil suit there may be an appeal and an appeal against an appeal.
5. In arbitration, the dispute can be resolved without inflicting stress and emotional burden on the parties which is a common feature in court proceedings.
6. In a large number of cases, 'Arbitration' facilitates the maintenance of continued relationship between the parties even after the settlement.

It can be concluded that Arbitration is a mode of resolving disputes with minimum interference of the court and comparatively a much faster mode of dispute resolution.

Acts Rules & Provisions applicable

1. Indian Arbitration and Conciliation Act, 1996
2. UNCITRAL Conciliation Rules in 1980
3. Model Law on International Commercial Arbitration adopted by UNCITRAL in 1985
4. United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 - ratified by more than 140 countries

Major Institutions and Bodies

1. International Chamber of Commerce (ICC)
2. JAMS International
3. British Columbia International Commercial Arbitration Centre (BCICAC, Canada)
4. International Centre for Dispute Resolution (ICDR)
5. International branch of the American Arbitration Association
6. London Court of International Arbitration (LCIA)
7. Hong Kong International Arbitration Centre
8. Singapore International Arbitration Centre (SIAC)
9. Specialist ADR bodies like World Intellectual Property Organisation (WIPO), which has an arbitration and mediation center and a panel of international neutrals specialising in intellectual property and technology related disputes
10. International Arbitration Institute
11. Association for International Arbitration (AIA)

REGISTRATION UNDER FCRA

The Foreign Contribution (Regulation) Act, 2010 is the law regulating & prohibiting the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and various activities. The MHA has been given the task of directly overseeing all operations under FCRA. Organisations having a definite cultural, economic, educational, religious or social programme are specifically covered under the act.

Any individual or organisation carrying out a definite cultural, economic, educational, religious or social programme is required to be registered with the Central Government or obtain prior permission of the Central Government before accepting any foreign contribution.

- Thus we can say that there are two types of FCRA authorization:
    1) Registration
    2) Prior Permission
- Persons requiring Registration or Prior Permission as per Section 11 of the Act.:

1. REGISTRATION:

Persons, who have definite programme of the following, shall accept foreign contribution only after seeking registration from the Central Government.

- Cultural
- Educational
- Economical
- Social
- Religious

2. PRIOR PERMISSION:

Every other person expecting of receiving Foreign Contribution shall seek prior permission if, has not obtained the registration as aforesaid.

The said permission shall be valid for the specific purpose and from the specific source.

If, the persons named in subsections (1) & (2) above found guilty under any provisions of the act, the unutilized or unreceived amount of foreign contribution shall not be utilized or received, as the case may be, without prior approval of the Central Government.

Procedure of Application for Certificate of Registration (section 12(1) of the Act):

The application for registration has to be made to the Central Government in the following manner:

- Form No. FC-3 ; the application shall be filed electronically on Ministry of Home Affair's website (http://fcraonline.nic.in/fc_login.aspx)
- The hard copy of the application must be sent to the Central Government within 30 days of the online submission and the required documents must be attached to it.

Documents that must be attached:

a. Certified copy of Registration Certificate.

b. Copy of Memorandum and/or Articles of Association, if applicable.

c. Demand Draft/Banker's Cheque of the required amount towards fees.

d. Copy of Audited Statements of Accounts for the past 3 years.

e. Recommendation Certificate from any competent authority, if applicable.

f. Any other document, if required necessary must be attached (Eg: PAN Card)

- The application must be signed by the Chief Functionary of the association.
- If the person fails to send the hard copy of the registration, his registration shall be deemed to have been ceased and a fresh online application can be made only after 6 months from the expiry of the cessation of the previous application.
- A person seeking application must open an exclusive bank account for receiving Foreign Contribution.
- The person may open one or more bank accounts for the utilization of the Foreign Contribution received but, the same must be intimated to 'The Secretary, Ministry of Home Affairs, New Delhi' on the plain paper within 15 days of opening the account.
- Re-application for obtaining registration for the same project shall not be made until the expiry of 6 months.
- Application fees for seeking registration is Rs. 2000/- (Rupees Two Thousand Only)
- The Demand Draft or the Banker's Cheque shall be drawn in favour of "Pay and Accounts Officer, Ministry of Home Affairs, New Delhi"
- On receipt of application , the Central Government shall make such enquiry as it deems fit and if the necessary conditions are fulfilled, ordinarily grant certificate within 90days from the date of receipt of application subject to terms and conditions if it deems fit. If not, the reasons for not granting it are communicated to the applicant in the perios of 90 days.
- A person shall not be eligible for grant of certificate , if his certificate has been suspended and such suspension of certificate continues on the date of making application.
- The Certificate of Registration shall be valid for a period of 5 years.

Suspension of Certificate under Section 13 of the Act:

If the Central Government is of the opinion the registration be cancelled may by order in writing, suspend the certificate for such period not exceeding 180 days as may be specified in the order.

Cancellation of Certificate under Section 14 of the Act:

The Central Government shall, after making enquiry as it may deem fit, cancel the certificate if-

- The holder has made a statement, in relation to grant of certificate or renewal thereof is incorrect or false.
- The holder has violated the terms and conditions of the certificate or renewal thereof.
- The Central government opines that in the public interest, it is necessary to cancel the certificate.

- The holder has violated any provisions or rules or order made there under (of the Act)

1) The holder has not been engaged in its chosen field for the benefit of the society for two consecutive years or has become defunct..

Renewal of the certificate under section 16:

- Every person who has been granted the certificate shall renew the certificate within 6 months before the expiry of the period of the certificate.
- The application shall be made to the Central Government in such Form No. FC-5 and manner along with such fees as may be prescribed (Rs.500/-).
- As per the Rules(Rule no.12) laid, if a person implementing a multi - year project, the application for renewal must be made 12 months before the expiry of the registration.
- The renewal fees shall be remitted through Demand Draft or Banker's Cheque in the favour of, "Pay and Accounts Officer, Ministry of Home Affairs, NewDelhi."
- Incase, no application for renewal has been received or such application is not accompanied by the requisite fees, the validity of the certificate or registration of such person shall be deemed to have ceased from the date of completion of the period of 5 years from the date of the grant of the registration.
- If the person provides sufficient grounds, in writing, explaining the reasons for not submitting the certificate of registration for renewal within the stipulated time, his application may be accepted for consideration along with the requisite fee, but not later than 4 months after the expiry the original certificate of registration.
- The Central Government shall renew the certificate, ordinarily within 90 days from the date of receipt of application, subject to such terms and conditions as it may deem fit for a period of 5 years. If it does not renew the certificate, it shall communicate the reasons to the applicant. The Central Government may refuse to renew if the applicant has violated any provisions of this Act or Rules made there under.

PRIOR PERMISSION

Application for Prior Permission

The application has to be made to the Central Government in the following manner:

- Form No. FC-4 ; the application shall be filed electronically on Ministry of Home Affair's website (http://fcraonline.nic.in/fc_login.aspx)
- The hard copy of the application must be sent to the Central Government within 30 days of the online submission and the required documents must be attached to it.

Documents that must be attached:

a. Certified copy of Registration Certificate.

b. Copy of Memorandum and/or Articles of Association, if applicable.

c. Demand Draft/Banker's Cheque of the required amount towards fees.

d. Copy of Audited Statements of Accounts for the past 3 years,if applicable.

e. Recommendation Certificate from any competent authority, if applicable.

f. Any other document, if required necessary must be attached (Eg: PAN Card)

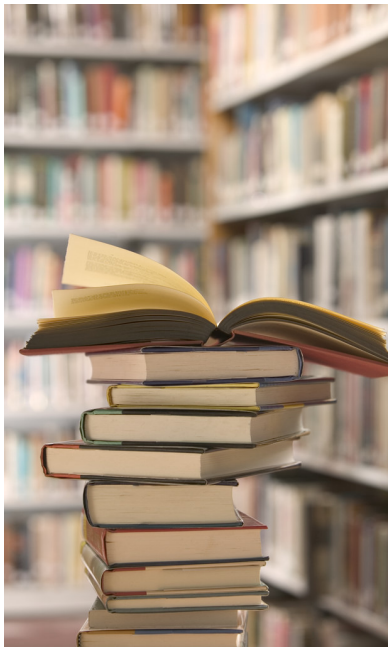
- The application must be signed by the Chief Functionary of the association.

- If the person fails to send the hard copy of the registration, his registration shall be deemed to have been ceased and a fresh online application can be made only after 6 months from the expiry of the cessation of the previous application.
- A person seeking application must open an exclusive bank account for receiving Foreign Contribution.
- The person may open one or more bank accounts for the utilization of the Foreign Contribution received but, the same must be intimated to 'The Secretary, Ministry of Home Affairs, New Delhi' on the plain paper within 15 days of opening the account.
- Re-application for obtaining prior permission for the same project shall not be made until the expiry of 6 months.
- Application fees for seeking registration is Rs. 1000/- (Rupees One Thousand Only)
- The Demand Draft or the Banker's Cheque shall be drawn in favour of "Pay and Accounts Officer, Ministry of Home Affairs, New Delhi"
- On receipt of application , the Central Government shall make such enquiry as it deems fit, it is of the opinion that conditions specified are satisfied, it shall ordinarily grant certificate within 90 days from the date of receipt of application subject to terms and conditions if it deems fit. If not, it shall within the said period of 90 days communicate the reasons thereof to the applicant.
- A person shall not be eligible for grant of permission, if his certificate has been suspended and such suspension of certificate continues on the date of making application.
- The Certificate of Registration shall be valid for a specific purpose and amount.

ANNOUNCEMENT ON CARO, 2003 AND ADDITIONAL REPORTING UNDER THE COMPANIES ACT, 2013

ICAI announcement on the applicability of CARO, 2003 along with Auditors' Report on financial statements of companies for the financial year 2014-15.

- The Companies Act, 1956 has ceased to have effect from 01st April, 2014. As a corollary, the Companies (Auditor's Report) Order, 2003 issued under section 227(4A) of the said Act also ceases to have effect from the said date.
- Section 143(11) of the Companies Act, 2013 which came into force from 01st April, 2014 provides that "the Central Government may, in consultation with the National Financial Reporting Authority, by general or special order, direct, in respect of such class or description of companies, as may be specified in the order, that the auditor's report shall also include a statement on such matters as may be specified therein."
- Accordingly, it may be noted that as when an Order is notified by the Central Government under section 143(11) of the Companies Act, 2013, the members would be required to report thereon as a part of their statutory audit reports.
- Until the aforesaid Order is issued, no additional reporting under section 143(11) of the Companies Act, 2013 is required by the Auditors for the financial year 2014-15.



COMPANIES ACT UPDATE

- The Ministry of Corporate Affairs has notified Roadmap for applicability of Indian Accounting Standards (Ind AS) for compliance by the class of companies specified in the said Roadmap. The notification has been uploaded on www.mca.gov.in along with the 39 Indian Accounting Standards (Ind AS). Companies which are not required to follow Indian Accounting Standards (Ind AS) shall continue to comply with Accounting Standards as prescribed in Companies (Accounting Standard Rules), 2006.
- All donations towards the Prime Minister's National Relief Fund (PMNRF) are notified for 100% deduction from taxable income under Section 80G of the Income Tax Act, 1961
- The Central Government delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong, the powers and functions vested in it under sub-section (5) of section 94 of the Companies Act,2O13 .

Voting through Electronic means - Companies (Management and Administration) Rules, 2015

The rules relating to provisions of e-voting were notified on 23rd June, 2014 and a clarification relating to the same was also issued vide circular no. 20/2014 on 20/06/2014.

MCA has now come out with Companies (Management and Administration) amendment rules, 2015 revising the procedure pertaining to e-voting. The provisions of this Rule shall apply in respect of the general meetings for which notices are issued on or after the date of commencement of this Rule.

Applicability

i. Every company other than a company referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 having its equity shares listed on a recognised stock exchange or

ii. a company having not less than one thousand members

Procedures

i. the notice of the meeting shall be sent to all the members, directors and auditors of the company either
   a. by registered post or speed post ; or
   b. through electronic means, namely, registered e-mail lD of the recipient; or
   c. by courier service;

ii. the notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;

iii. the notice of the meeting shall clearly state;
   a. that the company is providing facility for voting by electronic means and the business may be transacted through such voting;

b. that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;

c. that the members who have cast their vote by remote e-voting may also attend the meeting but shall not be entitled to cast their vote again

iv. the notice shall:-

   a. indicate the process and manner for voting by electronic means;

   b. indicate the time schedule including the time period during which the votes may be cast by remote e-voting;

   c. provide the details about the login ID;

   d. specify the process and manner for generating or receiving the password and for casting of vote in a secure manner .

A resolution proposed to be considered through voting by electronic means shall not be withdrawn. (Rule 20(xviii))

Public notice by way of advertisement should be made on completion of dispatch of notices but minimum 21 days before general meeting

i. Vernacular newspaper in principal vernacular language of the district in which registered office is situated having wide circulation in the district

ii. English newspaper in English language having country-wide circulation

iii. It shall also be put on the website of the company and agency.

The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting.

During the period when facility for remote e-voting is provided, the members of the company holding shares either in physical form or in dematerialized form, as on the cut-off date may opt for remote e-voting:

Scrutinizer

The scrutinizer shall be willing to be appointed and be available for ascertaining the majority. The Board may appoint a CA/CS/CWA/Advocate/any other person, not in employment of the company and is a person of repute as the scrutinizer. Now since as per rule 20 the Scrutinizer of e-voting & poll shall be the same, he should be a member of the Company as on cut-off date in order to be entitled to attend the general meeting. The scrutinizer may take assistance of a person who is not in the employment of the company and who is well versed with the e-voting system.

Documents required

1. Polling Papers (MGT-12)
2. Register of Members, attendance register (including attendance slips) and Specimen signatures of members (to be coordinated with the RTA in case of listed company).
3. Proxy register and proxy forms received (MGT-11) and Board Resolution(s) under section 113 (Representation of body corporate)
4. Ballot papers received in pursuance of clause 35B (2) of listing agreement.
5. Information required under rule 20 regarding persons who have voted through remote e-voting namely, name, folio, number of shares and other info. Scrutinizer may require (eg:- Copy of Board Resolution uploaded, in case of voting by Body Corporate) but the manner in which the votes have been cast should not be available to the scrutinizer.

Procedure

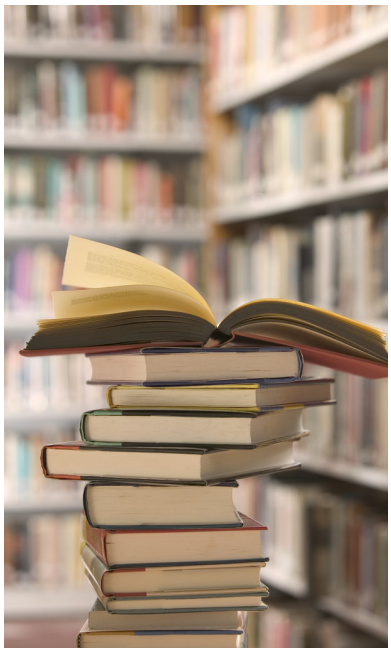
The Chairman shall, at the general meeting at the end of discussion on the resolutions on which voting is to be held, allow voting as provided in rule 21(1)(a) to (h) as applicable, with the assistance of scrutinizer. (views of the circular that show of hands not allowed in case of e-voting now incorporated in rules). The manner in which members have cast their votes, affirming or negating the resolution shall remain secret and not available to the chairman, scrutinizer or any other person till the votes are cast in the meeting.

Net Profit calculation methodology - CSR

Net Profit as per Section 135 is required to be calculated as per Section 198 of the Companies Act, 2013. However, Net profits as defined in the Companies (CSR Policy) Rules, 2014 defines Net Profit as Net Profit as per Financial statements prepared in accordance with the Act.

Since the Rules specify that the net profits are as per provisions of the Act and the relevant Section 135 of the Act requires such net profits calculation as per Section 198 of the Companies Act, the net profit shall be calculated u/s 198 of the Companies Act. This is based on a harmonious interpretation of the specific section in the Act and the relevant Rules framed under that Section.

DIRECT TAX UPDATE



Income Computation and Disclosure Standards

CBDT has vide Notification No. 33/2015 notified the Income Computation and Disclosure Standards (ICDS) to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head Profit and gains of business or profession or Income from other sources.

List of Income computation standards;

ICDS I- Accounting Policies

ICDS II- Valuation of Inventories

ICDS III- Construction contracts

ICDS IV- Revenue Recognition

ICDS V- Tangible Fixed Assets

ICDS VI- Effects of Changes in Foreign Exchange Rates

ICDS VII- Government Grants

ICDS VIII- Securities

ICDS IX- Borrowing Costs

ICDS X- Provisions, Contingent Liabilities and Contingent Assets

Applicability of TDS on Purchase of Software

- On purchase of software from a resident TDS shall be deducted @10% under section 194J
- On purchase of software from a non-resident TDS shall be deducted under section 195 at the rates in force. (i.e. @ 25% as provided in section 115A or if relevant DTAA provides lower rate then that rate shall apply instead of 25%)
- As per section 40(a)(ia), where any sum is payable to a resident on which TDS is deductible and such TDS has not been deducted or after deduction, has not been paid on or before the due date specified in section 139(1), Then 30% of any such sum shall be disallowed in computing the income of that previous year
- As per section 40(a)(i), Where any sum is payable to a non-resident by way of royalty on which TDS is deductible and such TDS has not been deducted or after deduction, has not been paid on or before the due date specified in section 139(1) then any such sum shall be disallowed in computing the income of that previous year.

As per CBDT Notification No. 21/2012 dated 13-6-2012, no deduction of tax shall be made on the following specified payment under section 194J of the Act, namely:-

i. The software is acquired in a subsequent transfer without modification

ii. tax has been deducted-

   a) under section 194J on payment for any previous transfer of such software; or

   b) under section 195 on payment for any previous transfer of such software from a non-resident, and

iii. the transferee obtains a declaration from the transferor that the tax has been deducted either under sub-clause (a) or (b) of clause (ii) along with the Permanent Account Number of the transferor.

Applicability of VAT/CST on E-commerce Transactions

E-commerce is the buzz word nowadays. It offers the handiness of buying things from the place of the customer's convenience without much hassle. Apart from big players like Amazone, Flipkart, eBay etc, many startup companies are also coming up with selling goods online.

Forms of E-commerce

- Business to Consumer (B2C)
- Business to Business (B2B)

E-commerce companies mainly work in two forms. One is that they act as a platform where buyer meets the sellers on the website. Sellers can showcase their product on the E-commerce website and on meeting quality and price; a sales transaction is initiated between the buyer and the seller. The e-commerce company is simply a facilitator of the transactions and gets commission for the services provided by them. They are also liable to pay service tax on the commission collected by them.

In the second form of e-commerce business, the companies develop software to predict the customer preferences, and demand – supply mechanism. They store the goods on behalf of the suppliers for more convenience.

Models of operation of E-commerce companies and applicability of VAT/CST

Model - 1

E-commerce companies are the owner of the goods and sell goods as their own goods after receiving booking/order on its e-portal; and, generally, own and store goods even before receiving of customer's order. Here, E-Commerce Company is liable to pay sales tax in the same manner as any other dealer. The sale shall be taxable at a consideration payable by the customer to the E-Commerce company, who shall, however, be eligible to purchase goods on the strength of Form C and, as the case may be, to claim input tax credit under the State VAT Act.

Model - 2

In this model, on receipt of the online order, the E-commerce company informs the seller about the order and the seller in turn sells the goods to the E-commerce company. The company then raises the invoice to the customer and receives the payment from the customer. After retaining the profit margin, E-commerce Company remits the purchase price to the seller. The goods are supplied to the customer by the seller.

Therefore, there are two sales which is happening in this model; one from seller to E-commerce company and E-commerce company to the customer. In such cases, taxability shall be decided accordingly as per VAT/CST provisions.

Model - 3

In this model, the E-commerce company acts as a facilitator/booking agent between the buyer and the seller. Order is made online and the supplier raises invoice and supplies the goods to the customer using its own logistics. Payment can be received either by the supplier or by the E-commerce company. If the payment is received by the supplier, it remits the commission to the E-commerce company and on the other hand, the E-commerce company retains the commission and pays the balance amount to the supplier.

Here, goods remain in the custody of the supplier, who delivers the goods and raises invoice on the customer as his own goods. State VAT/CST shall be imposed on the amount of invoice raised by the supplier on the customers. Further, invoice shall be raised by the supplier in the State where goods are located, i.e., the seller will collect State VAT/CST in the State from where movement of goods commences.

Model - 4

Under the fourth model, the supplier stores its products in one of the warehouses provided by E-Commerce company with a view to reduce the delivery time and quality assurance. Goods to the customers are dispatched by the E-Commerce Company; however, invoice is raised in the name of supplier. Payment is also received by the E-Commerce company, who after retaining its commission, remits the remaining amount to the supplier. Warehouse of the E-Commerce company is shown as additional place of business of the supplier. In this model, though the invoice is raised in the name of the supplier yet the E-Commerce company handles the goods as well as proceeds; thus, prima facie, E-Commerce Company will be considered as C&F Agent of the supplier. Accordingly, the supplier will be liable to obtain VAT-TIN in that State and pay VAT/CST as per the provisions of such State VAT Act. If the goods are transferred by the supplier from some other State to the warehouse of the E-Commerce Company, such transfer will take place on the strength of Form F.

Companies Act

Loan Received by private companies from members, directors or their relatives before 01.04.2014 is not deposit

General Circular No. 05/2015 Dated: 30th March, 2015 To All Regional Directors, All Registrars of Companies, All stakeholders.

Subject: Amounts received by private companies from their members, directors or their relatives before 1st April, 2014 – Clarification regarding applicability of Companies (Acceptance of Deposits) Rules, 2014

Sir, Stakeholders have sought clarifications as to whether amounts received by private companies from their members, directors or their relatives prior to 1st April, 2014 shall be considered as deposits under the Companies Act, 2013 as such amounts were not treated as 'deposits' under section 58A of the Companies Act, 1956 and rules made thereunder. 2.The matter has been examined in consultation with RBI and it is clarified that such amounts received by private companies prior to 1st April, 2014 shall not be treated as 'deposits' under the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 subject to the condition that relevant private company shall disclose, in the notes to its financial statement for the financial year commencing on or after 1st April, 2014 the figure of such amounts and the accounting head in which such amounts have been shown in the financial statement. 3. Any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall, however, be in accordance with the provisions of Companies Act, 2013 and rules made thereunder. 4.This issues with the approval of the competent authority. F. No. 1/8/2013-CL

Companies (Acceptance of Deposits) Amendment Rules, 2015

New Delhi, dated the 31st March, 2015 G.S.R. _ (E). – In exercise of the powers conferred by sections 73 and 76 read with sub-section (1) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Acceptance of Deposits) Rules, 2014, namely:-

1. (1) These rules may be called the Companies (Acceptance of Deposits) Amendment Rules, 2015. (2) They shall come into force from the date of their publication in the Official Gazette. 2. In the Companies (Acceptance of Deposits) Rules, 2014,- (1) in rule 2, in sub-rule (1), in clause (c),- (a) in sub-clause (vii), in Explanation (a), the follow1ng proviso shall be inserted, namely:- "Provided that unless otherwise required under the Companies Act,1956 (1 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or rules or regulations made thereunder to allot any share, stock, bond, or debenture within a specified period, if a company receives any amount by way of subscriptions to any shares, stock, bonds or debentures before the 1st April, 2014 and disclosed in the balance sheet for the financial year ending on or before the 31st March, 2014 against which the allotment is pending on the 31st March, 2015, the company shall, by the 1st June 2015, either return such amounts to the persons from whom these were received or allot shares, stock, bonds or debentures or comply with these rules." (b) In sub-clause (xii), in item (b), (A) for the words "consideration for property", the words "consideration for an immovable property" shall be substituted; (B) for the words "against the property", the words "against such property" shall be substituted; (c) in sub-clause (xii), in the Explanation, for the words "referred to in the first proviso", the words "referred to in the proviso" shall be substituted; (2) In rule 3, after sub-rule (7), the following sub-rule shall be inserted, namely:- "(8) Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it in the manner specified herein below and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3

Name of the agency	Minimum investment Grade Rating
(a) The Credit Rating Information Services of India Ltd	FA- (FA Minus)
(b) ICRA Ltd.	MA- (MA Minus)
(c) Credit Analysis and Research Ltd.	CARE BBB(FD)
(d) Fitch Ratings India Private Ltd.	tA-(ind)(FD)
(e) Brickwork Ratings India Pvt Ltd.	BWR F A
(f) SME Rating Agency of India Ltd.	SMERA A

(3) in rule 5, in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:- "Provided that the companies may accept deposits without deposit insurance contract till the 31st March, 2016 or till the availability of a deposit insurance product, whichever is earlier."

(4) in Annexure, for Form "DPT-3" the following form shall be substituted, namely:-

- Form DPT-3
- Return of deposits

[Pursuant to rule 16 of the Companies (Acceptance of Deposits) Rules, 2014]

Income Tax

Application for Roll Back of APA can be made upto to 30.06.2015

New Delhi, the 31st March, 2015

Press Release

The rules relating to Roll Back of an Advance Pricing Agreement (APA) have been notified through notification no. S.O. 758 (E) dated 14th March, 2015. As per sub-rule (5) of the newly prescribed rule 10MA, where an application for entering into an advance pricing agreement has been filed prior to 1.01.2015, the request for rollback in the newly prescribed Form No. 3CEDA may be filed at any time on or before 31.03.2015. Similarly, where an advance pricing agreement has been entered into before 1.01.2015, the said form may be filed before 31.03.2015.

2. Representations have been received stating that in respect of the applications and agreements referred to above, which have been filed or entered into prior to 1.01.2015, the window provided up to 31.03.2015 is very short in light of the fact that the relevant rules have been notified only on 14.03.2015. Further, it has been represented that a reasonable period also needs to be provided in respect of the applications or agreements, as the case may be, filed or entered into up to 31.03.2015

4. The formal notification in this regard would follow shortly.

Service Tax

No change in rate of Service Tax from 01.04.2015

ICAI/IDTC/GST/2015 1st April, 2015

Clarification- No change in rate of Service Tax

Finance bill, 2015 has proposed to increase effective rate of Service Tax from 12.36% to 14%. It is wrongly reported in some quarters that the effective date of change in rate of Service Tax is 1st April, 2015. It is hereby clarified that the change in the rate of Service Tax will be effective from the date to be notified after enactment of Finance Bill, 2015.

In this regard relevant portion of D.O.F. No.334/5/2015-TRU dated 28th February 2015 is produced below:

"3.3 The Service Tax rate shall come into effect from a date to be notified by the Central Government after the enactment of the Finance Bill, 2015".

Hence, it is worthwhile to mention that there is no change in the rate of Service Tax w.e.f. 1st April 2015.

RBI Circular on Provisioning pertaining to Fraud Accounts

RBI/2014-15/535

DBR.No.BP.BC.83/21.04.048/2014-15

April 1, 2015

All Scheduled Commercial Banks

(Excluding Regional Rural Banks)

Dear Sir,

Provisioning pertaining to Fraud Accounts

Please refer to the guidelines compiled in paragraph 4.2.9 of Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances dated July 1, 2014, in terms of which, in accounts where there are potential threats for recovery on account of erosion in the value of security or non--availability of security and existence of other factors such as frauds committed by borrowers, the asset classification, and consequent provisioning, depends upon the realisable value of security.

2. On a review, it has been decided to prescribe a uniform provisioning norm in respect of all cases of fraud, as under:

The entire amount due to the bank (irrespective of the quantum of security held against such assets), or for which the bank is liable (including in case of deposit accounts), is to be provided for over a period not exceeding four quarters commencing with the quarter in which the fraud has been detected;

However, where there has been delay, beyond the prescribed period, in reporting the fraud to the Reserve Bank, the entire provisioning is required to be made at once. In addition, Reserve Bank of India may also initiate appropriate supervisory action where there has been a delay by the bank in reporting a fraud, or provisioning there against.

3. We reiterate that banks must scrupulously adhere to the guidelines contained in circular DBS.CO.CFMC.BC.No.1/23.04.001/2014-15 dated July 1, 2014 on 'Frauds – Classification and Reporting'.

Yours faithfully,

(Sudarshan Sen)

Chief General Manager-in-Charge

Income Tax

U.P. Chalchitra Nigam Ltd. vs. CIT (2015) 274 CTR (All) 130 - Accrued Interest taxable under Mercantile System of Accounting

Assessee, a Government owned corporation, selling its properties under deferred payment plan and following mercantile system of accounting, Interest as agreed under the sale agreement accrued to the assessee in the relevant assessment year, hence liable to tax.

CIT vs. Silicon Institute of Technology. (2014) 272 CTR (Ori.) 319 - Incurring Capital Expenditure means application of money

When the surplus is utilised for educational purpose, i.e., for infrastructure development it cannot be said that the institution was having object to make profit; capital expenditure incurred by a trust for acquiring/ constructing capital asset would be application of money and the assessee would be entitled to exemption under S.11(1).

Nahalchand Laloochand (P) Ltd. vs. ACIT (2015) 274 CTR (SC) 246 - Rent income in the hands of a tenant

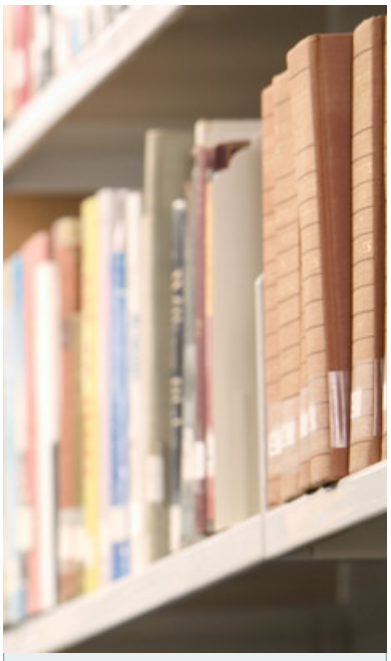
Tribunal and the High Court having held that the assessee being a tenant of the property for a long period was deemed owner covered by s. 27(iiib) and the income derived by it letting out the said premises was income from house property, without recording any definite finding of the fact about prerequisites of s. 269UA (f)(i) r/w Explanation thereto, the appeal is restored to the Tribunal for fresh hearing and disposal in accordance with law.

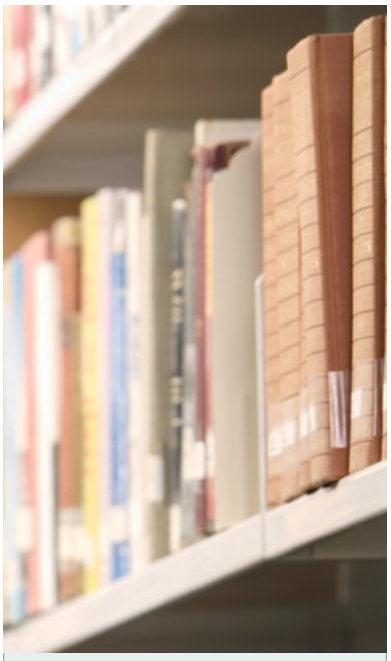
CIT & Anr. vs. MAC Charles (India) Ltd. (2015) 273 CTR (Kar.) 596 - Renovation expenditure revenue in nature

Expenditure on replacing the flooring, false roofing, furniture, carpets, and the refurbishing of hotel rooms in tune with the international standards was incurred without addition of extra floor space or extra room capacity; hence the same was allowable as revenue expenditure.

Rashmikant Kundalia vs. UOI (Bombay High Court) - Constitutional validity of levy of late filing fee

The late filing of TDS returns by the deductor causes inconvenience to everyone and s. 234E levies a fee to regularise the said late filing. The fee is not in the guise of a tax nor is it onerous. The levy is constitutionally valid.





M/s. Chakrabarty Medical Centre vs. TRO (ITAT-Pune) - Investment in name of Partner allowable as exemption

Property introduced by a partner into firm becomes the asset of the firm even if there is no registered deed. Though the asset is held by the firm as a depreciable asset and though the investment in s. 54EC bonds is made in the names of the partners, the firm is eligible for s. 54EC exemption.

Prema Gopal Rao vs. DCIT (ITAT-Mumbai) - Revised Return & Penalty

Revised return of income filed after issue of s. 143(2) notice amounts to voluntary disclosure if AO has not sought specific particulars in the notice.

Service Tax

Commissioner of Service Tax, Mumbai Versus Tata Tele services Ltd - Telephone services – whether the respondent is required to discharge the service tax liability on the amount which they have received from the distributors and dealers or on the MRP on which the subscribers purchases Recharge Vouchers and SIM Cards from the distributors or dealers

Held that according to the amended provisions of Section 67, the value of any taxable service shall be the gross amount charged by the service-provider for such service rendered by him. In instant case, the amount charged by the assessee (service-provider) is the amount received by them from dealers/ distributors and nothing extra was charged by the appellants. Admittedly, Service tax was paid on this amount. There are a few elements specified in the Explanation to Section 67, as includible in the value of taxable service. The Revenue has no case that any of these elements is applicable to the appellants. Decision in case of BPL Mobile Cellular Ltd. [2007 (6) TMI 107 - CESTAT, CHENNAI] followed.

Central excise

Commissioner of Central Excise, Jamshedpur Versus M/s. Tubes & Structurals & Another - Entitlement of the excise exemption in terms of exemption Notification No.1/93 dated 28.2.1993 - denial on the ground that the respondent is using the brand name of M/s. TISCO Ltd. i.e. TISCOG

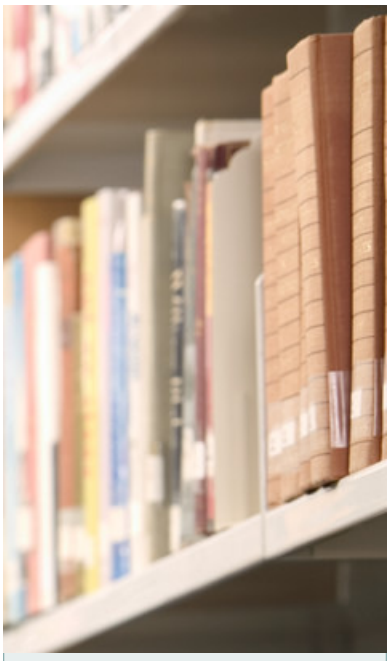
CASE LAWS

Held that it becomes clear that amendment was brought to deny the benefit of Notification to those SSI units which have been making use of branded good for another person irrespective of whether the brand name owner himself is SSI unit or not.

It was also made abundantly clear here that the requirement of affixation or brand name by the SSI unit was immaterial. That was the purpose for substituting the word "affixing" by the word "bearing". Going by the consideration this Court held in Australian Foods (India) (P) Ltd. case [2013 (1) TMI 330 - SUPREME COURT] that after this amendment in para 4 it was not necessary that there has to be affixation of the name or mark on the goods. - impugned order of the CEGAT is untenable and not in accordance with law - non-payment of duty by the respondent was bona fide act, having nurtured a belief that it was not liable to pay the excise duty on the goods - Therefore, while setting aside the order of the Tribunal, we restore the order of the Commissioner only insofar as it pertains to imposition of excise duty in the sum of ₹ 34,67,164/- and set aside the penalties imposed in the said order. - Decided partly in favour of Revenue.

Commissioner of Central Excise, Nagpur Versus M/s. Ispat Industries Ltd - Valuation of goods - includibility of the cost of transportation charges

Held that Tribunal has arrived at a categorical finding that the respondent is not responsible to pay the cost of transport from the place of removal to the place of delivery i.e. from the factory gate to the depot separately. In terms of Rule 5 of the Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000, such a cost of transport which is also separately shows, is not includable in the valuation for the purpose of excise duty. No error in the judgment of the Tribunal - Decided against Revenue.



DUE DATES FOR STATUTORY PAYMENTS – APRIL 2015

Date	Applicable Law	Compliance Required
6-April-15	Central Excise	Payment of Excise Duty for all Assessees
7-April-15	Income Tax	Due date for deposit of Tax deducted under Section 194-IA in the month of March, 2015
10-April-15	Central Excise	Filing ER-1 Return (Other than SSI Units)
10-April-15	Central Excise	Filing Quarterly ER-3 Return by SSI Units availaing small scale exemption
10-April-15	Central Excise	Filing Quarterly ER-8 Return by the units paying 2% duty
10-April-15	Central Excise	Filing Quarterly ER-2 Return by 100% EOUs
10-April-15	Central Excise	Filing monthly ER-6 Return by specified class of Assessees regarding principal inputs
15-April-15	Central Excise	Filing Quarterly Return (ANN. 13B) by the registered dealers
15-April-15	Provident Fund	PF Payment for March 2015
20-April-15	Central Excise	Filing Quarterly Return (Annexure 75) by units availing area based exemptions
22-April-15	Income Tax	Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of March, 2015
25-April-15	Service Tax	Service Tax Return for October 14 to March 15 – All Assessees
25-April-15	Central Excise	Filing Annual Information on principal inputs (ER-5) by the specified Assessees
25-April-15	Central Excise	Filing Annual Production Capacity Statement (ER-7) by the specified Assessees
30-April-15	Income Tax	Due date for deposit of Tax deducted/collected for the month of March, 2015
30-April-15	Income Tax	Due date for deposit of TDS for the period January 2015 to March 2015 when Assessing Officer has permitted quarterly deposit of TDS under sections 192, 194A, 194D or 194H

Team Adukia & Associates

CA Rajkumar S. Adukia

CA Kamlesh Parekh

CA A. S. Visalakshi

CA Pankaj Adukia

CA Sambasivan Ramesh

CA Shiva M .Chaudhari

CA Pramod Patel

CA Sini Thomas

CA Amit Brahmkhatri

CA Meenakshi Pravaschandra Gupta

CA Rishabh Rajkumar Adukia

CA Niraj Dilip Mahajan

CA Raj Kumar Agarwal

Adukia & Associates

A chartered Accountants Firm Registered with the Institute Of Chartered Accountants of India in the Year 1984. All Full fledged Operation of the Firm started the same year with the Mission to provide comprehensive range of Financial Services to its clients.

OUR-COMMITMENT

We are committed to provide consistent, customized and workable solutions to our clients and strive to support our services with the highest level of professionalism, efficiency and technology

OUR MISSION

To provide full range of high quality services in Auditing, Accounting, Taxation, Management consultancy.

To carry out all aspects of our work with high level of professionalism and excellence

To offer value for money for the services we provide.

Branches:

Bangalore **Bahrain** **Delhi** **Goa**

Hyderabad **Pune** **Vadodara**

Adukia & Associates

Chartered Accountants

H.O: Office-3 to 6, Ground floor, Building No.1, Meridien Apartments, Veera Desai Road, Andheri (W), Mumbai-400058, Maharashtra

Phone: 022-26765506/26763179

Email: office@caaa.in

www.caaa.in

Adukia & Associates Chartered Accountants

(A member of SPARK & Affiliates, A Network approved by ICAI)