The Institute of Chartered Accountants of India

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INDEX

Chairman's Message 2

Articles

Can a HUF be a Partner in a Firm? 3

Forthcoming amendments in GST returns (1/2) 6

Activities - April, 2021 9

Upcoming Programmes - June, 2021 12

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Chairman's Message

!! Namaste !! Warm Greetings to All,

Respected Members,

Amidst the rise of COVID 19 cases & restrictions, Kozhikode Branch of SIRC has never stopped its activities and continued with it on a regular basis. Although we had to shift from physical activities to Virtual ones but our zeal to upgrade our members and students has never stopped. We have virtually conducted successful events during the last month.

We have done a number of seminars in the May month including a 3 day Joint semianr with palakkad and Trissur branches. In the coming month also we have planned various seminars on latest topics.

In addition a blood.donation camp, covid vaccination camp, branch formation day, yoga day is planned as part of our activities.

I also take this oppurtunity to wish the students community best wishes for the coming exam. Our Foundation class has got good reponse where more than 50 students have joined.

Our increasingly sedentary lifestyles are impacting our health. A sedentary lifestyle doesn't just cause weight gain and increasing waistlines, but it also increases risk of cancer, diabetes, and developing back pain. With COVID-19, we all have now realised the importance of health and fitness. Regular exercises and taking care of health not only boosts our immune system, but also helps us reduce stress & anxiety, prevent weight gain and also improves our sleep. So we have tied up with Ahamedabad Branch of WIRC for a Movement 73 Fitness Carnival and exercise challenges.

I would suggest members to take maximum precautions and try to stay fit and healthy and participate in branch activities to acquire technical knowledge, develop soft skills and explore opportunities of networking. We solicit your contribution in terms of professionally relevant articles, narratingyour views on some of the latest changes in the laws, judicial pronouncements and mostimportantly expressing your creative talents like a short story, a poem, a painting, atravelogue, or even sharing your real-life experiences which will help the next generation.

We also welcome the creative work of your family members as well for the newsletter. This might be a small step to make a difference, but I am sure with the potential in all our members and students, it will be possible.

I would like to thank our Managing Committee Members for supporting, guiding and encouraging me in various activities to be done for the betterment of the branch, its members and students.

CAN A HUF BE A PARTNER IN A FIRM?

DR. CA. ABHISHEK MURALI,
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DISA(ICAI), ADIT(UK), D.Litt

INTRODUCTION:

Partnership Firms are one of the common forms of a Business in India. While the position of a Partnership Firm has been accepted without question for several decades now, in the last few months both Income Tax Authorities and Banks have brought this into question.

Can a HUF be a Partner in a Partnership Firm? Or is the Partnership itself invalid?

I. KARTA/HUF CANNOT BE A PARTNER IN AN LLP:

The MCA held the view that as per Sec 5 of the LLP Act, 2008, only an Individual or Body Corporate can become a Partner of an LLP. Hence, vide its General Circular dated 2/2016 dated15/01/2016, the MCA clarified that a HUF or it's Karta cannot become a Partner/Designated Partner in an LLP.

However, this MCA clarification suddenly raised a question. Can HUF/Karta be a Partner in a regular Partnership Firm where there is unlimited liability?

II. ONLY PERSONS CAN BE A PARTNER IN A FIRM:

All Partnership Firms are established based on the Partnership Act, 1932. Section 4 of the Act states as follows:

*"Partnership" is the **relation between persons** who have agreed to share the profits of a business carried on by all or any of them acting for all…"*

Therefore, the Partnership Act does not by itself restrict who can be Partner of the Firm. The Partnership Act also does not define who a Person is. The General Clauses Act, 1897 defines a Person as "*a Company or Association or body of individuals whether incorporated or not*".

The Income Tax Act defines a Person u/s 2(31), which is a wider definition and includes an *Individual, HUF, Company, Firm, Association of Persons, Body of Indiviuals* etc.

Hence, it is undisputed that a HUF falls under the definition of a Person as per both

General Clauses Act and the Income Tax Act. It appears from the above definition even a Partnership Firm can be a Partner in a Firm.

III. WHY ARE INCOME-TAX AND BANKS NOW SAYING PARTNERSHIP IS INVALID WITH HUF AS PARTNER?

In recent times, the Income Tax Authorities have resorted to using Revisionary Powers u/s 263 and disallowing Interest & Remuneration paid to a Partner that is a HUF. Some Banks have also refused to open a bank account for Firms which has a HUF as a Partner.

In ***Rashiklal & Co. vs. CIT (1998) (229 ITR 458)***, where the Hon'ble Supreme Court held that a HUF and a Partnership Firm both cannot join a Partnership with another individual. The Hon'ble Judges further stated that:

"In law, an HUF can never be a partner of a partnership firm. Even if a person nominated by the HUF joins a partnership, the partnership will be between the nominated person and the other partners of the firm.

…. Where the Karta of an HUF enters into a partnership agreement with a stranger, the Karta alone in the eye of law is the partner. If any payment by the firm to a partner is prohibited by law, the Karta cannot be heard to say that the payment was received by him not as a partner but in some other capacity. Within the partnership, the Karta is a partner like any other partner.

… The HUF is not and cannot be a partner in a partnership firm. The remuneration or the commission that is paid to the partner cannot be claimed to be a remuneration or commission paid to the HUF."

Though the above decision significantly pertains to disallowance u/s 40(b) for remuneration paid to the HUF; it also explores if a HUF can be a Partner of a Firm at all. From the above decision it is clear that where remuneration is received from the Partnership Firm that an HUF will not be assessable for the same but it will be in hands of the Partner individually.

In ***GT Cold Storage & Ice Factory vs CIT (2005) 275 ITR 340 (Allahabad)***, a Partner of the firm was representing his HUF & received a salary for the services rendered to the firm. The Court held that the salary was earned by the Karta not on account of any detriment to the family assets but in consideration of his personal services. Hence, it will not be allowable as a business expenditure.

IV. CONFLICTING DECISIONS WITH OTHER COURTS:

The Hon'ble Apex Court, in ***Ram Laxman Sugar Mills vs. CIT [1967] 66 ITR 613***, held that where the HUF is a Partner of the Firm, then any remuneration received by the HUF will be taxed in the individual hands of the Karta and not the HUF itself.

In ***Brij Mohan vs CIT (201 ITR 831)(1993)***, the Hon'ble Supreme Court held that *"where the receipt is a compensation made for the services rendered and not for the return on investment, it is to be treated as individual income of the partner"*.

Hence, from both decisions above, it can be observed that the Supreme Court has opined that remuneration is paid to an individual to compensate for effort, service or skill to complete a task/tasks. A Juristic Entity like HUF or Partnership Firm would not be able to render such a service, as it is an artificial entity represented by its Members/Partners.

However, there would be no restriction on earning Interest from Earmarked Funds Loaned to the

Partnership Firm as it does not require any individual skill or effort.

In ***CIT vs Golden Touch - 263 ITR 261 Mad (2003)***, the Madras High Court held that *"the remuneration paid to the individual partners who are working partners is not to be disallowed on the sole ground that such partners were nominees of their Hindu undivided families"*.

CONCLUSION:

In conclusion it can be concluded that the Partnership Act itself appears not to have any restriction of a HUF being a Partner. Hence, the existence of a Partner that is a HUF or representative of the HUF itself does not invalidate the Partnership Agreement.

However, for the purposes of Income Tax, through judicial judgements it can be concluded that the Karta can be a partner in his representative capacity. But any remuneration or commission earned from the firm will be taxable in his individual hands. Any Interest paid the HUF, vide the Karta in his capacity as Partner, can still be allowed when there is a "real and sufficient" connection between the joint family funds and the Interest Earned.

The validity of the Partnership itself cannot be questioned merely because the Karta is a Partner (on behalf of the HUF).

Thank you.

Any thoughts or doubts? Let's Discuss

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FORTHCOMING AMENDMENTS IN GST RETURNS (1/2)

-CA. SPUDARJUNAN S

Recent notifications from CBIC dated 10th November 2020 tends to implement several amendments pertaining to returns to be filed by the registered persons. Being most of the tax-payers are choked with GST - annual returns, ITR filing, day to day business chores etc. this article summaries the amendments notified in a lucid way.

For better purpose of understanding, we have discussed the amendments one by one pertaining to each return – GSTR-1, GSTR-3B.

GSTR 3B – Introduction of quarterly returns (Optional Scheme) and special payment procedures w.e.f. 01-01-2021.

Amendment has been made in s 39 (1) & (7) of CGST Act, allowing the Government to notify certain class of registered persons to furnish the return quarterly (***Which is only an Optional Scheme***) and also prescribed the manner of payment for such quarterly filers. Such notified registered persons and manner prescribed for payment are being discussed as follows:

i. Notified Class of Registered Persons (84/2020-Central Tax)

Persons having an aggregate turnover of up to ₹.5 crore /- in the preceding financial year may opt for filing the quarterly returns instead of monthly returns.

Further, when the aggregate turnover exceeds ₹.5 crore in the present financial year where he had opted for quarterly filing, he would be treated as ineligible for exercising such option from the next quarter. (i.e. he may continue quarterly filing for the present quarter in which the turnover exceeds the threshold ₹.5 crore)

ii. Exercising the option for filing quarterly returns

- The registered person may opt for quarterly return in common portal. The period for exercising such option would be between the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised.
- For the initial stage following deeming option has been prescribed (i.e) unless contrary has been opted expressly in the common portal from 05th December 2020 to 31st January 2021, the option in column (3) of below table would automatically be deemed to be opted:

Sl. No (1)	Class of registered person (2)	Deemed Option (3)
1	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR1 on quarterly basis in the current financial year	Quarterly return
2	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR1 on monthly basis in the current financial year	Monthly return
3	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

iii. Prescribed manner for payment (85/2020-Central Tax)

Being the returns are filed on quarterly basis, the followings procedure has to be followed by the registered persons who opted for the same –

1. For the 1st month of the quarter ensure that balance in electronic cash ledger and electronic credit ledger put together are adequate for the tax liability for the said period.
2. For the 2nd month of the quarter ensure that balance in electronic cash ledger and electronic credit ledger put together are adequate for the tax liability for the cumulative periods i.e. 1st and 2nd month.
3. If the balances are not adequate as provided above and then, such registered person has to deposit in his electronic cash ledger (vide PMT-06) -

a. if he had opted for quarterly filing in preceding quarter - 35% of the tax liability paid through debiting electronic cash ledger in the return for the immediately preceding quarter.

b. If he had furnished monthly returns for the preceding period - 100% of the tax liability paid through debiting electronic cash ledger in the return for the immediately preceding month.

Note: Registered persons are not allowed to opt for this special procedure unless he had furnished his returns from the first day of the tax period in which he was registered till the last day of the tax period preceding the month from which the special procedure is being opted for.

iv. Due date for filing quarterly 3B (82/2020-Central Tax)

The due dates for the quarterly return filers have been categorised based on States as follows –

Sl. No (1)	Class of registered person (2)	Due Date (3)
1	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	22nd day of the month succeeding such quarter.
2	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	24th day of the month succeeding such quarter.

GSTR 1 – for registered persons who opted for filing quarterly GSTR-3B

Those registered persons who opted for quarterly filing of GSTR-3B as discussed above, may furnish the details of their outward supplies during the quarter as follows:

For 1st and 2nd month of the quarter, he may furnish the details of his outward supplies to registered persons in "Invoice Furnishing Facility" (herein referred as IFF) electronically in common portal.

Furnishing of details in IFF can be made from 1st day of the succeeding month to 13th of the said month. For instance, the details of January can be uploaded in IFF during the period 1st February to 13th February.

Such details can be upto a cumulative value of ₹.50 lakh in each of the months.

The details of outward supplies furnished using IFF for the first and second months of a quarter shall not be furnished I Form-GSTR-1 for the said quarter.

Conclusion

From the above discussions following could be summarized as follows:

The threshold limit to opt for quarterly filing of R-1 and 3B are different i.e. ₹1.5 crore for R1 and ₹5 crore for 3B. There is no amendment to such extent with regard to threshold for quarterly filing of R1. Therefore, a person with turnover of ₹3 crore can file 3B quarterly but not R1 as per the present amendment.

Even though 3B is being filed quarterly the registered person should ensure to maintain the adequate balance in electronic credit ledger and/or electronic cash ledger for the tax liability of concerned periods as discussed.

Furnishing IFF is in addition to the monthly GSTR-1 furnished by the registered person,

since the quarterly filing option amended in only for return under s 39 i.e. 3B where the statement of outward supplies GSTR-1 is filed under s 37 of CGST Act.

Moreover, only transactions with registered persons can be uploaded in IFF and not B2C.

And also, allowing to upload the details of outward supplies in IFF only from 1st day of succeeding month does not encourages the real time updation whereas details in Form GSTR-1 can be done in real time.

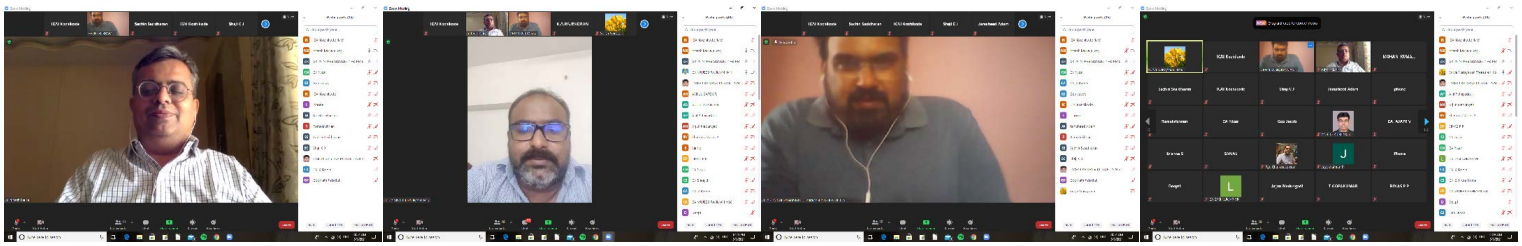
Government should clarify the gap between the quarterly filing options between R1 & 3B and also should clarify expressly that IFF is in addition to Form GSTR-1 for those taxpayers whose turnover are in between ₹1.5 crore to ₹5 crore i.e. eligible to file quarterly 3B and not to R1 and also to look upon the factor whether real time updation can be made in IFF.

Even though the amendment intends to ease the return filing cumbersome to small taxpayers the actual benefit of this scheme would pass on when the payment requirement also deferred as quarterly instead of monthly. At present most of the small taxpayers may not tend to opt for this new scheme as there is no material benefits being accrued to them.

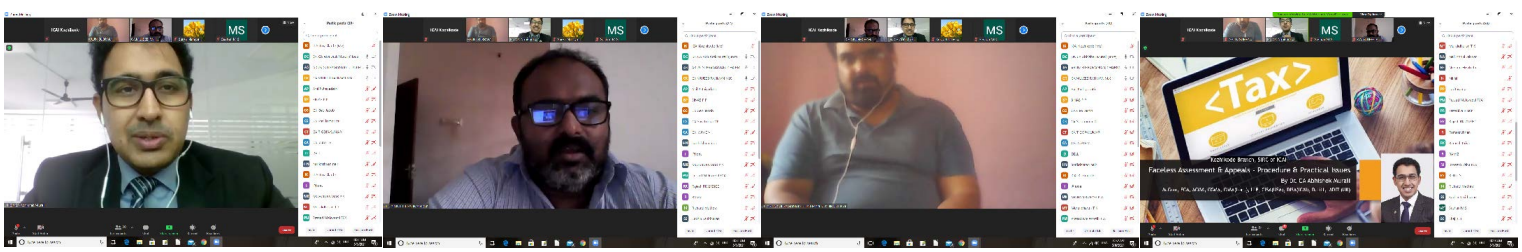
The discussions regarding GSTR-2B which is also being implemented w.e.f 01.01.2021 has been made in the other part of this article. To continue reading the same, kindly refer the following link -

For any clarification, suggestion/feedback in this regard, kindly get in touch at arjun@hiregange.com

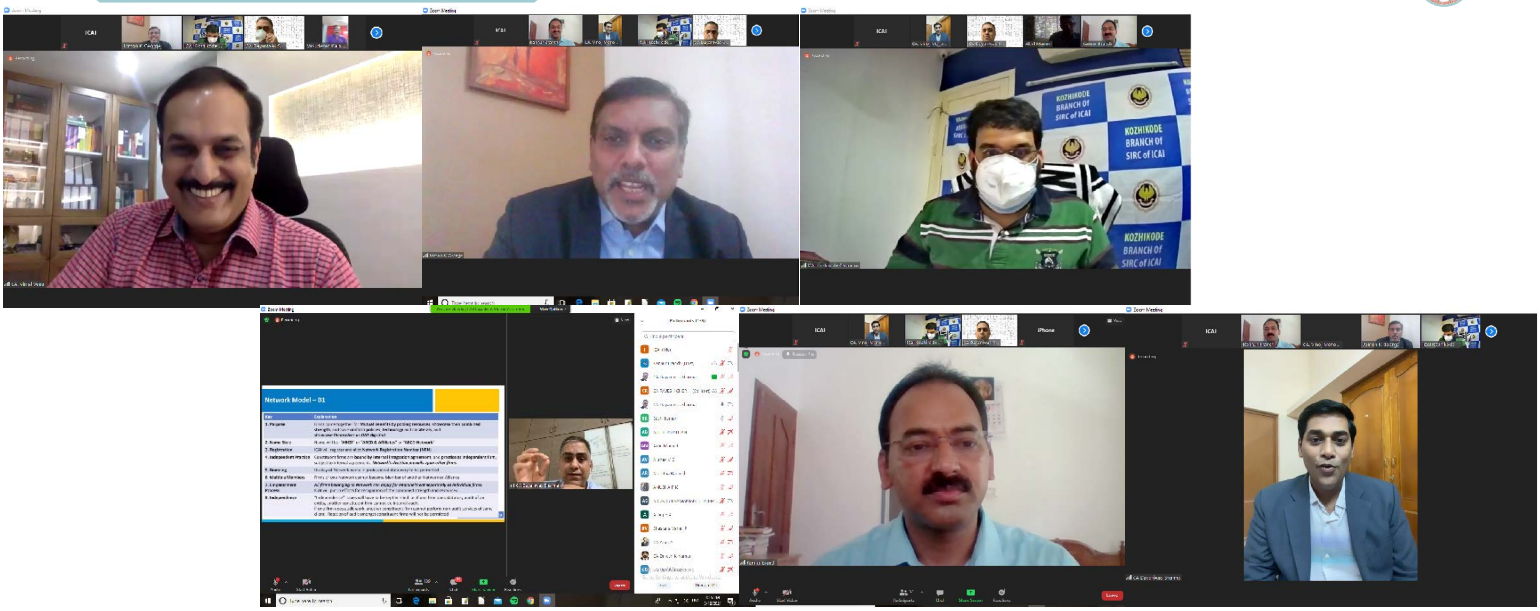
ACTIVITIES - APRIL, 2021



VCM on Work From Home and Effective Use Information Technology by CA's
Speaker - CA. Mitesh Katira , Mumbai. 06.05.2021

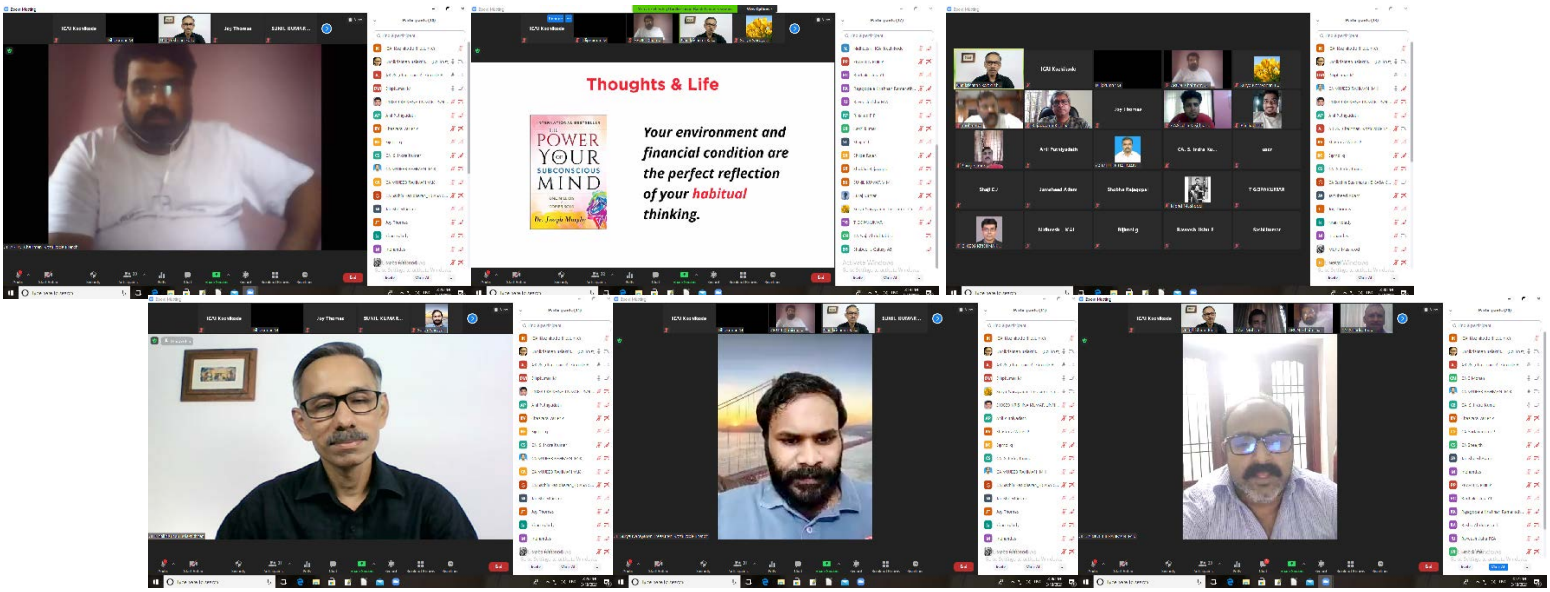


VCM on Faceless Assessment and Issues in Reassessment
Speaker - CA. Bhishek Murali, Member, SIRC. 08.05.2021

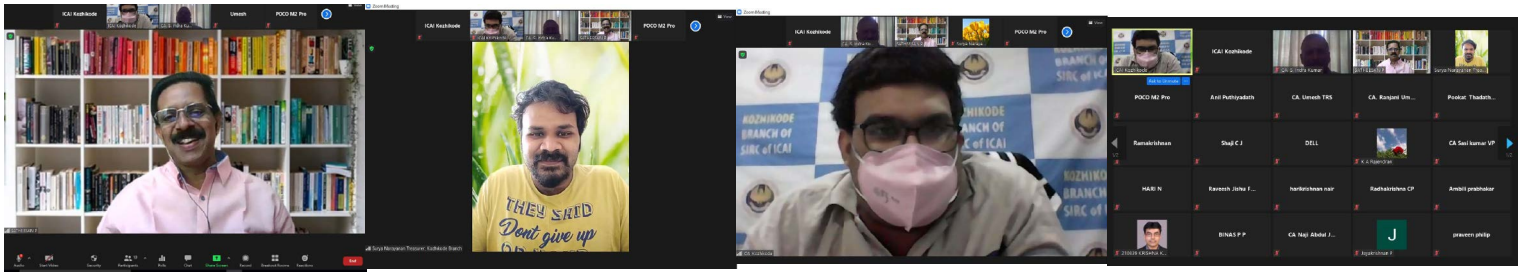


Emerging Professional Opportunities and New Networking Guidelines
Speaker - CA. Dayaniwas Sharma, Central Council Member. 12.05.2021

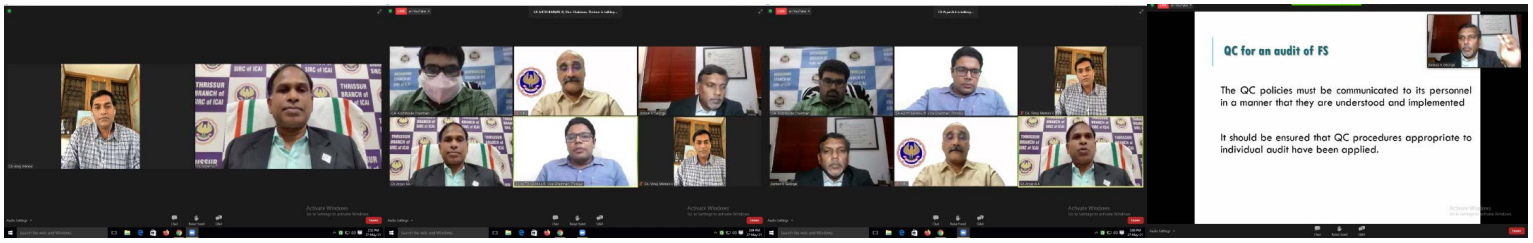
VCM on Trademark Compliances And Intellectual Property Rights Overview Speaker - Adv. Navaneeth P. , Calicut. 15.05.2021



Managing Work and Mental Health in Covid Day Speaker - CA. Unnikrishnan B., Calicut. 19.05.2021

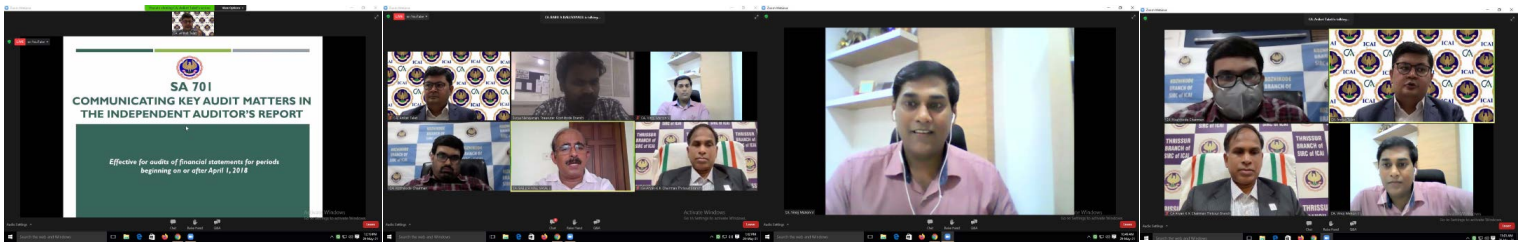


New Income Tax Return Forms Speaker : CA. Sathishan, Thrissur. 22.05.2021

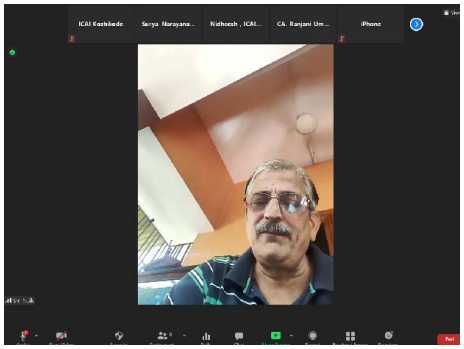


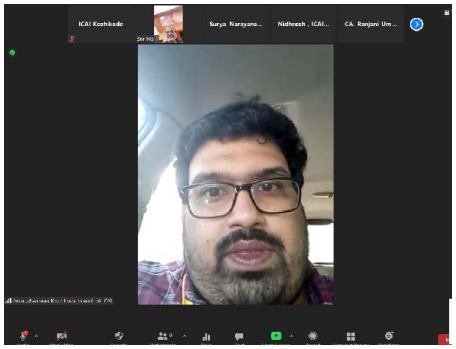
Joint VCM on Standards on Auditing SA 220,500,501,570, 580 (Kozhikode, Trichur and Palghat Branches)
Speaker - CA. Jomon K. George , Member SIRC. 27.05.2021

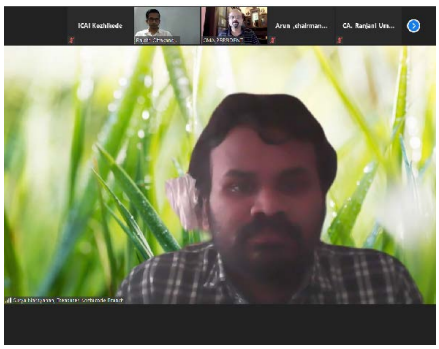
Joint VCM on Standards on Auditing SA 300, 315, 320, 330 (Kozhikode, Trichur and Palghat Branches)
Speaker - CA. Bhavani Balasubramaniam , Chennai. 28.05.2021

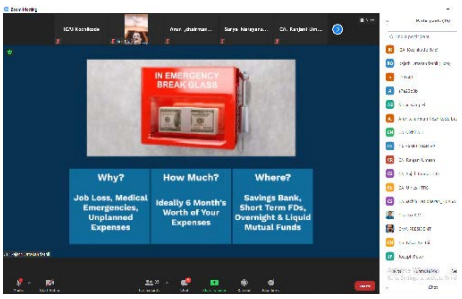


Joint VCM on Standards on Auditing 700,701,705 ,720 (Kozhikode, Trichur and Palghat Branches)
Speaker - CA. Aniket Sunil Talati, Central Council Member. 29.05.2021









Investor Awareness Programme (Kozhikode Branch of SIRC of ICAI in association with Calicut Management Association)
Speaker - Sri. Rajath O. , SEBI Registered Investment Advisor. 30.05.2021

Upcoming Programmes - June, 2021

June

03	3:00 PM to 5:00 PM	Topic - MCA Compliances Speaker - CA. Shwan Jeff Christopher, Ernakulam
07	3:00 PM to 5:00 PM	Jonit Seminar with Trichur and Palghat Topic - Foreign Contribution Regulation Act Speaker - CA. Gopalkrishna Raju, Member, SIRC
09	3:00 PM to 5:00 PM	Topic - GST Input Tax Issues , Practice Ahead, 1 and 3B Working Papers, E-invoicing Speaker s - CA. Rajesh Maddi , FCA, ACMA, CS CA. Spudarjunan S.
12	11:00 AM to 1:00 PM	Topic - RERA and Compliances Speaker - CA. Vinay Thygaraj, Bangalore
15	3:00 PM to 6:00 PM	Topic - Accounting Standards for SMEs Speaker - CA. Yagnesh Desai, Mumbai Topic - Pre-Pack Insolvency Resolution Process for SMEs Speaker - CA. Nainesh Sanghavi, Mumbai
19	10:00 AM to 12:30 PM	Topic - Role of independent directors and review of consultation paper on independent directors issued by SEBI. Speaker - CA. Sounder Rajan.SP Chennai
19 & 20		International Yoga Day - Online Yoga Session
23	3:00 PM to 5:00 PM	Topic – NRI Taxation Speaker – CA. Divakar Vijayasarathy
26		ICAI Kozhikode Branch formation Day 2021

Contributions to e-newsletter

Contributions in the form of articles, poems, jokes, travelogues etc. are invited from members for consideration in the monthly e-Newsletter. Interested members may email their contribution to *icaikoznewsletter@gmail.com* along with name, membership number and mobile number.