

# SBS | Wiki

monthly e-Journal

By

**SBS and Company LLP**  
**Chartered Accountants**



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## SERVICE TAX

### CO-OWNERS VS SMALL SERVICE PROVIDER EXEMPTION

Contributed by CA Sri Harsha

From the inception of the levy of service tax on 'Renting of Immovable Property Service', there was hue and cry from the trade. The trade is of the strong belief that there shall not be any service tax in the case of renting of immovable property service since there is no service element existing. However, the revenue was of the strong opinion that the activity of mere renting of immovable property is also a service and thus attracting service tax on the same. The fight started from the High Courts in light of various writs filed and reached the Apex Court and currently pending at the later for its judgment.

Leaving the taxability of the said service to the wisdom of the Apex Court, the trade is now facing another problem from the revenue pertaining to the claim of small service provider exemption notified vide Notification No 06/2005-ST dated 01.03.2005 (as amended from time to time) in relation to the renting of immovable property. This article aims at analysing the problem faced by the trade with respect to the exemption notification vis-à-vis renting of immovable property service.

It is very common in certain parts of the country that the immovable property is being purchased togetherly by immediate family members vide single sale deed or inherited by surviving family members from their ancestors vide a single document. Let us assume there was a family of three brothers who have purchased a property togetherly vide single sale deed. Later the said property was given on rent by three brothers to a single person by entering three different rental agreements individually.

As per the said agreement, each land lord (brother) is entitled for separate rental income amounting to the tune of Rs 30,000/- per month which is to be credited to the individual bank accounts after deduction of tax at source as per the provisions of the Income Tax Act, 1961.

Before discussing about the applicability of service tax on the said rental income, it is very important to discuss the benefit of exemption notification provided vide Notification No 6/2005-ST dated 01.03.2005 (in the earlier law) and Notification No 33/2012-ST dated 20.06.2012 (in the existing law). Both of the said notifications deal with the benefit of exempting small service providers from the ambit of service tax. There shall be no applicability of service tax on the first Rs

10,00,000/- if the previous financial year's taxable services turnover is less than Rs 10,00,000/- subject to certain conditions in the notifications, which shall be dealt in the later part of this article.

Applying such benefit to the instant case, there shall be no service tax impact on the said rental income since the income pertaining to each land lord (brother) is Rs. 3,60,000/- (Rs 30,000/-\*12 months) which is less than Rs 10,00,000/-.

**However, the revenue has a problem here. They were of the opinion that the benefit of the exemption notification shall not be applied individually and has to be applied for all the three brother put together, since the three brother have formed an 'Association of Persons' since the property is purchased vide single sale/title deed. That is to say, if the entire rental incomes of all the brothers is considered, the rental income shall be Rs 10,80,000/- (Rs 30,000\*12\*3) which would cross Rs 10,00,000/- and hence service tax is applicable.**

From the above it is clear that if the rental incomes are to be considered individually, then the benefit of exemption is applicable and if the same are considered jointly the benefit of exemption notification is not applicable. **Hence, the question whether such land lord has to be treated as 'individuals' or 'Association of Persons' is to be answered for claiming the benefit of the exemption notification.**

The revenue's claim is that since the property has been purchased jointly, the three brothers have to be treated jointly and hence the service tax has to be charged in the capacity of 'Association of Persons'. It is very important to note that with effect from 01.07.2012, the phrase 'person' has been defined in the Finance Act, 1994 to include 'Association of Persons'. However, the claim of the land lord is they never had an intention to form an association of persons to rent out the property. They have entered the rental agreements individually, the rents are collected separately by three different cheques and the tax is deducted in the capacity of the 'individual' by the tenants and hence there cannot be any tax in the capacity of association of persons which is claimed by the revenue.

In my view, there cannot be tax in the capacity of the 'Association of Persons' as claimed by the revenue, since the reason laid by the revenue is inappropriate. The Apex Court in the case of Ramanlal Bhailal Patel vs State of Gujarat, Appeal No (Civil) 4420 of 2004 has held that just because a property is purchased vide single sale deed by two persons, there cannot be called that an 'Association of Persons' coming into existence. There should be any intention between the parties that they have come together to achieve a common goal/purpose to call them as an 'Association of Persons' which is absent in the instant facts of the case. Hence, the claim of the revenue shall not be held good by the higher courts since they have failed to prove that the

parties (brothers) have an intention to achieve a common goal/purpose to call them as an 'Association of Persons'.

Hence, the benefit of exemption can be claimed individually even if the properties are held by virtue of single title/sale deed. The Honorable CESTAT, Ahmedabad in a bunch of cases held that the benefit of exemption notification shall be available to each co-owner separately and there cannot be any assessment under 'Association of Persons'. However, the ultimate judgment shall be delivered by the apex court since the revenue shall be determined to take this matter to such a forum in light of the stakes involved.

*(This article is contributed by Sri Harsha, Partner at SBS and Company LLP, Chartered Accountants. The author can be reached at [harsha@sbsandco.com](mailto:harsha@sbsandco.com))*

## COMPANIES ACT:

**LIMITED LIABILITY PARTNERSHIP - AN OPTION OR THE WAY AHEAD**

Contributed by CS Phanindra D.V.K. & CA Suresh Babu S

By this time, the Practicing Professionals [CA, CS, CWA] would have got a glimpse of the documentation involved for complying with the provisions of the Companies Act, 2013, and clients arguing and wondering why? do I have to do all these filings and documentation, on the pretext that, mine is a very small business.

The real documentation and reporting lies ahead at the time of preparation of the Accounts, Board's Report and Annual Return for the FY 2014 – 2015, and only then the real banging of heads will begin. The working style of copy and paste of a borrowed format is long gone, as reporting will be company specific.

With the above in mind, it has become the need of the hour for the professionals and business houses to suitably identify and explore other business models, with less compliances, so as to enable them to concentrate on carrying on the business, with minimal compliances.

This is where, the till now, not so popular concept of Limited Liability Partnership [LLP] comes into picture as an alternative.

**Points in favour of an LLP are:**

- ➔ Limited Liability to the Partners, similar to Limited Liability of members of a Company.
- ➔ Minimal intervention from Government;
- ➔ Minimal cost [Statutory Fees], in comparison with Companies;
- ➔ Comparatively less Compliances *[please refer to the October, 2014 issue of SBS Wiki, for list of compliances as applicable to a LLP]*;
- ➔ Relaxed requirement as to holding of Meetings under the Act, However the procedure as to calling and conducting of meeting are governed by the terms specifically spelled out in the LLP Agreement;
- ➔ Relaxed/minimal requirement of maintenance of Large statutory records;
- ➔ No specific regulation/restriction as to related party transactions [as of now];
- ➔ Relaxed requirement as to Audit of financials. Audit not required for LLPs having Capital contribution upto Rs.25 Lakhs and Turnover of upto Rs.40 Lakhs.
- ➔ Comparatively less financial disclosure norms.

With the above advantages, conversion of a Private Company or an unlisted Public Company is only the probable option available to reduce the burden as to the compliances.

**An effort has been made to list out the steps involved in the conversion of a Company to LLP:****Governing provisions:**

Conversion of a Private Company into LLP is governed by the provisions of **Section 56** of the LLP Act, 2008, read with **Schedule 3** to the Act, and applicable rules.

Conversion of a Private Company into LLP is governed by the provisions of **Section 57** of the LLP Act, 2008, read with **Schedule 4** to the Act, and applicable rules.

**Important aspects for conversion (pre-requisites) and upon conversion:**

- ➔ There should not any charge created/subsisting on the property of the Company.
- ➔ All the Shareholders of the Company shall become the partners of the LLP and nobody else.
- ➔ On conversion, all the tangible (movable and immovable) property and the intangible property, all assets, interest, rights, privileges, liabilities, obligations of the firm/Company shall stand transferred to, and vest in, the LLP, without further assurances, act or deed. Necessary steps are to be taken for intimation of the registration authorities as to the conversion for effecting the change in their record.
- ➔ Further, the Company after being converted in to LLP, shall stand dissolved.
- ➔ Any court proceedings for and on behalf of the Company or any conviction, ruling judgment relating to the Company shall be enforceable on the LLP, upon conversion.
- ➔ Any and all existing contracts, agreements, bonds in the name of the company, shall stand transferred to the LLP, including permits, licenses, if any, subject to the provisions of the respect enactment under which the permit, license were issued
- ➔ Every employee of the Company shall continue to be the employee of the LLP, after its conversion.
- ➔ For a period of Twelve (12) months after the date of conversion, every official correspondence of the LLP shall have to invariable state that (a) it was converted from a Company to LLP and (b) the name and registration number of the Company from which it was converted.

Before seeing the procedure for conversion, let us also have a peek in to RBI and Income Tax point of view:

**RBI PERSPECTIVE:**

FDI in LLP is allowed in such sectors/activities, where 100% FDI is allowed under automatic route, without any FDI-linked performance related conditions. Even such entry is subject to prior Government / FIPB approval.

*FDI is not allowed in:*

- (a) Sectors with less than 100 % FDI under automatic route,
- (b) Sectors with Approval route, activities such as Agricultural/plantation and Print media and Sectors in which FDI is prohibited.

#### **Prior permission for Conversion:**

Conversion of a company with FDI, into an LLP, will be allowed only with the prior approval of FIPB/Government, and upon fulfilment of stipulations as laid under FEMA.

#### **Restriction as ECB:**

LLPs shall not be permitted to avail External Commercial Borrowings (ECBs).

#### **INCOME TAX:**

##### **Capital Gains on conversion of Company into LLP:**

The Finance Bill 2010-11 has proposed to insert a new clause (xiiib) under Section 47 of the Income Tax Act, 1961 whereby any transaction concerning transfer of a capital asset or intangible asset by a Private Company or unlisted Public Company to a Limited Liability Partnership as a result of conversion of the company into a Limited Liability Partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 would be **exempted from the provision of Capital Gain Tax, only if the following conditions are satisfied:**

1. All the assets and liabilities of the Company immediately before the conversion shall become the assets and liabilities of the limited liability partnership;
2. All the shareholders of the Company immediately before the conversion shall become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in LLP should remain in the same proportion as their shareholding in the company on the date of conversion;
3. The shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;
4. The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than fifty per cent at any time during the period of five years from the date of conversion;
5. **The total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and**



6. No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.
7. However in case of non-compliance of any of the conditions provided as aforesaid, the amount of profits or gains arising from the transfer of such capital asset or intangible asset not charged under section 45 by virtue of conditions laid down in the said provision shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership for the previous year in which the requirements of the said proviso are not complied with.”
8. Where a private company or unlisted public company is converted into limited liability partnership in any previous year, the MAT credit which was available to the company shall lapse.

#### **The steps for conversion:**

1. To decide upon as who shall be Designated Partners among the Partners. One of them should be a Resident Indian;
2. Convene a Board Meeting and pass a Board resolution for seeking name availability, and making an application to the Registrar of Companies/LLP, for availability of name of the LLP
3. Convening of EGM for obtaining the approval of the members for the proposed conversion of the Company to LLP.
4. Drafting of LLP agreement.
5. Sign various documents to be filed with the Registrar of Companies/LLP, electronically, and payment of requisite fee to Ministry of Corporate Affairs.
6. Scrutiny of documents by the Registrar of Companies/LLP [ROC], and Receipt of Certificate of Registration/Incorporation from ROC.
7. Intimation to ROC about the conversion of the Company to LLP, for dissolution of the Company.
8. Execution of the LLP agreement on the date of registration of the LLP, payment of stamp duty on the agreement, and filing of the agreement with Registrar of Companies/LLP.
9. Obtaining registrations, as applicable, depending upon the activities of the company.

#### **STEPS FOR CONVERSION IN DETAIL:**

##### **1. Deciding upon the Designated Partners:**

Firstly, it is to be decided, as to who will be Designated Partners of the LLP after its conversion. The shareholders can decide up on as to whom among them shall be Designated partners. Further the Directors who may or may not be the Shareholders of the Company, may also be appointed as Designated partners, if the shareholders desire so.

## **2. Name Approval of the LLP:**

For name availability, an application in LLP Form-1, is required to be filed along with the Resolution of the Board of Directors for proposed conversion of the company to LLP, with the Registrar of Companies/LLP (ROC/LLP) online.

The format in which names allotted are:

Existing Company name: **XYZ SOFTWARE TECHNOLOGIES PRIVATE LIMITED**

LLP Name: **XYZ SOFTWARE TECHNOLOGIES LLP**

**(or)**

**XYZ SOFTWARE TECHNOLOGIES LIMITED LIABILITY PARTNERSHIP**

The ROC/LLP scrutinizes the application filed and sends the approval or objections to the applicant through e-mail.

## **3. Convening of EGM:**

Consequent upon receipt of the LLP name, an Extra-ordinary General Meeting of the members of the Company is required to be convened for obtaining the approval of the members for the proposed conversion.

Resolutions are required to be passed and filed with ROC in **Form MGT-14**.

## **4. Drafting of the LLP Agreement:**

After the approval of name, we need to finalize the LLP agreement.

All the points which the parties intend to have in their LLP agreement shall be expressly included in the agreement, as the same will be replacing the MOA/AOA of the Company upon conversion.

## **5. Documents required for Conversion:**

The under mentioned documents are required to be filed with ROC for conversion of Company to LLP:

**Subscribers list along with Consent** - The Subscription should be signed by the proposed Partners/Designated Partners and all the basic details as to name, father's name, Address, Date of Birth and Occupation, shall be written in their own handwriting in the presence of a

witness. The subscribers sheet shall also contain the statement as to their consent to act as partner/Designated partner of the LLP.

**Proof of Registered office** - A proof as to the proposed registered office address of the LLP shall be attached to the incorporation documents. A no-Objection shall be obtained from the Owner of the property and attached for use of the premises as the registered office of the LLP.

**Details of Interests** – The details as to the other entities i.e., Companies/LLP/Firms etc., in which the proposed Partners/Designated Partners needs to be obtained and attached to the incorporation document.

**LLP Form 2 – Incorporation document** – The LLP Form 2 containing all the details as to the partner/designated partner, their contribution, address of the registered office, the documents detailed above, is to be prepared, and filed with the Registrar of Companies/LLP, and pay the requisite fees depending upon the contribution of the LLP.

It is to be noted that the paid-up share capital in the Company shall be the contribution of the LLP, and the nominal value of the shares held by the individual shareholders shall be their contribution to the LLP.

**LLP Form 18 - Application and Statement for conversion of a private company / unlisted public company into LLP** – This application consists of all the details as to the conversion, pending cases, proceedings, etc.,. To this form, the following documents are to be attached.

- a. **Statement from Shareholders- to be obtained individually from all the Shareholders as below:**
  - (i) that all the requirements of the Limited Liability Partnership Act, 2008 and the rules made thereunder have been complied with, in respect of conversion of private company/ unlisted public company into limited liability partnership and matters precedent and incidental thereto;
  - (ii) that all the partners of the limited liability partnership comprise all the shareholders of the company and no one else;
  - (iii) that the applicable clearances, approvals or permissions for conversion of the company into a limited liability partnership from any authority/ authorities have been obtained.
  - (iv) that the consent of all the secured creditors for conversion of the company into limited liability partnership has been obtained;

(v) that all the documents due for filing including latest balance sheet and annual return have been filed under the provision of the Companies Act, 1956;

(vi) that to the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

- b. **Statement of Assets and Liabilities of the company** duly certified as true and correct by the auditor, not older than 15 days from the submission of the statement.
- c. Copy of the acknowledgement of the Latest Income Tax Return
- d. Consent from any secured creditors for the proposed conversion.
- e. Any such other document as required and appropriate.

#### **6. Scrutiny of the documents:**

After scrutinizing the documents and after being satisfied himself, the Registrar of Companies/LLP, issues a Certificate of Registration/Incorporation, after which the LLP legally comes into existence.

#### **7. Intimation to ROC about the conversion of Company to LLP:**

Subsequent upon the registration/conversion of the Company into LLP, Form No.14, is to be filed with the Registrar of Companies within 15 days of the registration, intimating the ROC about the conversion, so as to enable the ROC for dissolving the Company consequent upon conversion to LLP.

#### **8. Execution of the LLP agreement, payment of stamp duty on the agreement, and filing of the agreement with Registrar of Companies/LLP:**

On receipt of the LLP registration Certificate, the partners shall enter in to the LLP agreement, pay necessary stamp duty on the agreement, and electronically, file the agreement with the Registrar of Companies/LLP in LLP Form-3.

#### **Finally**

9. Applying of PAN, opening of bank account, obtaining necessary registrations/getting necessary changes in the registrations and proceeding with the business activities.

#### **Conclusion**

With the increased compliances and the onus of timely guidance to clients, being rested on us, LLP is definitely an option for small business and definitely the way ahead.

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*(This article is contributed by Mr. Phanindra D.V.K., a practicing Company Secretary operating from Hyderabad and Mr. Suresh Babu, Partner at SBS and Company LLP, Chartered Accountants. The authors can be reached at [phanindra@sbsandco.com](mailto:phanindra@sbsandco.com))*

## TECHNICAL MATTERS:

**WHAT'S NEW IN MS-EXCEL 2013???**

Contributed by CA Saran Kumar U

As we all know, MS Excel is one of the extraordinary spreadsheet, which can be useful for calculations, analysis and formatting. Microsoft is trying their level best to add more wonderful features on each release of new version.

There was a drastic change when Microsoft released Version 2007 from 2003. One of the most important changes from Version 2003 to Version 2007 has to do with the amount of data user can store in any one worksheet. Excel 2003 is confined to only 65,536 ( $2^{16}$ ) Rows and 256 ( $2^8$ ) Columns. Excel 2007 lifts this restriction, allowing 10,48,576 ( $2^{20}$ ) Rows and 16,384 ( $2^{14}$ ) Columns.

Along with the huge data storage support, introduction of new functions, tables, improvement in Conditional Formatting, Filtering and Sorting by Colour, Formula Nesting limitation have also been introduced with Version 2007. Than anything discussed above, User Interface is one of the greatest advantage with Excel 2007 than Excel 2003.

Microsoft is continuing the same user interface from Excel 2007 to Excel 2010 with additional improved features which includes high performance in computing, improved charts, Sparklines, Slicers etc.

Microsoft Excel version 2013 already is already in market. The following is the summary of what's new in Excel 2013 versus Excel 2010.

1. **One Workbook – One Window:**

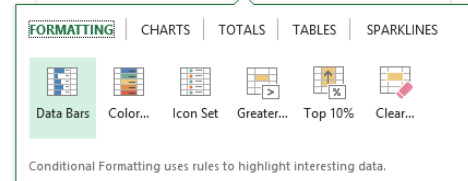
Till the Version 2010, Excel supports multiple document interface, which means under one window, there can be lot of workbooks. Excel no longer supports the option to display multiple workbooks in a single window. In Excel 2013, each workbook has its own top level window and ribbon menu.



## 2. Quick Analysis:

Use the Quick Analysis tool to Quickly and easily analyse data with some of Excel's most useful tools, such as Formatting, Charts, Totals, Tables, Sparklines. User can have preview before apply any of the tools and make his choice stick in just one click.

Other Expenses	Jan	Feb	Mar	Total
Rent	1,500	1,000	1,800	4,300
Stationery	900	1,200	600	2,700
Printing	2,500	2,000	3,000	7,500
<b>Total</b>	<b>4,900</b>	<b>4,200</b>	<b>5,400</b>	<b>14,500</b>



Once the user selects the data, an icon appears on the bottom corner of the right side. Once clicks, user can find the Quick Analysis tool bar.

Shortcut for the Quick Analysis is **Ctrl+Q**

## 3. Flash Fill:

One of the diamond in Excel 2013 version is Flash Fill option. Excel automatically fills the values based on the sample user provides in the first cell. Flash Fill is an amazing tools which helps user to Concatenate, Merge, Split text in Cells without using any single formula.

In the Below Example, the First Name should appear in the B Column. Instead using the combination of text formula, we can split the first name by simply using the Flash Fill option.

A	B
<b>Full Name</b>	<b>First Name</b>
Saran Kumar	Saran
Suresh Babu	Suresh
Harsha Vardhan	Harsha
Phanindra DVK	Phanindra
Murali Krishna	Murali
Kiran Kumar	Kiran
Sreehari Reddy	Sreehari

*The navigation to the Flash Fill is below:*

Ribbon Menu -> Home Tab -> Editing Group -> Fill Command Dropdown -> Flash Fill (Or)

Ribbon Menu -> Data Tab -> Data Tools Group -> Flash Fill

Shortcut for the Quick Analysis is **Ctrl+E**

**4. Chart Recommendations:**

Excel 2013 recommends user, the most suitable chart based on the data. User can simply peek into different charts recommended by Excel to selects the best.



Once user selects the data in worksheet and clicks the recommended charts command to get a customized set of charts that Excel think will fit best with the data.

*The navigation to the Flash Fill is below:*

Ribbon Menu -> Insert Tab -> Charts Group -> Recommended Charts

**5. New Excel Functions:**

Excel 2013 came up with 50 new Functions. More than half of the new functions belongs to Math & trigonometry, and Engineering Functions. There are couple of other new functions in Date and Time, Financial, Information, Logical, Lookup and reference, Statistical, Text and Web function categories.

The following are the new Functions introduced in Excel 2013 along with the Category:

Category	Function name	Category	Function name	Category	Function name
☑ Date and time	DAYS function	☑ Financial	PDURATION function	☑ Lookup and reference	FORMULATEXT function
	ISOWEekNUM function		RRI function	☑ Math and trigonometry	ACOT function
☑ Engineering	BITAND function	☑ Information	ISFORMULA function		ACOTH function
	BITLSHIFT function		SHEET function		ARABIC function
	BITOR function		SHEETs function		BASE function
	BITRSHIFT function	☑ Statistical	BINOM.DIST.RANGE function		CEILING.MATH function
	BITXOR function		GAMMA function		COMBINA function
	IMCOSH function		GAUSS function		COT function
	IMCOT function		PERMUTATIONA function		COTH function
	IMCSC function		PHI function		CSC function
	IMCSCH function		SKEW.P function		CSCH function
	IMSEC function	☑ Text	NUMBERVALUE function		DECIMAL function
	IMSECH function		UNICHAR function		FLOOR.MATH function
	IMSINH function	☑ Web	UNICODE function		MUNIT function
	IMTAN function		ENCODEURL function		SEC function
☑ Logical	IFNA function		FILTERXML function		SECH function
	XOR function		WEBSERVICE function		

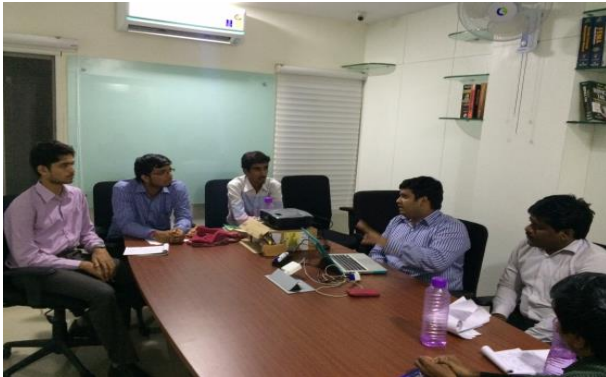
*(This article is contributed by Saran Kumar U, Partner at SBS and Company LLP, Chartered Accountants. The author can be reached at [saran@sbsandco.com](mailto:saran@sbsandco.com))*

**TECHNICAL SESSIONS:**

S No.	Event	Date	Speaker	Venue
1	Handling Notices and Appeals in Service Tax	07-Nov-2014	CA Sri Harsha	SBS – Hyd
2	Issues in VAT Input	14-Nov-2014	CA Ram Kumar D S	SBS – Hyd
3	Limited Liability Partnership – An Overview	21-Nov-2014	CS Phanindra D V K	SBS – Hyd
4	An Overview of Information Technology Act	28-Nov-2014	CA Saran Kumar U	SBS – Hyd
5	Tax Implications – Mining Industry	05-Dec-2014	CA Bhyrav	SBS – Hyd

**Note:**

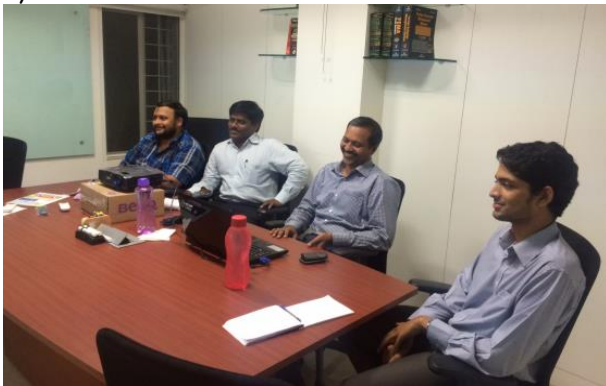
The timings for the above events shall be from 17:30 hrs to 19:30 hrs. We request the recipients of “SBS Wiki” who are interested to attend the above events to send confirmation of your participation 2 days in advance to make appropriate arrangements and sharing of the relevant material, if any.

**Events Gallery:**

*Technical session on "Service Tax Return - Compliance" by CA Manindhar*



*Technical session on "Loans and Investments under Companies Act 2013" by CS Phanindra*



*Technical session on "A Peek into ODI under FEMA" by CA Murali Krishna*



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