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# **Pune Branch of WIRC of ICAI**

**NEWSLETTER: AUGUST 2025** 









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#### **Our Torch Bearer**



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#### **Pune Branch Chairman's Communique**



CA. Sachin Miniyar

Chairman

Pune Branch of WIRC of ICAI

Dear Professional Colleagues,

Greetings from the Pune Branch of WIRC of ICAI!

On the occasion of our 79th Independence Day, I on behalf of the entire management committee of Pune branch wish everyone a "Happy Independence Day". Let us pledge to uphold the values of integrity, independence, and excellence – the hallmarks of our profession. Together, let us work towards strengthening our community and contributing to the growth of our profession and our nation.

In the month of August, a period that resonates deeply with the spirit of independence and national pride, let us take a moment to reflect on our role as professionals in nation-building. Chartered Accountants have always been at the forefront of ensuring transparency, accountability, and trust in the economic framework, and our contributions continue to be vital in these challenging times.

The month gone by was filled with enriching professional activities, seminars and knowledge sessions, all aimed at strengthening our professional competencies. I take this opportunity to thank all the resource persons, committee members, and volunteers whose active participation and dedication made these initiatives successful.

I encourage members to actively participate in all the programs / seminars organized by the branch for continuous learning and networking. I look forward to your continued support and active involvement in the Branch's activities.

Warm regards, **CA. Sachin Miniyar**Chairman, Pune Branch of WIRC of ICAI



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#### **Editorial Communique**



Chief Editor & MCM
Pune Branch of WIRC of ICAI

#### Dear Members,

As we step into August, the peak of the tax return filing season, I extend my best wishes to each one of you. This period undoubtedly brings intense work pressure, tight deadlines, and client expectations.

However, I firmly believe that by embracing automation tools, digital trackers, and intelligent workflows, we can transform this season into a more productive and stress-free experience.

Technology is no longer an option but a necessity for maintaining **work-life balance** and ensuring **accuracy and compliance**. I urge members to leverage available resources, delegate smartly, and most importantly, take care of their health during this high-demand period.

Wishing you a smooth, successful, and fulfilling tax season ahead!

Warm regards,

CA. Sarika Dindokar

Chief Editor & Managing Committee Member

Pune Branch of WIRC of ICAI





# COVER STORY & EXPERT VIEWS



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# **Decoding the US Sales Tax Web**Why Indian Businesses Must Pay Attention

When an Indian firm closed a million-dollar deal with a customer in New York, they celebrated the win, only to receive a penalty notice a year later for failing to collect state Sales Tax. The reason is not the size of the deal but the customer's location, which had quietly triggered a compliance obligation the company never anticipated. And this is not an isolated case. While Indian businesses often express frustration with GST, managing the US sales tax system, with its patchwork of rules, makes India's centralized model seem relatively straightforward. In a world where US-India bilateral trade has skyrocketed from \$20 billion in 2000 to over \$118 billion in 2024, these details can create chaos.



Today, it is not just large corporations crossing borders anymore, but small and mid-sized Indian exporters, SaaS providers, and digital entrepreneurs that are increasingly tapping into the US market. Many Indian businesses underestimate the US sales tax system—mainly because it differs significantly from India's GST.

This lack of understanding often leads to unintentional compliance failures, which can be costly and detrimental. Several Indian companies have already faced unexpected notices, penalties, or audits simply because they overlooked key US tax requirements. This makes it imperative to decode the US Sales Tax system to remain not just compliant but competitive.

This article marks the kickoff of a multi-part series breaking down the US Sales Tax regime for Indian professionals and business leaders. Each upcoming edition will unpack a new layer, from economic nexus and jurisdictional traps to platform responsibilities, product-level taxability, and tech-driven compliance strategies. Our aim is two-fold: in corporate accounting and tax functions, we aim to help you manage US tax complexity before it hinders your global growth plans. For the practicing CAs, we wish to point out business opportunities stemming from these complexities.



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#### The tax compliance grind

Indirect taxes—such as GST, VAT, and Sales Tax—are vital revenue tools globally. However, unlike value-added models with input credit mechanisms, the US still enforces Sales Tax, state by state. Over 12,000 sales and use tax jurisdictions operate independently, ranging from states to cities and counties. There is no GST-like unified portal in the US—no single login or centralized authority to manage it all. Each state sets up its own registration process and filing system. Businesses have different return periods—monthly, quarterly, or annually—with varying definitions of products or services that are subject to tax or exemption.



And that's just the start. Taxability can vary by block in the US—a ZIP code won't suffice. That means two customers living next door to each other could end up paying different taxes on the same item, ordered at the same time, from the same seller, for the same price, and delivered in the same way. The taxability rules themselves can be extremely complex, to begin with. For instance, in New York, a bagel is tax-free if sold whole but taxable if sliced—a minute distinction with real financial consequences if misclassified. In fact, even without selling anything in a state, a business can unwittingly invite registration and filing obligations just for attending a conference or hiring a contract marketing agency to scout for opportunities in that state! Awareness of all of this is extremely low even in the US, keeping track of it, especially here in India is next to impossible. As if all this were not enough fun, the jurisdictions treat indirect taxes as 'good tax.' In practical terms, it means that the governments can change them at will without unduly angering taxpayers (read 'voters') and still immediately affect the jurisdictions' cash flow as needed.

And they do, often more than tens of thousands of times annually. During the 2020 COVID year, there were more than 40,000 rate and taxability updates in the U.S. and Canada. For example, the State of Ohio decided to tax in-restaurant dining but not take-aways to encourage physical distancing during COVID. Needless to say, these changes are often temporary and time-bound. That means another set of changes is required when things return to their original state.



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Even digital service providers do not have it easy, and complexities in their taxation can trip up vendors, many of them from India. For example, one cloud software sale to a California business could create obligations completely unknown to the seller. Over 20 US states have already introduced specific tax rules for digital goods and IT services. For instance, Maryland now imposes a 3% tax on software publishing, cloud storage, and IT consulting—core areas for Indian firms. Such comprehensive and frequent changes not only increase complexity but also pricing and profitability. Worse yet, they tremendously increase the cost of non-compliance, even inadvertent ones.

#### Tax compliance expectations are rising

Authorities in the US are becoming increasingly vigilant about foreign businesses meeting local compliance standards, particularly in areas such as taxation, data protection, and trade regulations. Aided by Al-powered automated tools and data-tracking, they can now almost instantaneously detect businesses that have not registered, filed, collected the pertinent tax, and remitted it to the jurisdictions, which is another challenge for Indian businesses due to the foreign exchange transactions involved. Many states are also matching data from online marketplaces and shipping records to identify gaps—and they are doing so more quickly.

What does this mean for Indian businesses? Simply put, even a minor error, such as a missed return or incorrect tax rate, can trigger penalties or audits, especially if it occurs more than once. Being flagged for repeated non-compliance or ending up on a state's internal watchlist can seriously damage a company's credibility and lead to blacklisting in certain cases.



It can affect future partnerships, funding prospects, or even platform access. That is why US Sales Tax awareness and working with the right tax technology partners is a primary need now. They help configure systems correctly, monitor ongoing changes, and ensure filings are accurate across jurisdictions. For Indian exporters, this proactive support can be the difference between quietly scaling and unintentionally stalling in a key market.



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#### Automation becoming a line of defense

Given the speed and scale of change (remember 40,000+ changes annually?), manual compliance is simply not sustainable. Automation is becoming a compass in this tax maze. Automated tax software integrates directly with ERPs and e-commerce tools. It tracks jurisdiction-specific laws in real-time, applies the correct tax rate per transaction based on product type and location (down to each of the 150 Million US addresses), and adjusts instantly to near-constant changes in rules, regulations, and rates. Moreover, the right automation, applied early, eliminates reactive compliance and builds a scalable foundation for cross-border growth. Implementing these technologies at the right time with the right partners can help resolve tax compliance nuances.

Many businesses still believe developed markets have simplified tax systems. Unlike India's GST, with its centralized portal and standardized filing, the US sales tax system is inconsistent and often unpredictable. Indian exporters can no longer afford to treat US sales tax as an afterthought. But we've only scratched the surface. In our next edition, we'll unpack the economic nexus—the most misunderstood rule in cross-border tax—and explore why even attending a conference in a state might be enough to land your business on a state's radar. The difficulty faced by businesses in understanding this complexity, let alone dealing with it, is facing increasing headwinds of compliance enforcement actions driven by data ubiquity and analytical ease... and that's a perfect storm we are heading into!

US TAX SYSTEM — SIMPLIFIED OVERVIEW







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### **Taxability Of Ai Subscriptions**

Do the old judicial precedents on subscription access still hold good?

The rapid evolution of technology, particularly in Artificial Intelligence (AI), has transformed how individuals and organizations perform tasks. A growing number of tech companies and startups are offering AI-based services designed to deliver fast, efficient, and accurate solutions. These services span a wide range, including coding, creating presentations, drafting applications, preparing resumes, converting video to text, media editing, sound design, formatting workbooks, providing factual information, offering financial advisory services, and analyzing diverse data such as investment portfolios and health reports. While these AI tools are accessible with a subscription fee and a click of a button, their use raises significant tax implications in India, particularly concerning withholding tax under Section 195 of the Income Tax Act, 1961, and Form 15CA/CB compliance, especially when payments are made to foreign companies.

The age-old principle of "garbage in, garbage out" remains relevant, as AI tools rely heavily on logical and accurate inputs to produce reliable outputs. However, the sophistication of modern AI models, trained by expert algorithm testers and machine learning techniques using user data, distinguishes them from traditional software.



This article examines the taxability of payments for Al-based subscriptions in India, analyzing whether they qualify as Fees for Technical Services (FTS) or Royalties under the Income Tax Act and Double Taxation Avoidance Agreements (DTAAs). It also explores recent judicial precedents and their relevance to the evolving nature of Al tools.



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#### Taxability of Al Subscriptions: FTS and Royalty Considerations

One might argue that payments for AI subscriptions are merely for access to a platform and, thus, should not be taxed as FTS, as they lack human intervention and do not "make available" or transfer technical skills, knowledge, or expertise to the end user. Similarly, these payments may not qualify as royalties, as they involve the use of a copyrighted article rather than the transfer of copyright itself. These positions find support in judicial precedents, notably:

## Commissioner of Income Tax vs. Amazon Web Services, Inc. (Delhi High Court, May 29, 2025)

Facts: The Revenue challenged an Income Tax Appellate Tribunal (ITAT) ruling that payments to Amazon Web Services, Inc. (AWS), a US-based company, for cloud computing services were not taxable in India. The Assessing Officer (AO) argued that these payments constituted royalties or FTS/Fees for Included Services (FIS) under the Income Tax Act and the India-US DTAA, citing access to hardware, software, and intellectual property rights (IPRs). AWS countered that its services were standardized, automated, and did not involve transferring IPRs or technical know-how. The ITAT ruled in AWS's favor, prompting the Revenue's appeal.

Held: The Delhi High Court upheld the ITAT's decision, ruling that AWS's payments were neither royalties nor FTS/FIS under the India-US DTAA. The court distinguished between the use of a copyright and a copyrighted article, relying on the precedent in Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT (2021). AWS provided a non-exclusive, non-transferable license to access its cloud platform, not the underlying copyright in the software or infrastructure.



Customers used a copyrighted article (the cloud service) without acquiring rights to exploit the copyright, such as modifying or reproducing the software. The court also rejected the AO's claim of "equipment royalty," noting that customers did not control or exclusively use AWS's infrastructure. This ruling clarified that access to a platform does not equate to transferring IPRs, rendering AWS's receipts non-taxable.



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#### Pr. Commissioner of Income Tax vs. Coursera Inc. (Delhi High Court, May 19, 2025)

Facts: The Revenue appealed an ITAT decision that payments to Coursera Inc., a US-based online learning platform, from Indian customers were not taxable. The AO argued that these payments were FTS/FIS, citing customized services like landing pages and training involving human intervention. Coursera maintained that it facilitated access to third-party educational content without transferring technical knowledge. The ITAT ruled in Coursera's favour, leading to the appeal.

Held: The Delhi High Court dismissed the appeal, affirming that Coursera's receipts were not taxable as FTS/FIS under the India-US DTAA. The court emphasized the "make available" clause in Article 12(4), which requires that technical or consultancy services transfer technical knowledge, skills, or know-how to the recipient, enabling independent use. Coursera's role was limited to providing access to third-party content, not developing or transferring technical expertise. Incidental services like user support or training were ancillary to platform access and did not impart specialized skills. The court upheld the ITAT's finding that Coursera was an aggregator, not a technical service provider, aligning with the DTAA's narrow scope for taxing FIS.

#### **Challenges in Applying Precedents to Modern Al Tools**

While these rulings provide clarity on the non-taxability of certain subscription-based services, their applicability to modern AI tools, which have evolved significantly over the past three to four years, is limited. Unlike traditional platforms like AWS or Coursera, contemporary AI tools, such as AI coding assistants or advanced chatbots like ChatGPT, offer highly customized and dynamic outputs. For instance:



Al Coding Tools: These tools generate complete code with underlying logic, enabling users to learn, modify, and deploy applications on webpages or app stores. This functionality could be argued to "make available" technical knowledge, as users gain insights into coding logic and can independently apply it.

**Custom GPTs and AI Platforms:** Users can create custom GPTs tailored to organizational needs, akin to developing customized software within a software ecosystem. This level of customization and interactivity blurs the line between using a service and acquiring technical expertise. Users are essentially creating a customised software within a software.

**Evolving Capabilities:** Modern Al tools compile, process, and deliver outputs in definitive, user-specific formats, functioning as designers, editors, architects, financial consultants, teachers, or health experts. Unlike static repositories, these tools adapt and evolve based on user inputs and machine learning, raising questions about whether they merely provide access or impart technical know-how.



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Given these advancements, arguing that AI subscriptions do not "make available" technical skills or knowledge may be challenging. Additionally, users may claim ownership of AI-generated outputs as their own "copyrighted" work, complicating the distinction between using a copyrighted article and acquiring copyright. Consequently, past judicial precedents may not fully address the taxability of AI subscriptions, necessitating a case-by-case analysis of the tool's nature and end-use purpose.

#### **Practical Considerations and Future Outlook**

As AI tools become integral to business and personal operations, taxpayers must carefully evaluate the tax implications of subscription payments to foreign providers. Key considerations include:

**Nature of the AI Tool:** Assess whether the tool provides standardized access or transfers technical knowledge enabling independent use. Tools that generate actionable outputs (e.g., code or customized reports) may face scrutiny as FTS under the "make available" clause.

**Contractual Terms:** Review subscription agreements to determine whether they grant access to a platform or involve the use or transfer of IPRs, which could trigger royalty taxation.

**Compliance Requirements:** Ensure compliance with withholding tax obligations under Section 195 and Form 15CA/CB requirements when making cross-border payments. Consulting tax professionals can help navigate these complexities.

**Evolving Jurisprudence:** The unique capabilities of AI tools may lead to new litigation as tax authorities reassess their classification under the Income Tax Act and DTAAs. Taxpayers should stay informed about emerging judicial interpretations.

#### Conclusion

The taxability of Al-based subscription payments in India remains a complex and evolving issue. While judicial precedents guidance on the non-taxability of certain platform-based services, modern Al tools challenge these interpretations due to their dynamic, customized, and knowledge-imparting capabilities.



Taxpayers must analyze the specific functionality and enduse of AI tools to determine their tax implications, particularly under the FTS and royalty provisions of the Income Tax Act and relevant DTAAs. As AI continues to reshape the technological landscape, a new wave of litigation may emerge, necessitating proactive tax planning and professional guidance to ensure compliance and optimize tax outcomes.



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#### **GST – The Arrest Saga**

Section 69 deals with Arrest Provisions.

#### Section 69 deals with Arrest Provisions.

**Empowers the Commissioner who has reasons to believe** that a person has committed any offence under following clauses of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or subsection (2) of the said section, he may, by order, authorize any officer of central tax to arrest such person.

Section	Offence
132(1)(a)	Supply of goods or services or both without issue of any invoice in violation of the Act or Rules with intent to evade tax.
132(1)(b)	Issue of any invoice or Act without supply of goods or services or both in violation of the Act or Rules leading to wrongful availment or utilization of input tax credit or refund of tax.
132(1)(c)	Availment of input tax credit using the invoice or Act referred to in Section 132(1)(b).
132(1)(d)	Collecting any amount of tax but failing to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due.

#### [Instruction No.01/2025-GST] Dated: 13th January, 2025

In the light of Hon`ble Supreme Court in the case of PRABIR PURKAYASTHA Vs STATE (NCT OF DELHI), CRIMINAL APPEAL (D. No. 42896/2023).

Para 4.2.1 of Instruction 02/2022-23 GST (Investigation) dated 17.8.2022is amended and may be read as follows -

Para 4.2.1 - The grounds of arrest must be explained to the arrested person and also furnished to him in writing as an Annexure to the Arrest Memo. Acknowledgement of the same should be taken from the arrested person at the time of service of the Arrest Memo.



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The print and social media in the last few days have focused on Apex Court's decisions in the context of arrest with reference to GST, anticipatory bail, etc. GST is the biggest tax reform and has eliminated multiple levies by the State and the Centre. Fake invoice racket is a menace and there cannot be two views on the subject that the said practice should be eliminated as it is not only a fraud on the exchequer but also a fraud on the honest tax assessees.



- 1. GST has become more of a criminal law than business law.
- 2. Section 132 provides for criminal prosecution of persons primarily suspected of tax evasion.
- 3. It has Decision the power to arrest under Section 69 is not a general power, but it is restricted to certain specified offences under Section 132.
- 4. In many cases, persons have been arrested at the stage of investigation itself while in adjudication, the case was not proved. The High Court was passing order, at interim stage, on extension of interim protection (bail) and vacation of such protection sought by the department.
- 5. Among the many bail applications that have been coming up before Allahabad High Courts regularly now, in one such case, the High Court has granted anticipatory bail to the applicant, the applicant had been summoned by GST department and he apprehended arrest at the time of appearance before officer for recording statement. The department argued that the alleged evasion was around Rs.100 crores and the applicant has been threatening along with relatives and inquiry could not be conducted.



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- 6. The High Court has considered in details, the recent jurisprudence from Service Tax to GST regimes on arrest and bail, particularly in cases where adjudication (orders refer it as "assessment") was not completed and the party not being a habitual offender with no criminal antecedents, was granted bail.
- 7. In this case also the High Court noted that no criminal antecedents of the applicant have been brought no record and, arrest is not necessary in every case as personal liberty granted under Article 21 of the Constitution is a fundamental right.
- 8. It also observed that the applicant has own address of business and residence and he can give surety to ensure his appearance.
- 9. According to the Court, the applicant did not appear to be a habitual offender, prosecuted or convicted earlier.
- 10. The judgements considered by the High Court were mostly on the principle of arrest not to be made straightaway without completing adjudication/assessment when the person concerned is not a habitual offender. Evidence collected against assesses which are basically document based and also stored in electronic form hence apprehension of tempering does not appear reasonable.
- 11. High Court Decision when a person is arrested under CGST Act, he must be informed of the grounds and produced before a Magistrate within 24 hours and this ensures judicial scrutiny and therefore, it cannot be unreasonable or excessive. It further said "Also just because CGST Act provides for both adjudication of civil liability and criminal prosecution doesn't mean that the said Act is unfair or unreasonable.
- 12. According to the Court, Central Tax officers are empowered to conduct intelligence enforcement action against taxpayers.
- 13. The trial court will ensure no innocent person against whom baseless allegations have been made, are arrested and it declined to interfere with investigation at the interim stage, particularly in writ proceedings.



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- 14. It also said that even if Article 246A is seen as not conferring the power to make law on arrest under GST, the same could have been enacted as per the entry "Criminal law" in list III of the Seventh Schedule of the Constitution.
- 15. Article 246A is significantly wide as it also grants power to make all laws.
- 16. Delhi High Court has Decision Section 69 of CGST Act on arrest and section 132 on prosecution are not unconstitutional.
- 17. Most of the cases involving alleged tax evasion has two versions the department is of the view that the person concerned is an influential person and in a position to intimidate and threaten officers.

#### **Supreme Court Verdict**

On 27 February 2025, a three-judge bench of the Supreme Court, in Radhika Agarwal v Union of India (2025) unanimously held that the provisions of the Code of Criminal Procedure, 1973 (CrPC), and the Bharatiya Nagarik Suraksha Sanhita, 2023 "are equally applicable" to arrests made under the Central Goods and Services Tax Act, 2017, and the Customs Act, 1962.



The exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely to ascertain whether the officer was an authorized officer under the Act, whether the reason to believe that the person was guilty of the offence under the Act, was based on the "material" in possession of the authorized officer or not, and whether the arrestee was informed

about the grounds of arrest as soon as may be after the arrest was made. Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review.





# GLIMPSES OF THE PAST SEMINARS / EVENTS



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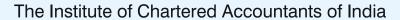


#### 'Walkathon' on the Occasion of CA Foundation Day 2025

Date: 01<sup>st</sup> July 2025











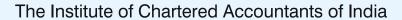


#### 'Flag Hoisting' on the occasion of CA Foundation Day 2025

Date: 01<sup>st</sup> July 2025

















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## Motivational Session followed by Cultural Evening on the occasion on CA Foundation Day 2025 (Only For CA. Members)

**Date: 05<sup>th</sup> July 2025** 

















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#### **Two Days ICAI Training Session for Central Council Members**

Date: 17<sup>th</sup> & 18<sup>th</sup> July, 2025











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#### **ICAI AI INNOVATION SUMMIT 2025**

Date: 18<sup>th</sup> & 19<sup>th</sup> July, 2025

















#### **ICAI AI INNOVATION SUMMIT 2025**

Date: 18<sup>th</sup> & 19<sup>th</sup> July, 2025











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#### **Certificate Course on**

#### Al for Chartered Accountants (Level 1) Batch 432

Date: 25<sup>th</sup> & 27<sup>th</sup> July, 2025





















#### Seminar on GST Implications on Import and Export Transactions

Date: 29<sup>th</sup> July 2025













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#### Dear Member,

Your contribution for Pune Branch E-newsletters is welcome in following ways: Contribute your own articles in areas of Professional Interest; the article may cover any topics relevant to auditing, finance, laws, strategy, taxation, technology and so on.

#### While submitting articles.

- Please keep following aspects in mind:
- The length of articles should be about 750-1000 words
- Articles should be original in nature

#### Please send articles with:

- A Photograph, your full name, membership number etc.
- Editable soft copy of file
- Declaration of originality of articles

Please send in your articles to: editor@puneicai.org; cpe@puneicai.org latest by 25th of every month.

All contributions are subject to approval by the editorial board.





## **Pune Branch of WIRC of ICAI**

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#### **Pune ICAI Newsletter Committee 2025 - 2026**

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CA. Rashmi Tongaonkar

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