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SET UP BY AN ACT OF PARLIAMENT

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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XBRL in India

Reporting is an integral function of every organisation. Each year, organisations the world over devote considerable efforts in reporting, be it internal or external. While technology has been a significant enabler in reporting, information systems in most large organisations have developed in spurts, driven by immediate to short term needs and often complicated by acquisitions and geographical spread. Data is often maintained in diverse sources/ applications and the resulting complexity often creates a challenge in the closure of accounts. Varying reporting requirements, formats and market expectations on the timing of declaration of results, also add to challenge.

The net result is that the reporting process in most cases still remains a complex, cumbersome one, requiring companies to collate, check, validate and reconcile significant volumes of data, to arrive at the reporting package. More often than not, despite efforts to ensure accurate information, the risk of error still remains high.

The much organisational mishaps in corporate governance and changing investor expectations have also seen regulators seeking more and more information from companies. The challenge for these regulators is to sift through the deluge of reports and undertake meaningful analysis to enable a timely, effective through.

The quest for a solution in this regard has seen the emergence of various technology platforms and applications. In recent times, eXtensible Business Reporting Language (XBRL) has emerged as a popular, effective, alternative for effective reporting and analysis. XBRL is a freely available, market-driven, open, and global standard for exchanging business information. XBRL allows information modeling and the expression of semantic meaning commonly required in business reporting. It provides major benefits in the preparation, analysis and communication of business infor-mation. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

XBRL is XML-based. XBRL is a standards-based way to communicate and exchange business information between business systems. These communications are defined by metadata set out in XBRL taxonomies, which capture the definition of individual reporting concepts as well as the relationships between concepts and other semantic meaning. Information being communicated or exchanged is provided within an XBRL instance. It uses the XML syntax and related XML technologies such as XML Schema, Xlink, Xpath, and Namespaces to articulate this semantic meaning.

Seeing the potential of XBRL to address the need for electronic platform for reporting financial information, and as an opportunity for the Chartered Accountants ICAI has been keeping track of the developments in the area of XBRL particularly formulation of taxonomies which are essential for XBRL. These taxonomies are based on accounting standards and other pronouncements on accounting including those contained in relevant legislations. The taxonomies are developed by the standard-setters. For instance, the International Accounting Standards Board (IASB), which issues International Financial Reporting Standards (IFRS) develops taxonomy based on IFRS. In the year 2007, ICAI being the authority which formulates Accounting Stand-ards that are followed in India, took the lead by constituting a Group comprising, amongst others, SEBI, RBI, IRDA, NSE, BSE, etc. for undertaking the development and promotion of XBRL in India and in December, 2008, spearheaded by the ICAI, the Provisional Indian XBRL Jurisdiction i.e. XBRL India was constituted to support the objective of development and promotion of XBRL through development of taxonomies, facilitation of education and training on XBRL, etc., in India. At present, ICAI is the neutral facilitator of XBRL India Jurisdiction, which is supported by the Government of India and various regulators.

The Institute of Chartered Accountants of India (ICAI) as the National Standard setter in India decided to take up the development of XBRL Taxonomies. Accordingly, two taxonomies, the Commercial & Industrial (C & I) and the Banking Taxonomy were developed. The NBFC Taxonomy is also under development. These taxonomies, also thereafter, have been conferred the 'acknowledged' status by the XBRL International (XII). XBRL International Inc. (XII) is a not-for-profit organisation of approximately 550 companies and agencies worldwide, which are working together to build the XBRL language and promote and support its adoption. It comprises local jurisdictions which focus on the progress of XBRL in their region.

Further, in this direction, the ICAI has also decided to incorporate a separate company (under Section 25 of the Indian Companies Act, 1956) for managing the XBRL Indian jurisdiction. Upon its incorporation, the jurisdiction shall open up its membership as per the byelaws being formulated in this regard.

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
ICAI Bhawan, Post Box No.7100, Indraprastha Marg,
New Delhi-110002, Tel: +91 (11) 39893989.
E-mail: icaiho@icai.org, Website: www.icai.org

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MUMBAI: Spenta Multimedia, Peninsula Spenta, Mathuradas Mill Compound, N. M. Joshi Marg, Lower Parel. Mumbai-400013. Tel: +91 (22) 24811022/24811025, Telefax: -91(22) 24811021.
DELHI: No.7, 1st Floor, Nizamuddin (West) Market. New Delhi-110013. Tel: +91 (11) 4669 9999.
BENGALURU: Old No. 583, New No. 9, Sri Manjunatha Krupa, 80 Feet Road, 3rd Cross, Opp. Koramangala Police Station, Bengaluru-560095. Tel: +91(80) 4161 8966/77.
KOLKATA: 206-Jodhpur Park, Kolkata - 700068. Tel: +91(33) 2473 5896. Telefax: +91(33) 2413 7973.
CHENNAI: AKS Pooja Complex, 2nd Floor, Old No: 203 New No: 154, R. K. Mutt Road, Mandevelli (Next to Jagan Mohan Clinic), Chennai-600028. Tel: +91(44) 4218 8984/85.
HYDERABAD: H.No:8-2-684/3/R/1&2, Flat No: 304, Alankrith Apts, Gulmohar Avenue, Rd No: 12, Banjara Hills, Hyderabad. Tel.: +91 9676666691
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Contents

Dear All,

Water, water, everywhere,
And all the boards did shrink;
Water, water, everywhere,
Nor any drop to drink.

18^{th} century English poet S. T. Coleridge, in the above lines, has represented the current situation in some of the densely-populated regions of our country. It has rained more than our needs this year. Hundreds of acres of land across our country have got submerged under water. Hundreds of kilometers of our roads have been washed away. Hundreds of people have been displaced, stuck and stranded, and rendered helpless. No real data is available on the destruction of human life. Immediate concern at present is to safeguard our human resources. Let us accept that we have added to the misery by eroding our own earth and destroying its vegetation on a mass scale. Actually, we have grown high in number. Couldn't we have controlled this eventuality? Our world is small and round: our irresponsibility comes back to us.

What can we do when things go out of our hands? No, nothing goes out of our hands ever. Therefore, time is always right to take a corrective measure. Let us deliberate, share our ideas and concerns, and cooperate towards the welfare of state.

International Initiatives and Concerns

MRA with CPA, Ireland: We are delighted to inform that our Institute has signed recently its fourth membership recognition MRA with CPA Ireland for reciprocal recognition of each other's qualification on a variable bridging mechanism. The agreement was signed on the sidelines of the IFAC Board meeting which took place in Paris. The MRA was signed in the presence of Mr. Robert Bunting, President, IFAC and CA. Ved Jain, Past President, ICAI and IFAC Board Member. The agreement will come into force w.e.f. October 1, 2010. We sincerely hope that our members would be benefited from this MRA. We have also initiated steps for having similar arrangements with the accountancy institutes of other countries like Canada, New Zealand and South Africa.

MoU with Higher Colleges of Technology, UAE: We would like to inform that the MoU with the Higher Colleges of Technology, UAE, pending on account of clearance from the Government authorities, has now got the clearance. The formal signing of the MoU is awaited.

New ICAI Chapter in UAE: We are very pleased to share that the 22^{nd} Chapter of the Institute at Ras Al Khaimah in the Middle East has been added in the list of existing international Chapters. The formal inauguration ceremony of the Chapter would be held after the completion of procedural formalities at their end.

International Seminar on CSR in Dubai: The undersigned attended a seminar in Dubai on *Corporate Social Responsibility for Finance and Accounting Professionals* on September 5, 2010, organised by Dubai Chapter of the ICAI in partnership with the Dubai Chamber Centre for Responsible Business as an effort towards raising awareness on responsible business practices, and shared the ICAI's commitment towards CSR with the participants. The seminar was attended by Shri M. K. Lokesh, Ambassador of India to UAE, Mr Hassan Al Hashemi, Director, External Relations, Dubai Chamber, Padamshree Dr. B. R. Shetty, Managing Director and CEO, NMC Group and Dr. Belaid Rettab, Sr. Director, Dubai Chamber of Commerce and Industry. The undersigned informed the participants about the ICAI's CSR initiatives like *Go-Green* campaign and Carbon Credit Accounting Sustainability Reporting, and mentioned that the ICAI endeavours to help its members maintain and adhere to its Ethical Standards, and also shared cases of some Indian Companies like WIPRO, Tata, Birla, etc., who have been committed to CSR even before they became global.

ICAI Participation in IFAC Board Meeting: The undersigned attended the IFAC Board meeting along with ICAI past-President and Member IFAC Board CA. Ved Jain, during September 8-10, 2010. We discussed the strategic plans of the IFAC focusing on quality and development. During the meeting, the Exposure Draft on *Public Interest* framework was discussed. While expressing the Indian concerns, we expressed our interest in becoming the associate member of International Valuation Standard Council (IVSC) particularly in view of the IFRS implementation. The undersigned, in response to the presentation made by the Forum of Firms, raised the issue of monitoring by the Forum with respect to the firms that were involved in the audit of an entity involved in scam. It was clarified that the Forum does not have any mechanism for policing or taking action against a firm or its partners. This position raises concerns and needs to be re-looked by the Forum.

ICAI Representation in Working Group on PAIB Review: The undersigned also attended the Edinburgh Group meeting coinciding with the IFAC Board meeting, where, besides the key issues of SMPs, communication strategy paper for the Group was discussed. The Group also met the IFAC leadership to discuss the SMP Task Force Report and other operational issues. It set up a Working Group on PAIB (Professional

Accountants in Business) Review to develop agenda items on the PAIB issues. Ms. Marta Rejman, Member of IFAC Board, Ingrid Doegra and the undersigned would be the members of the said Working Group.

ICAI Meets ICAEW: The undersigned along with the Vice-President CA. G. Ramaswamy met the President, ICAEW, on September 14, 2010, in London to augment and further strengthen the MRA between the two Institutes. Acting Chairman of the London Chapter of ICAI was also present. We discussed our interest in ICAEW's IFRS certificate course, e-learning modules on IFRS, the literature on Strategic Finance. We clarified that we can not recognise the members of ICAEW through the route of ACCA till the said body stops setting up its shops in India. Issue of equivalence of qualifications amongst the six accounting bodies in Great Britain, e.g. ICAS, ICAI, CIPFA, CIMA, etc., who are authorised to carry out the public accountancy function was discussed. The same aspect was also conveyed to the Indo-UK Accountancy Task Force authorities afterwards. We informed them that Indian students are being tested under case study situation and that papers on case study to be undertaken by our CAs should be reviewed. The two sides agreed in principle to encourage the members of respective institute to take a membership under the existing MRA.

Auditing and Accounting History Conference in Turkey: The undersigned along with the Vice-President CA. G. Ramaswamy and Director, Board of Studies, Shri Vijay Kapur participated in the 2nd Balkans and Middle East Countries Auditing and Accounting History Conference held in Istanbul from September 15-18, 2010. The undersigned also had the privilege to Chair one of the sessions on Internal Auditing. Approximately 600 academics from 55 countries participated and contributed 240 papers for discussion. We could showcase our country, particularly with regard to our *Accountancy Museum of India*. The same was well-covered in the media.

ICAI Helps CPA Mongolia: Council Members, CA. Charanjot Singh Nanda and CA. Vijay Garg have been deputed to visit Mangolia shortly for an interaction with CPA Mongolia. As CPA Mangolia is aspiring for attaining IFAC membership which would involve technical cooperation in making them compliant with IFAC SMOs, the assistance of ICAI has been sought in this matter.

International Conference on Accountancy in January 2011: We are pleased to share with you that we will organise an international conference during January 4-6, 2011, in New Delhi, to be attended by prominent personalities from accountancy profession of different parts of the world. Over 1500 stakeholders, specifically from Asia-Pacific region, will participate in it. The Conference will facilitate an assimilation of resources in areas of financial reengineering, governance, harmonization of standards, SMP context, accountants and millennium developmental goals and so on, in the emerging context. The schedule of the conference will soon be finalised.

ICAI in WTO Public Forum: Our Central Council colleague CA. Raj Kumar Adukia with Shri Rakesh Sehgal, Secretary, Committee on Economic & Commercial Laws and Trade & WTO, represented us in the WTO Public Forum, *The Forces Shaping World Trade* held in Geneva from September 15 to 17, 2010. The *Forum* was attended by nearly 800 international delegates and this provided an opportunity to discuss the emerging paradigm of world trade and, *inter alia*, dwelt on issues faced by services sector, trade and inclusive growth and alike.

Report on Companies Bill, 2009: Need to Reconsider

The Parliamentary Standing Committee on Finance, through its 21st report on the Companies Bill, 2009, has sought to bring significant changes in the Bill. Certain aspects of the *Report* need a thorough re-look. Clause 118 of the Bill deals with the Constitution of National Advisory Committee on Accounting and Auditing Standards (NACAAS). Introduction of Auditing Standards in the Companies Act in this clause will lead to duplication and delays without any gains. We would be left with the role of drafting the accounting and auditing standards and to assist the NACAAS, which will depend on us for preparing the original material. It is but logical that, having the expertise, we should continue with our role of framing the auditing standards and other authoritative literature for compliance. We issue Auditing Standards complying with the standards issued by the *International Auditing and Assurance Standards Board* (IAASB), a body constituted under the aegis of the IFAC. Observation by the MCA that Auditing Standards are issued by a 'single institute' is, in our opinion, misconceived. We issue the standards after the consideration of the comments received from various interest groups by the Auditing and Assurance Standards Board which consists of our Council members and representatives of the RBI, the SEBI, the C&AG, etc. Then, the vetting of these Standards by a body with no experience in the conduct of audit is not desirable. This issue needs a serious consideration, as this is a matter of our losing control over the area of expertise. Otherwise, the very purpose of bringing the Act of 1949 to create an autonomous body under an Act of Parliament would be lost.

Clause 123 dealing with the appointment of auditors, Clause 124 Eligibility, qualifications and disqualification of auditors, Clause 125 Remuneration of auditors, Clause 126 Powers and duties of auditors and auditing standards and Clause 130 Punishment for contravention also need to be further deliberated and given due consideration. Therefore, it has been decided to form a group at all-India level for drafting our response to various recommendations of the *Report*.

IFRS Convergence Status: NACAS Acceptance

The Draft of Ind-AS 41 (Corresponding to IFRS 1), first-time adoption of the Indian Accounting Standards, was considered by us recently. Meanwhile, National Advisory Committee on Accounting Standards (NACAS) has agreed to our view that, out of AS 30 (corresponding to IAS 39) or AS 40 (corresponding to IFRS 9), only AS 30 should be made applicable. It has approved Accounting Standards on Financial Instruments, i.e. AS 30, 31 and 32 with certain changes in AS 30 and AS 31. NACAS has also decided not to include IFRIC 15 on accounting of agreements for the construction of real estates in AS 9, *Revenue Recognition*, keeping in view the conflict displayed by us. The scope of AS 7, *Construction Contracts*, has been modified to the effect that accounting for real estate developers would be in the scope of AS 7. By implication, the real estate developers have to follow Percentage completion method rather than completion method, once the change is notified by the Government NACAS has approved the revised Schedule VI to the Companies Act, 1956, for recommending the same to the Ministry of Corporate Affairs for notification.

Regarding AS 18 (corresponding to IAS 24), *Related Party Disclosures*, NACAS has suggested that the term 'Domestic Partner' should not be removed. With regard to our suggestion to recognise gain on bargain purchase in case of business combinations in 'Capital Reserve' instead of 'Profit and Loss', NACAS has suggested to recognise the same in 'Other Comprehensive Income'. With regard to recognition of actuarial gains and losses arising on defined benefit obligation and related defined benefit plan, draft of AS 15 (Revised 20XX), *Employee Benefits*, requires the same to be recognised immediately in profit or loss. NACAS has suggested that the entire amount of actuarial gains or losses should be recognised immediately in 'Other comprehensive income', keeping in view the suggestions of industry representatives on NACAS and principles given in this regard in the Exposure Draft on IAS 19 issued in April 2010 by the IASB. We have agreed with their suggestions.

Revised Practitioners' Guide for SMPs

We have come across a lot of apprehensions with respect to the number of auditing standards being issued by us and the difficulties faced in their implementation in audit of smaller audit clients. In an increasingly quality-conscious world, application of the Standards is not just our obligation but a rightful demand of our clients that we pledge to serve. We have taken strong and proactive confidence-building measures to help our SMPs in joining the mainstream of the profession and grow, e.g. *Revised Practitioner's Guide to Audit of Smaller Entities* that takes a very comprehensive approach to implementation of all the auditing standards in case of audit of small clients. We urge our members too to come forward and accept the challenges that necessarily appear in any growth story. In addition, we are organising many awareness programmes in this regard.

Implementation Guide to SAs 700, 705 and 706

Reporting is the culmination of the auditor's work. As the members would be aware, the Institute has issued three critical Standards on Auditing to deal with different aspects of reporting. To help our members understand and implement these Standards in actual audit situations, we will bring out an Implementation Guide to the three reporting Standards, i.e. SA 700, SA 705 and SA 706, issued under the Clarity Project. The Implementation Guide will be in an FAQ form and will contain many illustrative situations requiring various types of audit opinions.

Technical Guide on Internal Audit for BPOs

The Internal Audit Standards Board of the ICAI has finalised and issued the *Technical Guide on Internal Audit of BPO Industry* to deal with the complexity of processes which give rise to a spectrum of strategic and operational risks. With sound domain knowledge, good analytical skills, and process understanding, chartered accountants would be able to plug into the position of the internal auditor of this (BPO) industry.

Consideration of Drafts on ASLB

The Council recently considered and approved the draft of ASLB (Accounting Standards for Local Bodies) 1 *Presentation of Financial Statements*. The draft will be circulated among our Council colleagues and other external specified bodies for comments. The IPSAS 24 on *Presentation of Budget Information in the Financial Statements* is relevant to this Standard. Accordingly, it was decided to take up a project for formulation of the corresponding ASLB. We also considered the basic draft of the proposed ASLB on *'Inventories'* and proposed certain changes in it.

MCA Requests ICAI to Develop Uniform Accounting/Reporting Fabric

Another Group was formed, at the request of the MCA, for developing uniform accounting/reporting framework for NGOs under the convenership of our Central Council colleague CA. S. B. Zaware. The Group would suggest and recommend an appropriate format of financial statements and financial control guidelines, and methods of accounting to be followed by NGOs governed by Societies Registration Act, 1860. It would examine the laws to monitor the fund-flow to NGOs under extant laws, e.g. FEMA, Income-tax Act, etc., and suggest a framework considering the features of all these Acts for proposing a regulatory model for monitoring the fund-flow. Committee on Economic & Commercial Laws and WTO has been instructed to deal with rest of the concerns arising out of the MCA communication to us.

SEBI Amendments in Listing Agreement and Draft Certifcates

Securities and Exchange Board of India had recently amended clause 24 of the Listing Agreement, requiring the auditors to certify that the scheme of merger/acquisition are in accordance with the applicable accounting standards. The Institute has already developed the draft formats of such certificate to be issued by the auditor. These draft formats will be available soon for the guidance of the members.

Roundtable on Commerce and Accountancy Education

We are happy to inform all our members and students that, to increase the scope of accountancy education, we are organising a roundtable conference on *Commerce and Accountancy Education in India: Issues and Challenges* on September 26, 2010, in New Delhi. Vice-Chancellors, heads of department and senior professors of commerce and finance of all established and recognised universities of the country have been invited to participate in the conference, which will provide a platform to discuss the new paradigms for commerce and professional accountancy education in India. This conference will help the academic foresee the bigger picture of accountancy and commerce education, and help us to rebuild our further strategies accordingly.

Assurance of Land to Bhopal Branch of ICAI

ICAI Vice-President CA. G. Ramaswamy and the undersigned attended the 31st Regional Conference of the CIRC, hosted by Bhopal Branch on August 28, 2010. CA. Shri Rameshwar Thakur, Hon'ble Governor of Madhya Pradesh and our Past President inaugurated the Conference. Shri Thakur assured us to allot land for the premises of Bhopal Branch of CIRC of the ICAI. Later, we also met the Hon'ble Chief Minister of the State, Shri Shivraj Singh Chouhan, and discussed the services that chartered accountants render to the State.

Project *Parivartan*

This Project was conceived with an idea of taking ICAI to a qualitatively new way of working which would bring together both aspiring and existing chartered accountants in the country. The project took a comprehensive 360 degree view of the existing processes and benchmarked them with the global best practices. Accordingly, a need to change the current operational processes of the Institute to meet global benchmarks has been made and a roadmap evolved for the adoption of a Unified Digital Technology Platform that will be used to transform ICAI into a truly efficient, transparent and global organisation. Infosys Technologies has partnered with us to help in formulating our vision, roadmap and an 18-month plan for Project *Parivartan*. Infosys will also help us in running the Program Management Office towards our dream of *Parivartan*.

Status of Disciplinary Cases

As regards the status of Disciplinary cases, we would like to inform that, under the old disciplinary mechanism, hearing in 58 cases has been concluded by the Disciplinary Committee of the Institute. In the Council Meeting recently, 55 reports were included and 10 more reports are ready for inclusion. Under the new mechanism, the Board of Discipline and Disciplinary Committee have completed hearing in 54 cases. The Board of Discipline/Disciplinary Committee has also considered prima facie opinion of the Director (Disc.) in 33 cases. In addition to the above, prima facie opinion of the Director (Discipline) in approx. 75 complaint and information cases would be considered by the Board of Discipline or Disciplinary Committee as the case may be. All efforts are being taken to complete the public interest cases on priority, irrespective of the mechanism in which they are falling.

Concerns for Members

Banks to Open List of Auditors in 2:1 Ratio: We are happy to inform that the persistent efforts of Professional Development Committee with regards to the appointment of auditors for the banks have paid off. We have successfully convinced both the Ministry of Finance and the RBI not to open the complete list of eligible central statutory auditors for banks to select their auditors. Accordingly, the list of auditors has been released in the ratio of 2:1, i.e. names of two auditors will be given against one vacancy. Next year, we would try for the 1:1 ratio. We deeply appreciate the efforts made by our Central Council colleague CA. Pankaj I. C. Jain, Chairman, Professional Development Committee in this regard.

Seeking Data on Tax Audit from CBDT: We have sent a letter of request to the Central Board of Direct Taxes (CBDT) asking them to provide the number of tax audit reports filed with them during 2009-10, e.g. data on tax audit based on fields like name and membership number of the auditor, assessment year, PAN of the auditee, etc., which would enable us to review the ceiling on the number of tax audit assignments that a chartered accountant can accept in a financial year, either as a partner or a proprietor.

ICAI Recommendations of Amendments in the CA Act, 1949: Our Council had constituted a Group on Amendments in the Chartered Accountants Act, 1949, under the convenership of ICAI Vice-President, CA. G. Ramaswamy, to suggest draft amendments in the Act arising out of the Report of the High-Powered Committee so as to empower the Act to take disciplinary action against erring CA firms, only in grave circumstances and, also, in cases of repetition of gross negligence by their partners. In addition to our Council colleagues' suggestions on table, they have also been asked to send their written comments, if any, for consideration of the Group.

Group to Resolve Dispute for Members: A new group has been constituted recently under the convenership of our Central Council colleague CA. Nilesh Vikamsey to examine the matter of development of an alternative dispute resolution mechanism (arbitrator) for dealing with disputes of member vis-à-vis member and member vis-à-vis student, and bringing the same back to the Central Council with its recommendations.

Auditors, Remuneration and Indian Banks: We have made a representation to Shri G. Gopalakrishna, Executive Director, Reserve Bank of India regarding the revival of Category of Part C auditors for audit of Public Sector Banks. We have sent a letter to NABARD Chairman Shri Umesh Chandra Sarangi regarding appointment and remuneration of auditors of state and district central cooperative banks. Indian Banks Association has appreciated the suggested coverage of the report on concurrent audit of banks as comprehensive and has stated that it covers the major functions of the branches.

Webcast on Direct Tax: The Direct Taxes Committee has conducted a live webcast recently, where the undersigned along with the ICAI Vice-President CA. G. Ramaswamy and Central Council colleague CA. Dhinal Shah participated in deliberations of the webcast from Chennai. The Committee Chairman and Vice-Chairman CA. Jayant Gokhale and CA. M. Devaraja Reddy respectively participated in the webcast from Delhi and provided their valuable inputs.

Cause of Concern: US Move to Discourage Outsourcing: As members are aware that fee hikes for H1-B visas and Ohio's decision to ban outsourcing of government IT projects will directly affect Indian tech workers and Indian companies in the US. US President Barack Obama now intends to end corporate tax breaks for US companies that "create jobs and profits in other countries. This move has triggered consternation across India's US$50 billion annual outsourcing industry. It is indeed a matter of concern, although the issue of tax breaks is not going to have a direct impact on our accountancy profession or our outsourcing business, because the US companies are outsourcing to India for better operational efficiency and to arbitrage labour costs, not taxes, as Indian corporate tax rates are actually higher than those in the US. Blocking of tax breaks is unlikely to be enough detriment for US companies to stop outsourcing. However, what is more worrying is the trend of 'populist extra-protectionism' that US is trying to set, which might affect Indian CA professionals in the long run. In this age of globalisation, such protectionist barriers can only prove to be detrimental. We would advise the interested members to prepare themselves to face such protectionist trends as well.

Students' Matters

Students necessarily have an element of idealism and the world becomes better when they enter into the institution of a family with their idealism. This is called a gift of the *new* world. We would like to appeal to our members to encourage such endeavours in students during articleship. Meanwhile, we will continue to take strong measures in the students' interests:

Reduction in Scale of Entitlement to Train Articled Assistants: The Executive Committee has discussed and rationalised the criteria for entitlement to train articled assistants by an Associate/Fellow member or a full-time employed chartered accountant considering that a large number of vacancies remain unfilled especially in the case of SMPs. On the recommendations of the Committee, our Council has considered the reduction in scale of entitlement to train articled assistants, as a large number of vacancies are unfilled due to the change in scheme and education wherein students are entitled to commence article only after passing IPCC instead of immediately after passing CPT examination.

International Conference on Indian Accountancy Profession: An international conference of CA Students would be organised on December 28-29, 2010, in Delhi jointly by the Board of Studies and the NIRC of the ICAI. Theme of the conference would be *Indian Accountancy Profession – Marching towards Global Centre Stage*. Detailed announcement will follow in the students' Journal and in the Newsletters of other Regional Councils and Branches. We sincerely hope that our students will actively participate and make it a success.

Eligibility for admission to CPT examination: The Council, realising the difficulties faced by students, has decided that the students who have not passed 10+2 examination but have passed any other diploma course and later have pursued graduation are eligible for the CPT examination. The same is being taken up with the Central Government for necessary approval.

Residential Course: We have decided to organise the residential course on General Management and Communication Skills (GMCS) at more centres so that a large number of students can be benefited. The duration of the course will be reduced to six weeks from three months. And, top 10 rank-holders in the PCC/IPCC and Final examinations will be enrolled for the six-week course without any fee.

Live Virtual Classes: Considerable progress has been made to start Live Virtual Classes (LVC) for CPT, IPCC and Final courses of the CA curriculum. The conduct of classes would commence very shortly and we are hopeful that a large number of students would derive benefit from these classes.

Campus Selection for Articled Assistants: An optional campus placement scheme has been introduced for selection of articles. The Pilot Campus Placement Programme was held at Delhi in August 2010 for the firms having their offices in Delhi. 41 CA firms and 390 students registered for the programme, and, out of these, 31 firms and 148 students participated. Considering the positive response, feedback and request from both firms and students, it has been decided to start an *Online Articles Placement Portal* to facilitate placement of articles in firms on pan-India basis. Eligible firms and candidates can register at http://bosapp.icai.org that would be opened shortly.

Nationwide Programmes/Conventions: 21 one-day seminars were successfully organised across the nation. Regional Councils and Branches of the ICAI organised elocution and quiz contests. Branches also organised 34 career-counseling programmes to popularise the CA course. Ernakulam Branch of ICAI hosted a state-level conference. A two-day National Convention of Students was held in Kolkata and attended by almost one thousand students. Chief Guest and Special Guest on the occasion were Minister-in-charge, PWD, West Bengal, Shri K. Goswami and former Indian cricket captain Shri Sourav Ganguly respectively. Shri T. N. Manoharan, former ICAI President, and the Chairman and the Director of the Board of Studies also addressed the students.

VI Pay Commission and ICAI Officers' Pay Revision

We are extremely happy to inform that the issue regarding the pay revision of the ICAI officers based on the recommendations of the VI Pay Commission was largely completed by the appointed Group. We are sure that this decision will further motivate our officers towards their responsibilities and strengthen their bonds with the Institute.

Commonwealth Games, Delhi's biggest-ever event, are approaching fast. So much has been said for our preparations and efforts in this regard. Isn't it too late to speak our concerns over this? Demand of the hour asks us to be positive and to try to add to the success of the event and to the comfort of our athletes, both national and international, and other guests. Let us speak positive. We grow together learning from each other. We all are responsible people. Let us behave more responsibly. Let us put in our concerted efforts to make it a spectacle by understanding our role in it.

Let us try to make this event a success by celebrating the occasion and we are sure to remember it as an event of national pride in retrospect. Let the festival of *Dussehra* speed up our win over the evil. We wish everybody a very happy and joyous *Dussehra*.

Best Wishes

CA. AMARJIT CHOPRA
President, ICAI
September 26, 2010

MRA between ICAI and CPA Ireland

ICAI President CA. Amarjit Chopra and Chief Executive, Institute of CPA in Ireland, Mr. Eamonn Siggins meet warmly in Paris, while IFAC President Mr. Robert Bunting and former ICAI President CA Ved Jain relish the occasion. (September 8, 2010)

2nd Balkans and Middle East Countries Auditing & Accounting History Conference

ICAI President CA. Amarjit Chopra shares the dais with the academicians from history of accountancy on the occasion during the Conference in Istanbul. (September 15-18, 2010)

31st Regional Conference in Bhopal

Hon'ble Governor of Madya Pradesh, CA. Rameshwar Thakur, lights the lamp to inaugurate the Conference, while the ICAI President CA. Amarjit Chopra, Vice-President CA. G. Ramaswamy and Central Council member CA. Manoj Fadnis celebrate the occasion. (August 28, 2010)

ICAI President on Opportunities & Challenges in Profession

ICAI President diligently addresses the members in Pune at a programme organised jointly by the Pune and Pimpri Chinchiwad Branches of the WIRC, ICAI. Central Council member CA. Shiwaji Bhikaji Zaware can be seen on the dais. (September 12, 2010)

Convocation Ceremony in Mumbai

Chief Guest and Hon'ble Finance Minister of Maharashtra, Shri Sunil Tatkare, lighting the lamp to inaugurate the Ceremony in the august presence of ICAI President CA. Amarjit Chopra, Vice-President CA. G. Ramaswamy, Central Council member CA. Pankaj I. C. Jain and a Mumbaikar industrialist Shri Deepak Ghaisas. (August 29, 2010)

Convocation Ceremony in Kanpur

ICAI President CA. Amarjit Chopra appreciates the efforts of new entrants into the CA profession, as the Chief Guest Shri K. D. Gupta, Chairman, Quality Review Board, hands over the certificate of merit to a participant at the Convocation. (September 22, 2010)

Know Your Ethics*

Ethical Issues in Question-Answer Form

Q. Can a member share profits with the widow of his deceased partner?

A. Yes, when there are two or more partners and one of them dies, the widow of the deceased partner can continue to receive a share of the profit of the firm. A legal representative, say widow of a deceased partner, would be entitled to share the profits only where the partnership agreement contains a provision that on the death of the partner his widow or legal representative would be entitled to such payment by way of sharing of fees or otherwise for the specified period.

Q. Can there be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the sole proprietor of the firm?

A. No, there could not be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the Sole proprietor of the firm. Payment of goodwill to the widow is permissible in such cases only for the goodwill of the firm and to enable such payments to be made in installments provided the agreement of the sale of goodwill contains such a provision. These payments even if they are spread over the specified period should not be linked up with participation in the earnings of the firm.

Q. Can the goodwill of a proprietary firm of Chartered Accountant, after his death, be sold/transferred to another eligible member of the Institute?

A. Yes, the Council of the Institute considered the issue whether the goodwill of a proprietary firm of Chartered Accountant can be sold/transferred to another eligible member of the Institute, after the death of the proprietor concerned and came to the view that the same is permissible. Accordingly, the Council passed the resolution with a view to mitigate the hardship generally faced by the families after the death of such proprietors, subject to following conditions:-

(a) in respect of cases where the death of the proprietor concerned occurred on or after 30.8.1998.

Provided such a sale is completed/effected in all respects and the Institute's permission to practice in deceased's proprietary firm name is sought within a year of the death of such proprietor concerned. In respect of these cases, the name of the proprietary firm concerned would be kept in abeyance (i.e. not removed on receipt of information about the death of the proprietor as is being done at present) only up to a period of one year from the death of proprietor concerned as aforesaid.

(b) in respect of cases where the death of the proprietor concerned occurred on or after 30.8.1998 and there existed a dispute as to the legal heir of the deceased proprietor.

Provided the information as to the existence of the dispute is received by the Institute within a year of the death of the proprietor concerned. In respect of these cases, the name of proprietary firm concerned shall be kept in abeyance till one year from the date of settlement of dispute.

(c) in respect of cases where the death of the proprietor concerned had occurred on or before 29th August, 1998 (irrespective of the time lag between the date of death of the proprietor concerned and the date of sale/transfer of goodwill completed/to be completed)

Provided such a sale/transfer is completed/effected and the Institute's permission to practice in the deceased's proprietary firm name is sought for by 28th August, 1999 and also further provided that the firm name concerned is still available with the Institute."

Q. Can a member publish a change in partnership or change in the address of practice and telephone numbers?

A. Yes, a member can publish a change in partnership or change in the address of practice and telephone numbers. Such announcements should be limited to a bare statement of facts and consideration given to the appropriateness of the area of distribution of the newspaper or magazine and number of insertions.

Q. What is the meaning of communicating with the retiring auditor?

A. Where a new auditor is appointed, the incoming auditor has an obligation to communicate the fact of his appointment to the retiring auditor and make enquiry as to whether there are any professional or other reasons why he should not accept the appointment.

This is intended not only as a mark of Professional courtesy but also to know the reasons for the change in order to be able to safeguard member's own interest, the legitimate interest of the public and the independence of the existing accountant. The provision is not intended, in

*Contributed by the Ethical Standards Board of ICAI any way, to prevent or obstruct the change.

The incoming auditor may not accept the audit in following cases:

(i) Non-compliance of the provisions of Sections 224 and 225 of the Companies Act as mentioned in Clause (9)

(ii) Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act, 1956 or various other statutes; and

(iii) Issuance of a qualified report.

Q. Can the details of a student passing examination be published in local press?

A. It is usual for local papers to publish details of the examination success of local candidates. Some biographical information is often included. The candidate's name and address, school and local background, examination passed with details of any prize or place gained, the name of the principal, firm and town in which the principal practices may be published.

Q. Can a member act as an Insurance Surveyor?

A. As per Appendix (9) of CA Regulations, a member of the Institute in practice is generally permitted to act as a Surveyor and Loss Assessor under the Insurance Act, 1938 provided they are otherwise eligible and can perform attest functions.

Q. Can a member act as Tax Auditor and Internal Auditor of an entity?

A. No, the Council has decided that the Tax Auditor can not act as internal auditor or vice versa for the same financial year.

Q. Can a concurrent auditor of a bank also undertake the assignment of quarterly review of the same bank?

A. No, the Concurrent audit and the assignment of quarterly review of the same entity can not be taken simultaneously as the concurrent audit is a kind of internal audit and the quarterly review is a kind of statutory audit. It is prohibited in terms of the 'Guidance Note of Independence of Auditors.'

Q. Can a member act as Insurance agent and arrange business for Insurance Company?

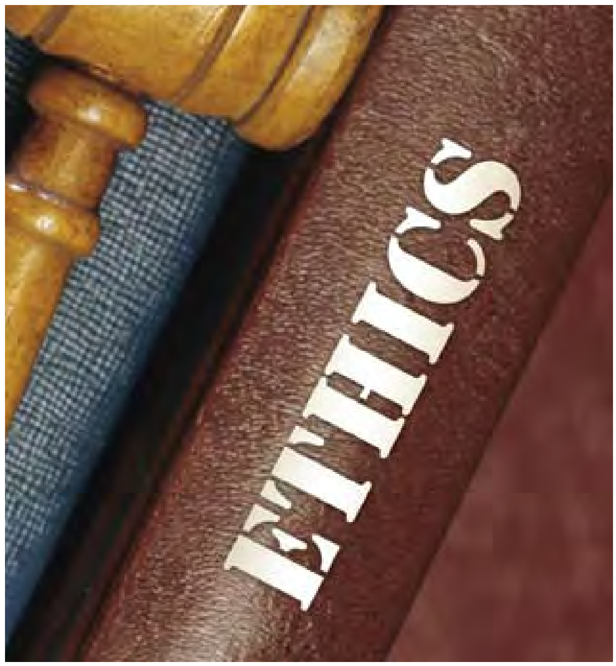
A. No, members are permitted to render Insurance Financial Advisory Services. It is not permissible to the members to do any kind of marketing and business procurement for any insurance company. Their services should remain limited to professional services in the form of advisory and consultancy services.

Q. Can a member or firm advertise his/its services?

A. Yes, in a restricted manner within the provisions of advertisement guidelines issued by the Council on 14th May, 2008. For Advertisement Guidelines, please refer pages 309-312 of the Code of Ethics, 2009 (issued under Clause-7 of Part-I of the First Schedule).

Q. Is a member holding certificate of practice entitled to own Agricultural land and continue agricultural activity?

A. Yes, member holding certificate of practice can own and hold agricultural land and continue agricultural activity through hired labour. ■



CORRIGENDA

Readers' attention is invited to the fact that ICAI Council approved the ICAI logo as suggested by Shri Aurobindo in its second meeting on November 9 & 10, 1949, and not on August 15, 1950 as erroneously printed on page 226 of August 2010 issue of the Journal under the feature titled, *Tracing the Roots*.

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Readers' attention is invited to the fact that the designation of Shri Sunil Verma is 'Deputy Comptroller and Auditor General, and Chairman, Audit Board', not 'Secretary, Audit Board, C&AG' as erroneously printed on page 382 under the column, *From the President*, in September 2010.

The errors are regretted.

-Editor

LEGAL DECISIONS[1]

DIRECT TAXES

Income-tax Act

Section 10(38) read with Section 115JB of the Income-tax Act, 1961 – Exemption – Transfer of Long-term Capital Asset

Foreign company which does not have any physical presence in India in form of an office or branch or a PE, provisions of Section 115JB are not applicable on sale of shares by it and accordingly, tax exempt under section 10(38)

The Timken Company, In Re, July 23, 2010 (AAR)

The applicant was a Company formed under the laws of the State of Ohio, USA and was a global manufacturer of engineered bearings, alloy and specialty steel related components. It was initially a joint venture between Timken USA and Tata Iron and Steel Company Limited ("TISCO"), subsequent to which the Company undertook a maiden public issue in the year 1991, and started commercial production one year later. Subsequently, Timken USA acquired the equity shares of the Company from TISCO in compliance with the laws of India. The applicant proposes to transfer 50,999,988 equity shares held by it in Timken India to Timken Mauritius Ltd as part of its global restructuring exercise. The applicant is of the view that the capital gains, if any, arising from the above transaction would be exempt from tax under Section 10(38) and therefore no tax is deductible under Section 195. The applicant further submits that the provisions of MAT contained in Section 115JB cannot be made applicable to foreign companies who do not have any presence or PE in India.

The Authority for Advance Ruling held that for the purposes of Section 115JB, if the definition of "company" is applied to a 'foreign company' without enquiring into the opening words used in the section "unless the context otherwise requires", Section 115JB may become unworkable. The income, which does not have a source in India, cannot be made part of the book profits. The annual accounts, including the P&L Account, can not be prepared as per the first proviso to Section 115JB(2) in respect of the world income and laid before the company at its AGM in accordance with the provision of Section 210 of the Companies Act.

As the applicant did not have a place of business in India, it was not required to prepare its accounts under section 594 read with Section 591 of the Companies Act, 1956. That being so the applicant could not have prepared its accounts in accordance with the provisions of Part II and III of Schedule VI of the Companies Act, 1956.

Section 115JB is not designed to be applicable to the case of the applicant, a foreign company, who has no presence or PE in India.

As the applicant does not have any physical presence in India in the form of an office or branch or a PE, the provisions of Section 115JB are not applicable on the sale of shares of a listed company Timken India Limited, by the applicant, which has suffered securities transaction tax and accordingly, tax exempt under Section 10(38).

Section 10B of the Income-tax Act, 1961 - Export-oriented undertakings

An assessee was entitled to a deduction in respect of profits of three eligible units while loss sustained by fourth unit could be set off against normal business income [Assessment Year 2004-05]

Hindustan Unilever Limited v. Dy. CIT, April 1, 2010 (BOM)

Plainly, Section 10B as it stands is not a provision in the nature of an exemption but provides for a deduction. Section 10B was substituted by the Finance Act of 2000 with effect from 1st April 2001. Prior to the substitution of the provision, the earlier provision stipulated that any profits and gains derived by an assessee from a 100 per cent Export Oriented Undertaking, to which the section applies "shall not be included in the total income of the assessee". The provision, therefore, as it earlier stood was in the nature of an exemption. After the substitution of Section 10B by the Finance Act of 2000, the provision as it now stands provides for a deduction of such profits and gains as are derived by a 100 per cent Export Oriented Undertaking from the export of articles or things or computer software for ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce. It cannot be contended that because the income is exempted, the loss is not allowable.

Where the assessee had four eligible units along with other business and three eligible units earned profits while the one loss, the assessee would be entitled to a deduction in respect of the profits of the three eligible units while the loss sustained by the fourth unit could be set off against the normal business income. [See also digests under Section 147 & Rule 8]

Section 32 of the Income-tax Act, 1961 - Depreciation

BSE membership card is a licence within the meaning of Section 32(1)(ii) and therefore, depreciation is allowable on cost of BSE membership card [Assessment Years 1999-2000 to 2002-03]

Techno Shares & Stocks Ltd. and others v. CIT, September 9, 2010 (SC)

On the analysis of the Rules of BSE, it is clear that the right of membership (including right of nomination) gets vested in the Exchange on the demise/default committed by the member; that, on such forfeiture and vesting in the Exchange the same gets disposed of by inviting offers and the consideration received thereof is used to liquidate the dues owed by the former/defaulting member to the Exchange, Clearing House, etc. [see Rule 16 and Bye-law 400]. It is this right of membership which allows the non-defaulting member to participate in the trading session on the floor of the Exchange. Thus, the said membership right is a "business or commercial right" conferred by the Rules of BSE on the non-defaulting continuing member.

The membership right could be said to be owned by the assessee and used for the business purpose in terms

[1] *Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.org. For the convenience of readers full text of these cases have been hosted on the website of the institute at the link: www.icai.org/post.html?post_id=967&c_id=59*

of Section 32(1)(ii). The Rules and the Bye-laws analysed hereinabove indicate that the right of membership (including the right of nomination) vests in the Exchange only when a member commits default. Otherwise, he continues to participate in the trading session on the floor of the Exchange; that he continues to deal with other members of the Exchange and even has the right to nominate subject to compliance of the Rules. Moreover, by virtue of Explanation 3 to Section 32(1)(ii) the commercial or business right which is similar to a "licence" or "franchise" is declared to be an intangible asset. Moreover, under Rule 5 membership is a personal permission from the Exchange which is nothing but a "licence" which enables the member to exercise rights and privileges attached thereto. It is this licence which enables the member to trade on the floor of the Exchange and to participate in the trading session on the floor of the Exchange. It is this licence which enables the member to access the market. Therefore, the right of membership, which includes right of nomination, is a "licence" or "akin to a licence" which is one of the items which falls in Section 32(1)(ii). The right to participate in the market has an economic and money value. It is an expense incurred by the assessee which satisfies the test of being a "licence" or "any other business or commercial right of similar nature" in terms of Section 32(1)(ii).

The right of membership conferred upon the member under the BSE membership card is a "business or commercial right" which gives a non-defaulting continuing member a right to access the Exchange and to participate therein and in that sense it is a licence or akin to licence in terms of Section 32(1)(ii). Such a right vests in the Exchange only on default/demise in terms of the Rules and Bye-laws of BSE, as they stood at the relevant time. However, every business or commercial right would not constitute a "licence" or a "franchise" in terms of Section 32(1)(ii). Therefore, depreciation is allowable on the cost of BSE membership card under Section 32(1)(ii).

Case Review: Decision of Bombay High Court in CIT v. Techno Shares & Stocks Ltd. [IT Appeal No. 971 of 2006] decided on September 11, 2009 set aside. [Digest of the Bombay High Court Judgment is published in Legal Decision Section of The Chartered Accountant Journal Vol. 58 December 2009 issue (Page 894)]

Section 115-JB, read with Section 80HHC of Income-tax Act, 1961 - Special provision for payment of tax by certain companies

While computing the "book profits" under Section 115- JB, reduction of 100% export profits is to be reduced therefrom [Assessment year 2001-02]

Ajanta Pharma Ltd. v. CIT, September 9, 2010 (SC)

Section 80HHC(1) inter alia states that where an assessee, who is the Indian resident, is engaged in the business of exports out of India of any goods earns convertible foreign exchange then in computing the total income, a deduction of the profits derived from such exports would be admissible. Thus, Section 80HHC provides for tax incentives.

At one point of time prior to the Finance Act, 2000, exporters were allowed 100% deduction in respect of profits derived from export of goods. However, that has now been reduced in a phase-wise manner under Section 80HHC(1B). It may be noted that all assessable entities are not eligible for deduction under Section 80HHC. Similarly, only eligible goods are entitled to such special deduction under Section 80HHC(1). On the other hand, Section 115JB refers to levy of MAT on the deemed income. The above discussion is only to show that Sections 80HHC and 115JB operate in different spheres.

Coming to Section 80HHC(1B) it is clear that after Finance Act, 2000 w.e.f. assessment year 2001-02 exporters would not get 100% deduction in respect of profits derived from exports but that they would get deduction of 80% in the assessment year 2001-02, 70% in the assessment year 2002-03 and so on. Thus, Section 80HHC(1B) deals not with "eligibility" but with the "extent of deduction".

Section 115JB is a self-contained Code. It taxes deemed income. It begins with a non-obstante clause. Section 115JB refers to computation of "book profits" which have to be computed by making Upward and Downward Adjustments. In the Downward Adjustment, vide clause (iv) it seeks to exclude "eligible" profits derived from exports.

On the other hand, under Section 80HHC(1B) it is the extent of deduction which matters. The word "thereof" in each of the items under Section 80HHC(1B) is important. Thus, if an assessee earns ₹100 crore then for the assessment year 2001-02, the extent of deduction is 80% thereof and so on which means that the principle of proportionality is brought in to scale down the tax incentive in a phased manner.

However, for the purposes of computation of book profits under Section 115-JB which computation is different from normal computation under the 1961 Act/computation under Chapter VIA. The Upward and Downward Adjustments are to kept in mind and if so read it becomes clear that clause (iv) covers full export profits of 100% as "eligible profits" and that the same cannot be reduced to 80% by relying on Section 80HHC(1B). Thus, for computing "book profits" the Downward Adjustment, in the above example, would be ₹100 crore and not ₹90 crore. The idea being to exclude "export profits" from computation of book profits under Section 115JB which imposes MAT on deemed income. The above reasoning also gets support from the Memorandum of Explanation to the Finance Bill, 2000.

If the dichotomy between "eligibility" of profit and "deductibility" of profit is not kept in mind then Section 115JB will cease to be a self-contained code. In Section 115JB, as in Section 115JA, it has been clearly stated that the relief will be computed under Section 80HHC(3)/(3A), subject to the conditions under sub-clauses (4) and (4A) of that Section. The conditions are only that the relief should be certified by the Chartered Accountant. Such condition is not a qualifying condition but it is a compliance condition. Therefore, one cannot rely upon the last sentence in clause (iv) of Explanation to Section 115JB (subject to the conditions specified in sub-clauses (4) and (4A) of that Section) to obliterate the difference between "eligibility" and "deductibility" of profits.

Case Review: Decision of Bombay High Court in CIT v. Ajanta Pharma Ltd. [IT Appeal No. 1005 of 2008] decided on May 7, 2009 set aside. [Digest of the Bombay High Court Judgment is published in Legal Decision Section of The Chartered Accountant Journal Vol. 58 November 2009 issue (Page 724)]

Section 119 of the Income-tax Act, 1961 - Central Board of Direct Taxes - Directions to subordinate authorities

CBDT Circular No 8/2009 dated 24-11-2009 stipulating that a failure to deduct tax on payments made by TPAs to hospitals under Section 194J will necessarily attract a penalty under Section 271C has foreclosed a recourse to defence statutorily available to assessee under Section 273B and has thus, acted in violation of restraints imposed upon it by provisions of Section 119(1); to that extent, therefore, said circular would have to be set aside

Dedicated Health Care Services TPA (India) (P.) Ltd. v. Asstt. CIT, May 3, 2010 (BOM)

The Board has by the Circular No. 8/2009 dated 24-11-2009 taken the view that payments which are made by TPAs to hospitals fall within the purview of Section 194J. No exception can be taken to the circular to that extent, consistent with the interpretation placed on the provisions of Section 194J in the course of this judgment. However, the grievance of the Petitioners is that the circular proceeds to postulate that a liability to pay a penalty under Section 271C will be attracted for a failure to make a deduction under Section 194J. Section 273B of the Act provides that notwithstanding anything contained in the provisions inter alia of Section 271C no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the provision if he proves that there was a reasonable cause for the failure. The vice in the Circular No 8/2009 dated 24-11-2009 that has been issued by the Central Board of Direct Taxes lies in the determination which has been made by the Board that a failure to deduct tax on payments made by TPAs to hospitals under Section 194J will necessarily attract a penalty under Section 271C. Besides interfering with the quasi judicial discretion of the Assessing Officer or, as the case may be, the appellate authority the direction which has been issued by the Board would foreclose the defence which is open to the assessee under Section 273B. By foreclosing a recourse to the defence statutorily available to the assessee under Section 273B, the Board has by issuing such a direction acted in violation of the restraints imposed upon it by the provisions of sub-Section (1) of Section 119. To that extent, the Circular No 8/2009 dated 24-11-2009 issued by the Board would have to be set aside and is accordingly set aside. [See also digest under Section 194J]

Section 147, read with Section 154 of the Income-tax Act, 1961 - Income escaping assessment

Where Revenue has an efficacious remedy open to it in form of a rectification under Section 154 for correcting computational error, recourse to provisions of Section 147 was not warranted [Assessment Year 2004-05]

Hindustan Unilever Limited v. Dy. CIT, April 1, 2010 (BOM)

Explanation (2) to Section 147 provides a deeming fiction, for the purposes of the Section, of cases where income chargeable to tax would be regarded as having escaped assessment. Clause (c) of Explanation (2) incorporates a situation where an assessment has been made, but income chargeable to tax has been under assessed; or assessed

at too low a rate; or where such income has been made the subject of excessive relief under the Act. Where the power to rectify an order of assessment under Section 154(1) is adequate to meet a mistake or error in the order of assessment, the Assessing Officer must take recourse to that power as opposed to the wider power to reopen the assessment. The assessee cannot be penalized for a fault of the Assessing officer. However, it would be a different case where the error in the order of assessment is attributable to a lapse or omission on the part of the assessee. The provisions of the statute lay down overlapping remedies which are available to the Revenue but the exercise of these remedies must be commensurate with the purpose that is sought to be achieved by the legislature. The reopening of an assessment under Section 147 has serious ramifications. Explanation (3) to Section 147 provides that for the purposes of assessment or reassessment, the Assessing Officer may assess or reassess the income in respect of any issue which has escaped assessment and where such issue comes to his notice subsequently in the course of the proceedings under the Section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under subsection (2) of Section 148. In other words, once an assessment is validly reopened in exercise of powers conferred by Section 147, the Assessing Officer is empowered to reassess the income in respect of any other issue which comes to his notice in the course of the proceedings, though such reasons have not been set out in the notice under Section 148. Before recourse can be taken to the wider power to reopen the assessment on the ground that there is a computation error, the Assessing Officer ought to have rectified the mistake by adopting the remedy available under Section 154 of the Act. All statutory powers have to be exercised reasonably. Where a statute confers an area of discretion, the exercise of that discretion is structured by the requirement that discretionary powers must be exercised reasonably. Indian Law is governed by the prescriptions of a written constitution. Fairness and fair treatment are norms which emanate from the guarantee of equality and non discrimination under Article 14. Constitutional norms, including non discriminatory application of law, must guide the interpretation of statutes. Statutory enactments must be read to be in conformity with constitutional norms. The exercise of powers vested by a statute must equally be consistent with constitutional norms. The remedies which the law provides are tailored to be proportional to the situation which the remedy resolves. Where the statute provides for several remedies, the choice of the remedy must be appropriate to the underlying basis and object of the conferment of the remedy. A simple computational error can be resolved by rectifying an order of assessment under Section 154(1). It would be entirely arbitrary for the Assessing Officer to reopen the entire assessment under Section 147 to rectify an error or mistake which can be rectified under Section 154. An arbitrary exercise of power is certainly not a consequence which Parliament contemplates.

Where the Revenue has an efficacious remedy open to it in the form of a rectification under Section 154 for correcting the computational error and that consequently recourse to the provisions of Section 147 was not warranted. [See also digests under Section 10B & Rule 8]

Section 194J of the Income-tax Act, 1961 - Deduction of tax at source - Professional or technical services, fees for

TPAs, when they make payments to hospitals are liable to deduct tax at source under the provisions of Section 194J

Dedicated Health Care Services TPA (India) (P.) Ltd. v. Asstt. CIT, May 3, 2010 (BOM)

There are three circumstances, while construing the provisions of Section 194J, that would weigh in determining the interpretation of the provision. Firstly, in defining the character of the person who is to make the payment and whose obligation it is to deduct tax at source, Parliament has excluded from the ambit of the expression "any person" an individual and a Hindu Undivided Family. Secondly, in defining the character of the payee under the substantive part of Section 194J Parliament has used the wider expression "resident". Thirdly, in terms of explanation (a), the words "services rendered by a person in the course of carrying on" have to be given a meaning. These words include service rendered which is incidental to the carrying out of a profession which is listed therein.

There can be no gain saying the fact that a hospital provides medical services. As a matter of fact, a hospital provides an umbrella of services and for making those services available engages the services of doctors and qualified medical professionals. The fact that the services are institutionalized at a hospital which provides medical services should make no difference to the applicability of the provision of Section 194J. The services which are provided continue to be services rendered in the course of carrying on the medical profession. These are medical services institutionally provided by the hospital, in the course of the carrying on of the medical profession. Now undoubtedly a hospital by itself, being an artificial entity, or a corporate enterprise which conducts the hospital is not a medical professional.

The Explanation to Section 194J provides a definition of the expression "professional services" only for the purposes of the section. Parliament must be attributed to be cognizant of the fact that the pursuit of a profession is, as noted by the Supreme Court in Dr. Devengra M. Surti v. State of Gujarat AIR 1969 SC 63, an activity carried on by an individual through the application of personal skill and intelligence. Despite this, when it imposed an obligation under Section 194J to deduct tax, Parliament imposed that obligation on any person (not being an individual or a Hindu Undivided Family) who is responsible for paying to a resident any sum by way of fees for professional services and the expression "professional services" has been defined to mean services rendered by a person in the course of carrying on inter alia the medical profession. Where the provision of medical services takes place within the institutional framework of a hospital, services are rendered as part of an umbrella of services provided by the hospital which engages qualified medical professionals who practise the medical profession.

These are services rendered in the course of the carrying on of the medical profession. Hence, it is not possible to accept the submission that TPAs, when they make payments to hospitals are not liable to deduct tax at source under the provisions of Section 194J. [See also digest under Section 119]

Section 194J of the Income-tax Act, 1961 - Deduction of tax at source - Professional or technical services, fees for

Where a cellular service provider has Interconnect Agreement with BSNL/MTNL and under such agreement, pays interconnect/access/port charges to BSNL/MTNL and Revenue proceeds against Cellular Service provider for failure to comply with TDS obligations holding payment as 'fees for technical services', but there is no expert evidence to show how human intervention takes place, particularly, during the process when calls take place, matter is to be remanded for availing expert opinion

CIT v. Bharti Cellular Ltd, August 12, 2010 (SC)

Respondent No.1 Bharti Cellular is a cellular service provider. It has Interconnect Agreement with BSNL/MTNL. Under such agreement, Respondent No.1 Bharti Cellular pays interconnect/ access/ port charges to BSNL/MTNL. Bharti Cellular, BSNL, MTNL, Hutchison are all service providers. All are governed by National Standards of CCS No.7 issued by Telecom Engineering Centre. Under the National Standards Bharti Cellular is required to connect its network with the network of BSNL (the service provider) and similar concomitant agreement is provided for under which BSNL is required to interconnect its network with Bharti Cellular Limited. The question arose as to whether TDS was deductible by Bharti Cellular Limited when it paid interconnect charges/access/port charges to BSNL.

The Supreme Court held that the meaning of the words "fees for technical services" under Section 194J read with clause (b) of the Explanation to Section 194J is to be examined. Section 194J which, inter alia, states that "fees for technical services" shall have the same meaning as contained in Explanation 2 to clause (vii) of Section 9(1). Right from 1979 various judgments of the High Courts and Tribunals have taken the view that the words "technical services" have got to be read in the narrower sense by applying the rule of Noscitur a sociis, particularly, because the words "technical services" in Section 9(1)(vii) read with Explanation 2 comes in between the words "managerial and consultancy services".

The problem which arose in these cases was that there was no expert evidence from the side of the Department to show how human intervention takes place, particularly, during the process when calls take place from one place, say 'A', to another place, say 'B'. If, for example, BSNL has no network in 'B' whereas it has a network in 'A', the Interconnect Agreement enables Bharti Cellular to access the network of BSNL in 'B' and the same situation can arise vice versa in a given case. During the traffic of such calls whether there is any manual intervention, is one of the points which requires expert evidence. Similarly, on what basis is the "capacity" of each service provider fixed when Interconnect Agreements are arrived at is also to be found out, each service provider is allotted a certain "capacity". It is also to be found out on what basis such "capacity" is allotted and what happens if a situation arises where a service provider's "allotted capacity" gets exhausted and it wants, on an urgent basis, "additional capacity". Whether at that stage, any human intervention is involved is required to be examined, which again needs a technical data. These types of matters cannot be decided without any technical assistance available on record.

The assessee(s) was not at fault in these cases for the simple reason that the question of human intervention was never raised by the Department. Accordingly, the Assessing Officer (TDS) was to be in each of these cases to examine technical experts.

Section 195 of the Income-tax Act, 1961 - Deduction of tax at source - Payments to Non-resident

Where amount(s) paid by the importer distributors of software in India to the foreign software Suppliers was not "royalty" and the same did not give rise to any "income" taxable in India, the importers were not liable to deduct any tax at source

GE India Technology Centre Private Ltd. v. CIT, September 9, 2010 (SC)

The most important expression in Section 195(1) consists of the words "chargeable under the provisions of the Act". A person paying interest or any other sum to a non-resident is not liable to deduct tax if such sum is not chargeable to tax under the I.T. Act. For instance, where there is no obligation on the part of the payer and no right to receive the sum by the recipient and that the payment does not arise out of any contract or obligation between the payer and the recipient but is made voluntarily, such payments cannot be regarded as income under the I.T. Act. It may be noted that Section 195 contemplates not merely amounts, the whole of which are pure income payments, it also covers composite payments which has an element of income embedded or incorporated in them. Thus, where an amount is payable to a non-resident, the payer is under an obligation to deduct TAS in respect of such composite payments. The obligation to deduct TAS is, however, limited to the appropriate proportion of income chargeable under the Act forming part of the gross sum of money payable to the non-resident. This obligation being limited to the appropriate proportion of income flows from the words used in Section 195(1), namely, "chargeable under the provisions of the Act". It is for this reason that vide Circular No. 728 dated October 30, 1995 the CBDT has clarified that the tax deductor can take into consideration the effect of DTAA in respect of payment of royalties and technical fees while deducting TAS.

The application of Section 195(2) pre-supposes that the person responsible for making the payment to the non-resident is in no doubt that tax is payable in respect of some part of the amount to be remitted to a non-resident but is not sure as to what should be the portion so taxable or is not sure as to the amount of tax to be deducted. In such a situation, he is required to make an application to the ITO (TDS) for determining the amount. It is only when these conditions are satisfied and an application is made to the ITO(TDS) that the question of making an order under Section 195(2) will arise. In fact, at one point of time, there was a provision in the I.T. Act to obtain a NOC from the Department that no tax was due. That certificate was required to be given to RBI for making remittance.

While deciding the scope of Section 195(2) it is important to note that the tax which is required to be deducted at source is deductible only out of the chargeable sum. This is the underlying principle of Section 195. Hence, apart from Section 9(1), Sections 4, 5, 9, 90, 91 as well as the provisions of DTAA are also relevant, while applying tax deduction at source provisions. Reference to ITO (TDS) under Sections 195(2) or 195(3) either by the non-resident or by the resident payer is to avoid any future hassles for both resident as well as non-resident. In our view, Sections 195(2) and 195(3) are safeguards. The said provisions are of practical importance.

If the contention that the moment there is remittance the obligation to deduct TAS arises is to be accepted then we are obliterating the words "chargeable under the provisions of the Act" in Section 195(1). The said expression in Section 195(1) shows that the remittance has got to be of a trading receipt, the whole or part of which is liable to tax in India. The payer is bound to deduct TAS only if the tax is assessable in India. If tax is not so assessable, there is no question of TAS being deducted.

The expression "sum chargeable under the provisions of the Act" is used only in Section 195. The obligation to deduct TAS arises only when there is a sum chargeable under the Act. Section 195(2) is not merely a provision to provide information to the ITO(TDS). It is a provision requiring tax to be deducted at source to be paid to the Revenue by the payer who makes payment to a non- resident. Therefore, Section 195 has to be read in conformity with the charging provisions, i.e., Sections 4, 5 and 9.

There is no provision in the I.T. Act by which a payer can obtain refund. Section 237 read with Section 199 implies that only the recipient of the sum, i.e., the payee could seek a refund. Further, Section 195 uses the word `payer' and not the word "assessee". The payer is not an assessee. The payer becomes an assessee-in-default only when he fails to fulfill the statutory obligation under Section 195(1). If the payment does not contain the element of income the payer cannot be made liable. He cannot be declared to be an assessee-in-default.

When the payer remits an amount to a non-resident out of India he claims deduction or allowances under the Income Tax Act for the said sum as an "expenditure". Under Section 40(a)(i), inserted vide Finance Act, 1988 w.e.f. 1.4.89, payment in respect of royalty, fees for technical services or other sums chargeable under the Income Tax Act would not get the benefit of deduction if the assessee fails to deduct TAS in respect of payments outside India which are chargeable under the I.T. Act. This provision ensures effective compliance of Section 195 of the I.T. Act relating to tax deduction at source in respect of payments outside India in respect of royalties, fees or other sums chargeable under the I.T. Act. In a given case where the payer is an assessee he will definitely claim deduction under the I.T. Act for such remittance and on inquiry if the AO finds that the sums remitted outside India comes within the definition of royalty or fees for technical service or other sums chargeable under the I.T. Act then it would be open to the AO to disallow such claim for deduction. Similarly, vide Finance Act, 2008, w.e.f. 1.4.2008 sub-Section (6) has been inserted in Section 195 which requires the payer to furnish information relating to payment of any sum in such form and manner as may be prescribed by the Board. This provision is brought into force only from 1.4.2008. It will not apply for the period with which we are concerned in these cases before us. Therefore, there are adequate safeguards in the Act which would prevent revenue leakage.

Where the amount(s) paid by the importer distributors of software in India to the foreign software Suppliers was not "royalty" and the same did not give rise to any "income" taxable in India, the importers were not liable to deduct any tax at source.

Case Review: Decision of the Karnataka High Court in CIT v. Samsung Electronics 320 ITR 209 set aside.

Section 245D of the Income-tax Act, 1961 - Settlement Commission - Procedures on application under section 245C

In scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under Section 245C(1) of the Act and thus natural corollary is that determination of income by Settlement Commission has necessarily to be with reference to income disclosed in application filed under said section in prescribed form

Ajmera Housing Corporation v. CIT, August 20, 2010 (SC)

A bare reading of the provision of Section 245C would reveal that besides such other particulars, as may be prescribed, in an application for settlement, the assessee is required to disclose: (i) a full and true disclosure of the income which has not been disclosed before the assessing officer; (ii) the manner in which such income has been derived and (iii) the additional amount of income tax payable on such income.

It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the pre-requisites for a valid application under Section 245C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that Section 245C(1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application.

The procedure laid down in Section 245D of the Act, contemplates that on receipt of the application under Section 245C(1) of the Act, the Settlement Commission is required to forward a copy of the application filed in the prescribed form (No. 34B), containing full details of issues

for which application for settlement is made, the nature and circumstances of the case and complexities of the investigation involved, save and except the annexures, referred to in item No. 11 of the form and to call for report from the Commissioner. The Commissioner is obliged to furnish such report within a period of 45 days from the date of communication by the Settlement Commission. Thereafter, the Settlement Commission, on the basis of the material contained in the said report and having regard to the facts and circumstances of the case and/or complexity of the investigation involved therein may by an order, allow the application to be proceeded with or reject the application. After an order under Section 245D(1) is made, by the Settlement Commission, Rule 8 of the Income Tax Settlement Commission (Procedure) Rules, 1987 (1987 Rules) mandates that a copy of the annexure to the application, together with a copy of each of the statements and other documents accompanying such annexure shall be forwarded to the Commissioner and further report shall be called from the Commissioner. The Settlement Commission can also direct the Commissioner to make further enquiry and investigations in the matter and furnish his report. Thereafter, after examining the record, Commissioner's report and such further evidence that may be laid before it or obtained by it, the Settlement Commission is required to pass an order as it thinks fit on the matter covered by the application and in every matter relating to the case not covered by the application and referred to in the report of the Commissioner under sub-Section (1) or sub-Section (3) of the said Section. It bears repetition that as per the scheme of the Chapter, in the first instance, the report of the Commissioner is based on the bare information furnished by the assessee against item No. 10 of the prescribed form, and the material gathered by the revenue by way of its own investigation. It is evident from the language of Section 245C(1) of the Act that the report of the Commissioner is primarily on the nature of the case and the complexities of the investigation, as the annexure filed in support of the disclosure of undisclosed income against item No. 11 of the form and the manner in which such income had been derived are treated as confidential and are not supplied to the Commissioner. It is only after the Settlement Commission has decided to proceed with the application that a copy of the annexure to the said application and other statements and documents accompanying such annexure, containing the aforesaid information are required to be furnished to the Commissioner. The Settlement Commission decides to proceed with the application, it will not be denuded of its power to examine as to whether in his application under Section 245C(1) of the Act, the assessee has made a full and true disclosure of his undisclosed income. The report(s) of the Commissioner and other documents coming on record at different stages of the consideration of the case, before or after the Settlement Commission has decided to proceed with the application would be most germane to determination of the said question. It is plain from the language of sub-Section (4) of Section 245D of the Act that the jurisdiction of the Settlement Commission to pass such orders as it may think fit is confined to the matters covered by the application and it can extend only to such matters which are referred to in the report of the Commissioner under sub-Section (1) or sub-Section (3) of the said Section. A "full and true" disclosure of income, which had not been previously disclosed by the assessee, being a pre-condition for a valid application under Section 245C(1) of the Act, the scheme of Chapter XIX-A does not contemplate revision of the income so disclosed in the application against item No. 11 of the form. Moreover, if an assessee is permitted to revise his disclosure, in essence, he would be making a fresh application in relation to the same case by withdrawing the earlier application. In this regard, Section 245C(3) of the Act which prohibits the withdrawal of an application once made under sub-Section (1) of the said Section is instructive in as much as it manifests that an assessee cannot be permitted to resile from his stand at any stage during the proceedings. Therefore, by revising the application, the applicant would be achieving something indirectly what he cannot otherwise achieve directly and in the process rendering the provision of sub-Section (3) of Section 245C of the Act otiose and meaningless. The scheme of said Chapter is clear and admits no ambiguity.

In the scheme of Chapter XIX-A, there is no stipulation for revision of an application filed under Section 245C(1) of the Act and thus the natural corollary is that determination of income by the Settlement Commission has necessarily to be with reference to the income disclosed in the application filed under the said Section in the prescribed form.

Case Review: Order of the Bombay High Court dated July 8, 2010 upheld.

Income-tax Rules

Rule 8 of the Income-tax Rules, 1962 – Income from Manufacture of Tea

Deeming provisions of Rule 8 are applicable both in cases of agricultural income and loss; claim to set off 40 per cent of losses against normal business profits is allowable [Assessment Year 2004-05]

Hindustan Unilever Limited v. Dy. CIT, April 1, 2010 (BOM)

What Rule 8 postulates is the process of segregating the income derived from the sale of tea upon its computation as if it were income derived from business. Rule 8 creates a legal fiction, as a result of which the income which is derived from the sale of tea which is grown and manufactured by the assessee is to be computed as if it were income derived from business. It needs no line of elaborate reasoning to state the well settled position in law that once a legal fiction is created by the legislature or, as in this case, in subordinate legislation, the legal fiction has to be given force and effect so as to operate within the area in which it was intended to operate. In applying a legal fiction, it is trite law that one cannot allow the imagination to boggle. A legal fiction has to be carried to its logical conclusion. In computing the income from the sale of tea as if it was income derived from business, for the purposes of Rule 8, it is impossible to comprehend as to how the expenditure incurred by an assessee, wholly and exclusively, for the purposes of business should be disregarded. Obviously, the expenditure cannot be disregarded.

In the instant case, the Assessing Officer, while issuing a notice for reopening the assessment observed that the provisions of Rule 8 are applicable "only in the case of income" and the claim of the assessee to set off 40 per cent of losses against normal business profits could not be allowed. On this basis, the Assessing Officer has formed the opinion that the loss of ₹10.84 crore attributable to the business activity of the assessee involving the manufacture and sale of tea was liable to be disallowed. It must be noted here that it was not the contention of the Assessing Officer that the loss which has been computed by the assessee by applying the proportion of 40 per cent is not a fair

estimate of the actual loss sustained by the assessee in its business operations. On the contrary, it is on the basis of Rule 8 that the Assessing Officer seeks to postulate that the loss attributable to the business activity of the assessee would have to be disregarded on the ground that it is not allowable expenditure. This inference which was sought to be drawn by the Assessing Officer was contrary to the plain meaning of the charging provisions of the Act; and to Rule 8, besides being contrary to the position in law laid down by the Supreme Court. The assessee was lawfully entitled to adjust the loss which arose as a result of the business activity under Rule 8. [See also digests under Sections 10B and 147]

OTHER ACTS

Supreme Court Rules

Additional facility of issuing notice through e-mails for commercial litigation is to be provided

Central Elect. Regulatory Commn. v. National Hydroelect Power Corpn Ltd, July 26, 2010 (SC)

The statistical data indicates that on account of delay in process serving, arrears of cases keep on mounting particularly in commercial cases.

Therefore, for convenience of all concerned in addition to normal mode of service, service of Notice(s) may be effected by e-mail. For this purpose, E-mail addresses of the companies/corporations(s) are also to be filed. Notices are also to be sent at the e-mail address of the advocate(s) for companies/corporation(s).

Clarification: The above facility is being extended in addition to the modes of service mentioned in the existing Supreme Court Rules. This facility, for the time being, is extended to commercial litigation and to those cases where the advocate(s) on-record seeks urgent interim reliefs. ■

CIRCULARS/NOTIFICATIONS

DIRECT TAXES

1. Notification No. 69/2010 dated 26-08-2010

Recognised Provident Fund: 8.5 percent rate notified under rule 6(b) of Part A of Schedule IV to the Income-tax Act, 1961

Rule 6 of Part A of the Fourth Schedule to the Income-tax Act, 1961, provides, inter alia, that interest credited on the balance to the credit of an employee participating in a recognised provident fund in so far as it is allowed at a rate exceeding such rate notified by the Central Government, shall be deemed to have been received by the employee in the relevant previous year and shall be included in his total income.

Accordingly, the Central Government has notified w.e.f. 1st September, 2010, in exercise of the powers conferred by Rule 6, 8.5 per cent as the rate of interest on Employer's annual contributions in a recognised provident fund. This implies that w.e.f. 1st September 2010 interest credited on the balance to the credit of the employee in excess of 8.5 percent shall be deemed to have been received by the employee in the previous year and shall be included in the total income of the employee. Prior to this date, the interest credited in excess of 9.5 per cent was deemed to be the income of the employee.

2. Notification No. 72/2010, dated 8.9.2010

Notification of bonds, interest from which would be exempt under section 10(15)(iv)

Section 10(15)(iv)(h) of the Income-tax Act, 1961, exempts interest on bonds/debentures issued by any public sector company and notified by the Central Government in the Official Gazette. Accordingly, the Central Government has notified the tax-free secured, redeemable, non-convertible Railway Bonds (of ₹1,000 each in case of public issue and ₹1,00,000 each in other cases) to be issued by the Indian Railway Finance Corporation (IRFC), interest from which would be exempt under section 10(15)(iv)(h).

The complete text of the above notifications can be downloaded from the website of the Income-tax Department, www.incometaxindia.gov.in, and the complete link may be downloaded from the home page of the Direct Taxes Committee of the Institute at http://www.icai.org/post.html?post_id=965&c_id=57.

(Matter on Direct Taxes has been contributed by the Direct Taxes Committee of the ICAI)

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INDIRECT TAXES

A. EXCISE

I. Notification:

1. Notification No. 28/2010-CE (N.T.) dated 01.09.2010 : CENVAT credit taken or utilised of the duty or tax or cess paid on inputs, capital goods and input services used in drawing wires from wire rods shall not be required to be reversed if the assessee has paid excise duty on removal of the said final product and has not claimed a refund thereof even though the process of drawing of wires from wire rods has been held as not amounting to manufacture by the Supreme Court in the case of *Collector of Central Excise Vs Technoweld Industries 2003 (155) ELT 209 (SC)*. Such non-reversal shall be allowed only for the CENVAT credit taken upto 08.07.2004.

Further, the CENVAT credit taken of excise duty paid by the buyer of such final product made and cleared upto 08.07.2004 shall also not be required to be reversed.

Note: *With effect from 09.07.2004, a section note has been inserted in section XV of the First Schedule to the Central Excise Tariff Act so as to provide that 'the process of drawing or redrawing a rod, wire or any other similar article, into wire shall amount to manufacture'. Thus, w.e.f. 09.07.2004, drawing of wires from wire rods is deemed manufacture.*

II. Circular:

1. Circular No. 933/23/2010-CX dated 16.08.2010 has been issued to clarify that the value of goods cleared from an 100 per cent Export Oriented Undertaking to a depot from where the sale thereof to Domestic Tariff Area is effected through consignment agents will have to be determined by sequential application of Rules 3 to 9 of the Customs Valuation Rules (Determination of Price of Imported Goods), 2007.

The same view has been expressed by the CESTAT in following cases :

(a) Endress Hauser Flowtec (I) Pvt. Ltd. [2009 (237) ELT 598 (T)]
(b) Morarjee Brembana Ltd. [2003 (154) ELT 500 (T)]
(c) Uniworth Textile Ltd. [2009 (244) ELT 401 (T)]

The earlier clarification issued vide Circular No 268/85-CX.8 dated 29.09.1994 clarifying that valuation of goods in such situations will have to be done in accordance with the Rule 8 of the Customs Valuation Rule (Determination of Price of Imported Goods), 1988 as it existed then has been withdrawn.

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B. SERVICE TAX

I. Notifications:

1. Notification No. 47/2010 ST dated 03.09.2010 hasexempted taxable service of outdoor catering provided by a Non Government Organisation registered under any Central Act or State Act, under the Centrally assisted Mid-Day Meal Scheme, from the whole of service tax leviable thereon.

2. Notification No. 48/2010 ST dated 08.09.2010: Central Board of Excise and Customs has revised the monetary limits for adjudication of penalty by Central Excise Officers by amending Notification No. 30/2005-ST dated 10.08.2005 in the following manner:

Sr. No.	Central Excise Officer	Amount of service tax or CENVAT credit specified in a notice for the purpose of adjudication under Section 83A
(1)	Superintendent of Central Excise	Up to ₹1,00,000 (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation)

(2)	Assistant/Deputy Commissioner of Central Excise	Up to ₹5,00,000 (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner of Central Excise	₹5,00,000 to ₹50,00,000
(4)	Additional Commissioner of Central Excise	₹20,00,000 to ₹50,00,000
(5)	Commissioner of Central Excise	Without limit.

II. Circulars:

1. Circular No. 127/2010-ST dated 16.08.2010 has clarified that donations and grants-in-aid received from different sources by a Charitable Foundation imparting free livelihood training to the poor and marginalised youth, will not be treated as 'consideration' received for such training and thus not subjected to service tax under 'commercial training or coaching service as donation or grant-in-aid is not specifically meant for a person receiving such training or to the specific activity, but is in general meant for the charitable cause championed by the registered foundation. There is no relationship other than universal humanitarian interest between the provider of donation/grant and the trainee. In such a situation, service tax is not leviable, since the donation or grant-in-aid is not linked to specific trainee or training.

2. Circular No. 128/2010-ST dated 24.08.2010 has been issued to clarify the following:

(i) With effect from 01.06.2007, when the new service 'Works Contract' service was made effective, classification of construction, erection, commissioning or installation, repair services in the nature of works contract would undergo a change in case of long term contracts even though part of the service was classified under the respective taxable service prior to 01.06.2007 as 'works contract' describes the nature of the activity more specifically. Therefore, as per the provisions of section 65A of the Finance Act, 1994, it would be the appropriate classification for the part of the service provided after that date.

(ii) The on-going works contract, entered till 31.05.2007, satisfying rule 3(3) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 only would be entitled for Composition Scheme. Rule 3(3) casts an obligation for exercising an option to choose the scheme prior to payment of service tax in respect of a particular works contract. Once such an option is made, it is applicable for the entire contract and cannot be altered.

Therefore, in case a contract where the provision of service commenced prior to 01.06.2007 and any payment of service tax was made under the respective taxable service before 01.06.2007, the said condition under rule 3(3) was not satisfied and thus no portion of that contract would be eligible for composition scheme. On the other hand, even if the provision of service commenced before 01.06.2007, but no payment of service tax was made till the taxpayer opted for the composition scheme after its coming into effect from 01.06.2007, such contracts would be eligible for opting of the composition scheme.

The Board's previous Circular No. 98/1/2008-ST dated 04.01.2008 and the ratio of judgement of the High Court of Andhra Pradesh in the matter of *M/s. Nagarjuna Construction Company Limited vs. Government of India (2010 TIOL 403 HC AP ST)* are in line with the above interpretation.

The complete text of the above-mentioned notification and circulars can be downloaded from the following link : http://www.cbec.gov.in/cae1-english.htm

(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

CORPORATE LAWS

1. SEBI Clarification on submission of Audit report

www.sebi.gov.in

The SEBI has issued Circular No. CIR/MRD/DP/30/2010 dated 06.09.2010 in relation to SEBI (Depositories and Participants) Regulations, 1996 based on which it was clarified earlier that every issuer is to submit audit report on a quarterly basis to the stock exchanges audited by a qualified chartered accountant or a practicing company secretary, for the purpose of reconciliation of share capital held in depositories and in physical form with the issued / listed capital. Based on representations received by SEBI for changing the term 'secretarial audit' as it encompasses a wider area pertaining to examination of corporate and secretarial records of the company and cannot be restricted to merely audit for reconciliation of share capital, SEBI has issued this Circular and clarified and modified the terminology 'secretarial audit' to 'reconciliation of share capital audit'. One may refer to the above website for further details.

2. Submission of data to Credit Information Companies (CICs)

www.rbi.gov.in

The RBI has issued Circular No. RPCD.CO.RF.BC.No.17/07.40.06/2010-11 dated 06.09.2010 informing that it has, apart from Credit Information Bureau of India Ltd. (existing credit information company in operation since January 2001), issued certificate of registration to Experian Credit Information Company of India Pvt. Ltd. and Equifax Credit Information Services Pvt. Ltd. to commence the business of credit information. In terms of sub-sections (1) and (2) of section 17 of the CICs (Regulation) Act, 2005, a CIC may require its members to furnish credit information as it may deem necessary in accordance with the provisions of the Act and every such credit institution has to provide the required information to that CIC. Further, in terms of Regulation 10(a)(ii) of the CICs Regulations, 2006, every credit institution shall, (a) keep the credit information maintained by it, updated regularly on a monthly basis or at such shorter intervals as may be mutually agreed upon between the credit institution and the CIC, and, (b) take all such steps which may be necessary to ensure that the credit information furnished by it is up-to-date, accurate and complete. The RBI has advised that banks which have become members of the above CICs may provide them the current data in the format prescribed by the CIC. Such banks may also provide historical data in order to enable the CICs to validate their software and develop a robust database. One may refer to the above website for further details.

3. Trading Rules and shareholding in dematerialized mode

www.sebi.gov.in

The SEBI has issued Circular No. SEBI/Cir/ISD/1/2010 dated 02.09.2010 whereby in order to moderate sharp and destabilising price movements in shares of companies, to encourage better price discovery and to increase transparency in securities market, SEBI in consultation with Stock Exchanges has decided to adopt following measures:

(a) Securities of all companies shall be traded in the normal segment of the exchange if and only if the company has achieved at least 50 per cent of non-promoters holding in dematerialised form by 31st October, 2010,

(b) In all cases, wherein based on the latest available quarterly shareholding pattern, the companies do not satisfy above criteria, trading in such scrips shall take place in Trade for Trade segment (TFT segment) with effect from the time schedule specified above,

(c) In addition to these measures, in the following cases (except for the original scrips, on which derivatives products are available or included in indices on which derivatives products are available) the trading shall take place in TFT segment for first 10 trading days with applicable price band while keeping the price band open on the first day of trading:
   - Merger, demerger, amalgamation, capital reduction/consolidation, scheme of arrangement, in terms of the Companies Act, 1956 and/or as sanctioned by the Courts, in cases of rehabilitation packages approved by the Board of Industrial and Financial Reconstruction under Sick Industrial Companies Act and in cases of Corporate Debt Restructuring (CDR) packages by the CDR Cell of the RBI.
   - Securities that are being admitted to trading from another exchange by way of direct listing/MOU/securities admitted for trading under permitted category, where suspension of trading is being revoked after more than one year.

(d) In all cases, the exchanges shall ensure that before starting trading in scrips, the companies have complied with the disclosure requirements and the same is publicly disseminated on the website of exchanges to enable investors to take informed decision.

One may refer to the above website for further details.

4. Arbitration Mechanism in Stock Exchanges

www.sebi.gov.in

The SEBI has issued Circular No. CIR/MRD/DSA/29/2010 dated 31.08.2010 in relation to arbitration mechanism available at stock exchanges for arbitration of disputes (claims, complaints, differences, etc.) arising between a client and a member (Stock Broker, Trading Member and Clearing Member) across various market segments for which SEBI has revised the arbitration fees payable by each of the parties to the arbitration as under:

(a) Each of the parties to arbitration (other than a client with a claim /counter claim upto ₹10 lakh and filing the arbitration reference for the same within six months) shall deposit an amount, as may be prescribed by the stock exchange, at the time of making arbitration reference and that the deposits (exclusive of statutory dues - stamp duty, service tax, etc.) shall not exceed the amount as indicated under:

Amount of Claim / Counter Claim, whichever is higher (₹)	**If claim is filed within six months**	**If claim is filed after six months**
≤ 10,00,000	1.3% subject to a minimum of ₹10,000	3.9% subject to a minimum of ₹30,000
> 10,00,000 - ≤ 25,00,000	₹13,000 plus 0.3% amount above ₹10 lakh	₹39,000 plus 0.9% amount above ₹10 lakh
> 25,00,000	₹17,500 plus 0.2 % amount above ₹25 lakh subject to maximum of ₹ 30,000	₹52,500 plus 0.6 % amount above ₹25 lakh subject to maximum of ₹ 90,000

(b) A client who has a claim / counter claim upto ₹10 lakh and files arbitration reference for the same within six months shall be exempt from the deposit.

(c) In all cases, on issue of the arbitral award the stock exchange shall refund the deposit to the party in whose favour the award has been passed. In cases where claim was filed within six months period, the full deposit made by the party against whom the award has been passed, shall be appropriated towards arbitration fees. In cases where claim was filed after six months, one-third of the deposit collected from the party against whom the award has been passed, shall be appropriated towards arbitration fees and balance two-third amount shall be credited to the Investor Protection Fund of the respective stock exchange.

(d) A party filing an appeal before the appellate panel [as mentioned under item 6 above] shall pay a fee not exceeding ₹30,000, as may be prescribed by the stock exchange, in addition to statutory dues (stamp duty, service tax, etc) along with the appeal.

One may refer to the above citation for further details of the comprehensive and operational aspects of the guidelines.

5. Execution of Power of Attorney (PoA) by the Client in favour of the Stock Broker and Depository Participant

www.sebi.gov.in

The SEBI has issued Circular No. CIR/MRD/DMS/28/2010 dated 31.08.2010 in relation to guidelines issued earlier regarding execution of Power of Attorney (PoA) by the client in favor of Stock Broker/Stock Broker and Depository Participant. SEBI has received representation from Market Participants seeking guidance and clarifications on process to be followed for implementation of the provisions of the circular and by this Circular; the SEBI has clarified in relation to several situations which include inter alia the following two:

- Standardizing the norms for PoA must not be construed as making the PoA a condition precedent or mandatory for availing broking or depository participant services. PoA is merely an option available to the client for instructing his broker or depository participant to facilitate the delivery of shares and pay-in/pay-out of funds, etc. No stock broker or depository participant shall deny services to the client if the client refuses to execute a PoA in their favour.
- PoA executed in favour of a Stock Broker and Depository Participant by the client should provide the list of clients' & brokers' bank accounts & demat accounts where funds and securities can be moved. Such bank & demat accounts should be accounts of related party only.

One may refer to the above citation for further details.

6. Interest Subvention Scheme - 1.5 per cent interest subvention and 2 per cent additional subvention for short-term crop loans in 2010-11

The Hon'ble Finance Minister, in his Budget Speech (paragraph 52) for 2010-11 had announced as follows:

"In the last budget, I had provided an additional one per cent interest subvention as an incentive to those farmers who repay their short-term crop loans as per schedule. I propose to raise this subvention for timely repayment of crop loans from one per cent to two per cent for 2010-11. Thus, the effective rate of interest for such farmers will now be five per cent per annum."

2. In pursuance of this announcement, Government of India will provide interest subvention of 1.5 per cent p.a. to public sector banks in respect of short-term production credit up to ₹3 lakh during the year 2010-11. This amount of subvention will be calculated on the crop loan amount from the date of its disbursement/ drawal up to the date of actual repayment of the crop loan by the farmer or up to the due date of the loan fixed by the banks for the repayment of the loan, whichever is earlier, subject to a maximum period of one year. This subvention will be available to Public Sector Banks on the condition that they make available short-term production credit up to ₹3 lakh at ground level at 7 per cent p.a.
3. The Reserve Bank of India vide circular no. RBI/2010-11/192 RPCD. No. PLFS. BC.18/05.04.02/2010-11 dated September 6, 2010 has advised the banks to immediately submit their estimates of short-term production credit to farmers up to ₹3 lakh during the year 2010-11, to enable us to provide Government with an estimate of the likely amount of subvention. Please note that the estimates should be realistic in nature.
4. In pursuance of the above announcement, Government of India will also provide additional interest subvention of 2 per cent p.a. to public sector banks in respect of those prompt paying farmers who repay their short-term production credit within one year of disbursement/ drawal of such loans. This subvention will be available to such farmers on the short-term production credit up to a maximum amount of ₹3 lakh availed of by them during the year, *from the date of disbursement/drawal of the crop loan up to the actual date of repayment by farmers or up to the due date fixed by the bank for repayment of crop loan, whichever is earlier, subject to a maximum period of one year from the date of disbursement*. This additional subvention will be available to Public Sector Banks on the condition that the effective rate of interest on short-term production credit up to ₹3 lakh for such farmers will now be 5 per cent p.a.
5. The RBI has also advised the banks as under:
   i) Claims in respect of 1.5 per cent interest subvention and 2 per cent additional interest subvention may be submitted in **Formats I and II** (as enclosed with the circular) respectively to the Chief General Manager-in-Charge, Rural Planning and Credit Department, Reserve Bank of India, Central Office, Shahid Bhagat Singh Road, Fort, Mumbai – 400 001.
   ii) In respect of 1.5 per cent interest subvention, banks are required to submit their claims **<u>on a half-yearly basis</u>** as at September 30, 2010 and March 31, 2011, of which, the latter needs to be **accompanied by a Statutory Auditor's certificate certifying the claims for subvention for the entire year ended March 31, 2011 as true and correct**. Any remaining claim pertaining to the disbursements made during the year 2010- 11 and not included in the claim for March 31, 2011, may be consolidated separately and marked as an ***'Additional Claim'*** and submitted latest by April 30, 2012, **duly audited by Statutory Auditors certifying the correctness**.
   iii) In respect of the 2 per cent *additional* subvention, banks may submit their one-time consolidated claims pertaining to the disbursements made during the entire year 2010-11, latest by April 30, 2012, **duly audited by Statutory Auditors certifying the correctness**.

For complete circular and Formats I and II to be certified by the Statutory Auditor of the banks please refer RBI website www.rbi.org.in

(Matter on Corporate Laws has been contributed by CA. Jayesh Thakur)

■

Basis of calculation of future cash flows.

The following is the opinion given by the Expert Advisory Committee of the Institute in response to a query sent by a member. This is being published for the information of readers.

A.Facts of the Case

1. A company is a public sector enterprise under the administrative control of the Ministry of Mines, Government of India and is engaged in mining of bauxite, manufacturing of alumina and aluminium, generation of power at captive power plant for use in Smelter Plant. The saleable products derived out of the manufacturing process are alumina and aluminium which are sold in domestic and international markets. The company has four production units (i) A fully mechanised open cast Bauxite Mine having excavation capacity of 48,00,000 tonnes per annum, (ii) Alumina Refinery having production capacity of 15,75,000 tonnes per annum, (iii) Captive Power Plant having 8 units of 120 MW each to generate power and (iv) Smelter Plant of 3,45,000 M.T. per annum capacity.

2. Mines division serves feed-stock to the Alumina Refinery, located at 16 KM downhill. The Refinery provides alumina to the company's Smelter Plant which is about 600 KM away, in a specially designed alumina wagon by rail transport. For production of 1 M.T. of aluminium metal at Smelter, 13600 KWH of power is required, which is met by generation of power at Captive Power Plant situated at a distance of 4 KM. Cost of power constitutes about 30 per cent of the cost of production of aluminium. Captive Power Plant is set up exclusively to supply un-interrupted power to Smelter. It is also connected to State grid, to take care of the supply of emergency power to Smelter in case of any break-down or failure at the Captive Power Plant. Any surplus power after meeting the requirement of Smelter is automatically transmitted to State grid and treated as sale.

3. The company has identified the following three reportable segments on the basis of type of products :

(i)	Chemical Segment	-	For Bauxite Mining and Alumina Plant.
(ii)	Power Segment	-	For Captive Power Plant.
(iii)	Aluminium	-	For Smelter Plant.

4. At Alumina Refinery, the company has set up two value added plants for (i) special grade hydrate and (ii) special grade alumina (SGA). Both the units have been identified as cash-generating units for the purpose of Accounting Standard (AS) 28, 'Impairment of Assets'.

5. The installed capacity of the SGA plant is 19400 MT per annum. On its way to stabilisation and entering into the new market, the capacity utilisation during the period from the financial year 2005-06 to 2007-08 ranged from 8.23 per cent to 21.65 per cent only. During the course of audit for the financial year 2008-09, the Comptroller and Auditor General of India (C&AG) auditors advised for calculating recoverable amount of SGA plant for the purpose of testing impairment.

6. The querist has stated that estimate of future cash flows over the useful life of the SGA plant, i.e., upto the financial year 2022-23 was made in line with the provisions of paragraphs 26(a), 26(b), 26(c), 27, 28, 29, 30, 31(a) , 31(b), and 31(c) of AS 28. Present value of the cash flows worked out to be positive as compared to the carrying cost of the assets. For SGA plant, calcined alumina, which is internally transferred, is the only raw-material. While calculating the cash flows, cost of production of calcined alumina was considered as the cost of raw-material. The querist has further stated that calcined alumina which is internally transferred to Smelter Plant for production of aluminium metal is valued at cost although about 50 per cent of production of alumina is sold.

7. As per the querist, during the course of scrutiny/checking of cash flow statement, C&AG auditors agreed to each and every assumption taken, except the cost of raw-materials. In support of their views, C&AG auditors relied upon the following provisions of paragraph 68 of AS 28:
"68. If an active market exists for the output produced by an asset or a group of assets, this asset or group of assets should be identified as a separate cash-generating unit, even if some or all of the output is used internally. If this is the case, management's best estimate of future market prices for the output should be used:
(a) in determining the value in use of this cash-generating unit, when estimating the future cash inflows that relate to the internal use of the output; and

(b) in determining the value in use of other cash-generating units of the reporting enterprise, when estimating the future cash outflows that relate to the internal use of the output."

In the opinion of the C&AG auditors, market price of calcined alumina should have been taken as the cost of raw-material instead of cost of production. This resulted into negative cash flows necessitating making provision for impairment loss.

8. The querist has stated that in reply to the C&AG's query, as stated in paragraph 7 above, the management justified its calculation as per paragraph 31(b) of AS 28, which reads as follows:

"31. Estimates of future cash flows should include:

(a) projections of cash inflows from the continuing use of the asset;

(b) projections of cash outflows that are necessarily incurred to generate the cash inflows from continuing use of the asset (including cash outflows to prepare the asset for use) and that can be directly attributed, or allocated on a reasonable and consistent basis, to the asset; and

(c) net cash flows, if any, to be received (or paid) for the disposal of the asset at the end of its useful life."

9. *According* to the querist, C&AG auditors were of the view that there seems to be a contradiction between the provisions of paragraph 31 and paragraph 68 of AS 28 and advised to seek opinion from the Expert Advisory Committee of the Institute of Chartered Accountants of India.

B. Query

10. Based on the facts stated above, the opinion of the Expert Advisory Committee has been sought by the querist on the issue as to whether the raw-materials' cost (internally transferred) should be taken at 'cost of production' or at 'market price' for the purpose of calculating future cash flows for ascertaining impairment as per AS 28.

C. Points considered by the Committee

11. The Committee notes that the basic issue raised by the querist is that whether, for the purpose of calculating future cash flows while testing for impairment, the price of the raw-material which is transferred internally, should be taken at 'cost of production' or 'market price'. The Committee has, therefore, examined only this issue, and has not examined any other issue that

may arise from the Facts of the Case, such as, whether the cash generating units are properly identified by the company, etc. The Committee presumes that all other factors for determining future cash flows/value in use of the CGU have been duly considered by the company in accordance with AS 28. The Committee notes from the Facts of the Case that it is not clear whether 'calcined alumina' is the raw-material for the SGA plant or for Smelter Plant. However, since the opinion of the Committee contained hereinafter is based on the principles of pricing of internally transferred raw-materials, it does not affect the opinion.

12. The Committee notes paragraph 31 of AS 28 reproduced in paragraph 8 above and paragraph 68 of AS 28 reproduced in paragraph 7 above. The Committee further notes paragraph 69 of AS 28 which states as below:

> "69. Even if part or all of the output produced by an asset or a group of assets is used by other units of the reporting enterprise (for example, products at an intermediate stage of a production process), this asset or group of assets forms a separate cash-generating unit if the enterprise could sell this output in an active market. This is because this asset or group of assets could generate cash inflows from continuing use that would be largely independent of the cash inflows from other assets or group of assets. …"

13. From the above, the Committee is of the view that paragraph 31 of AS 28 lays down the composition of the estimates of future cash flows. Paragraph 31(b) of AS 28 only lays down that the projections of cash flows for an asset should include cash outflows required to generate cash inflows. This paragraph further requires that cash outflows should include among other expenses, overheads and other related charges that can be directly attributed or allocated on a reasonable and consistent basis to the asset.

14. The Committee is of the view that, on the other hand, paragraph 68 of AS 28 lays down the parameters for identification of the cash-generating unit in case when an active market exists for the output produced by the asset or a group of assets even if the output is used internally. This paragraph requires that in such a situation, that is, when an active market exists for the output of an asset or a group of assets which is used internally, that asset or group of assets should be identified as a separate cash generating unit. This paragraph further requires that in such a situation, it is the management's best estimate of future market prices of the output that should be used for determining the cash inflows even from internal use of the output. Similarly, for determining the cash outflows of the cash generating unit that uses the output of this CGU as its raw material, it is the management's best estimate of future market prices of the product that should be used for determining cash outflows.

15. From paragraphs 13 and 14 above, the Committee is of the view that paragraph 31(b) is a general paragraph which deals with what cash outflows should be taken into account while determining future cash flows; whereas, paragraph 68 of AS 28 contains specific requirement with respect to, inter alia, the price at which the raw material which is transferred internally, should be taken for the purpose of determining cash outflows. Thus, in the view of the Committee, there is no contradiction between paragraphs 31 and 68 of AS 28.

D. Opinion

16. On the basis of the above and subject to paragraph 11 above, the Committee is of the opinion that for the purpose of calculating future cash flows for determining impairment as per AS 28, the cost of the internally transferred raw-material should be taken at the management's best estimate of future market prices of the output (raw material).

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist.
3	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in twenty seven volumes, which are also available in the from of CD. Each Volume of the Compendium and the CD are available for sale at the Institute's office at New Delhi and its Regional Council offices at Mumbai, Chennai, Kolkata and Kanpur. The CD can also be accessed at the Institute's website: **www.icai.org**
4	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to **eac@icai.org**

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CA Profession Has Very Effectively Helped Businesses: Mukesh Ambani

Chairman and Managing Director of Reliance Indsutries Ltd., Shri Mukesh Dhirubhai Ambani, has attained an inspiring height of success, much to the benefit of our country, its corporate sector and society at large. A Chemical Engineer from University Institute of Chemical Technology, University of Mumbai, and an MBA from Stanford University, USA, the leading industrialist Shri Ambani's vision of energy security is transforming India's energy landscape whereas his futuristic initiatives in other spheres of business and industry are setting very high standards worth emulating. As a member of the Prime Minister's Council on Trade and Industry and as a member of the Board of Governors of the National Council of Applied Economic Research, New Delhi, Shri Ambani is effectively contributing his vision and energy for the economic growth of the nation and its people. Every Indian is proud of the achievements of *Reliance* and The Institute of Chartered Accountants of India is no exception. In the following exclusive interview to *The Chartered Accountant*, he shares his vision and views on a range of topics including traits of success, national economy, corporate governance and role of the chartered accountancy profession:

Q 1. With a view to inspire younger generation of the chartered accountancy profession, can you please describe briefly what made such an astonishing success possible in a relatively short span?

Ans. I strongly believe that it is possible to achieve a new landmark every time you set out to conquer or break into new territory with a sense of ownership and passion. My father Shri Dhirubhai taught us this philosophy by practising it first. Indeed it is an open secret of success – set yourself an audacious goal, do your research well, get the right team in place, set global benchmarks, bring in world class execution capabilities, and above all, do it all with a sense of ownership and great passion.

Q 2. We understand you have certain characteristics unique to yourself which you have very carefully retained, e.g. being a very simple person with very dynamic way of thinking, a pure vegetarian and a teetotaler. How have you managed to retain your originality and whether that has contributed in taking you to greater heights?

Ans. To be what you are does not really need any special effort. It is when you want to be someone else that you waste considerable time and energy that can be put to productive usage. As far as my achievements go, it is for the others to judge.

Q 3. *Reliance* is always synonymous with mega size. You have always thought in terms of being largest producer/seller, etc. What has influenced this approach? Is it always beneficial? Is there any difference between thinking "Big" and thinking "huge"?

Ans. There are two or three aspects to this question. From the business point of view, creating and achieving economies of scale is almost always beneficial. From the social point of view, you can serve a larger number of people. From the national point of view, it is important to create capacities that can make our country globally competitive. As a guiding philosophy, we have always believed that what is good for the country is good for Reliance.

Q 4. Indian economy almost remained insulated from the global slowdown/recession. What according to you is one single most important characteristic of our economy/society for the same? What care in your opinion, we as a country or society need to take? There is one view that India has the benefit of having largest young population. Do you see this advantage as a future liability?

Ans. I do not think the Indian economy was either insulated or isolated from the global slowdown. It is just that we were far more resilient, and one of the biggest elements of this resilience came from the ability of Indian consumers to balance their consumption and saving patterns. I think it naturally comes to most if not all Indians.

As far as the young population of India is concerned, I personally pin a lot of hope on them to deliver world class standards and steer the country to a global leadership position. The youth of a country can be likened to the innate energy of a nation. It needs to be channeled into the right direction and I feel the current generation of leaders have to play a significant role in harnessing all this energy through the right educational initiatives.

"Political economy tells us that shareholder activism is the best bet for ensuring corporate governance in any organisation, especially because corporate governance in any country is directly linked to the present business environment. Taking a leaf out of our corporate governance initiatives I can confidently say that engaging shareholders in a timely fashion can ensure the best results."

"Chartered accountancy as a profession has very effectively helped businesses because it has created high standards of accounting and a rigorous system that only allows the best to get certification. At RIL, we have a large number of chartered accountants who have made significant contribution to the organisation's success and corporate governance."

Q 5. The current problems in Europe have again raised concerns about the global growth. How do you expect things to play out?

Ans. Waste not, want not. If governments behave sincerely there is no reason why this crisis should not blow over soon now that we have detected the causes. But I believe it is a difficult task and would really need concerted effort on the part of the entire European Union to come out of this situation.

Q 6. The issue of *corporate governance* is a hotly-debated one, particularly after the Satyam episode. How do you rate the governance standards in our Indian corporate world?

Ans. The standards of corporate governance in India are getting better by the day, and the corporate sector is quick to adapt to the needs of the changing times. Contrary to the prevailing perception of corporate governance in developing countries, I believe our conservative approach has benefited us by insulating us from the type of machinations that big corporations in developed countries have delved in, leading to the recently felt crisis of confidence.

Q 7. What are your inputs for enhancing the level of corporate governance in India?

Ans. Political economy tells us that shareholder activism is the best bet for ensuring corporate governance in any organisation, especially because corporate governance in any country is directly linked to the present business environment. Taking a leaf out of our corporate governance initiatives I can confidently say that engaging shareholders in a timely fashion can ensure the best results.

Q 8. Would you like say something about the chartered accountancy profession? How is your experience with chartered accountants? Would you like to give any feedback on their knowledge, skills, training, etc.?

Ans. Chartered accountancy as a profession has very effectively helped businesses because it has created high standards of accounting and a rigorous system that only allows the best to get certification. At RIL, we have a large number of chartered accountants who have made significant contribution to the organisation's success and corporate governance.

"I think chartered accountancy can benefit by expanding its horizons to encompass global standards prescribed by well renowned courses such as the CPA, especially because our best students are brighter, can work harder and are mathematically inclined. I would also like to encourage them to maintain their excellence."

"I believe ICAI can help evolve a standard template with the help of leading corporate houses to ensure minimum standards of corporate governance. An institution like ICAI can also align with our future initiatives in education to take the profession to the smaller towns of India."

Q 9. Would you like to give message to the members of the chartered accountancy profession to inspire and enable them to fully tap opportunities and face ever changing dynamic world of business?

Ans. I think chartered accountancy can benefit by expanding its horizons to encompass global standards prescribed by well renowned courses such as the CPA, especially because our best students are brighter, can work harder and are mathematically inclined. I would also like to encourage them to maintain their excellence.

Q 10. What are the areas where ICAI and Reliance can jointly work for development of chartered accountancy as a profession with a focus on economical and social development of our country?

Ans. I believe ICAI can help evolve a standard template with the help of leading corporate houses to ensure minimum standards of corporate governance. An institution like ICAI can also align with our future initiatives in education to take the profession to the smaller towns of India. ■

Fundamentals of XBRL[1]

XBRL is a member of the family of languages based on XML, or Extensible Markup Language, which is a standard for the electronic exchange of data between businesses and on the internet. Under XML, identifying tags are applied to items of data so that they can be processed efficiently by computer software. XBRL is a powerful and flexible version of XML which has been defined specifically to meet the requirements of business and financial information. It enables unique identifying tags to be applied to items of financial data, such as 'net profit'. This article is introductory in nature and describes the basics of XBRL, and provides explanations of the major terms underlying this concept. The contents of this article have been taken from the IFRS and XBRL International websites. Interested and enthusiastic readers are encouraged to consult the said websites.

XBRL is a language for the electronic communication of business and financial data which is revolutionising business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information. It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data. XBRL stands for e**X**tensible **B**usiness **R**eporting **L**anguage. It is one of a family of "XML" languages which is becoming a standard means of communicating information between businesses and on the internet. XBRL is being developed by an international non-profit consortium of approximately 450 major companies, organisations and government agencies. It is an open standard, free of licence fees. It is already being put to practical use in a number of countries and implementations of XBRL are growing rapidly around the world.

A Simple Explanation

The idea behind XBRL, eXtensible Business Reporting Language, is simple. Instead of treating financial information as a block of text - as in a standard internet page or a printed document - it provides an identifying tag for each individual item of data. This is computer readable. For example, company net profit has its own unique tag. The introduction of XBRL tags enables automated processing of business information by computer

[1] Source: www.xbrl.org, www.ifrs.org and other related websites

software, cutting out laborious and costly processes of manual re-entry and comparison. Computers can treat XBRL data "intelligently": they can recognise the information in a XBRL document, select it, analyse it, store it, exchange it with other computers and present it automatically in a variety of ways for users. XBRL greatly increases the speed of handling of financial data, reduces the chance of error and permits automatic checking of information.

The target audiences are non-technical (IT) and non-accounting people who would like to understand both a bit of XBRL code and some of the problems that are tackled in order to allow computers to process and communicate accounting data meaningfully. If you have questions of a more generic nature, such as how it started, who owns XBRL, or, what the benefits are, please visit the XBRL International Website, www.xbrl.org.

Fundamentals

In XBRL, financial data is tagged so that it can be easily understood and processed by computers, for example <Asset>1000</Asset>. The word Asset together with brackets "<" and ">" is called a tag. We distinguish opening tags: <…> and closing tag: </…>. Between the tags there is a value. What computers understand from the example above is that something called an Asset has the content "1000". But how do they know what an Asset is? This is where XBRL uses computer scientists' concept of metadata. In brief, metadata is data about data.

For example, a programmer has to explain to a computer how it should understand the term Asset and what kind of values could be assigned to this concept. From the accounting perspective, Asset should have a monetary value (type attribute) and its balance nature is debit. This refers to the basic rule of double entry accounting that Assets and Expenses have normal balance of a debit while Equity, Liabilities and Revenues have a normal balance of a credit.

Another characteristic of an Asset is that it is a resource available to an entity at a particular point in time. It appears on the Balance sheet which is a snapshot of an entity's financial position at a specified date. The opposite of a resource presented at a point of time is a flow which occurs during a period.

The description above shows that information about at least three characteristics must be provided to a computer so that it can understand <Asset> in an accounting manner. Of course, thousands of hours spent on developing XBRL were not devoted to only tell computers what an Asset is. In accountancy there are many concepts that could be described using XBRL. Moreover, there are different regulations concerning financial reporting which means that the definition of an Asset under IFRSs (International Financial Reporting Standards) could be different to the one provided by some national GAAPs (Generally Accepted Accounting Practices/Principles).

Therefore, there is a need to describe interactions between financial concepts for each regulation of GAAP. This is to define whether or not there is any relation between Assets and for example Receivables and if there is, how it looks it terms of accounting knowledge and create references for elements to express to which accounting act they apply to. To do that, XBRL uses technology called XML Linking (X Link).

To relate the information provided above to the main drawing at the top we could say:

- values between tags (for example <Asset>100</Asset>) are found in instance documents;
- information on what an Asset is and how a computer should treat it is provided in schema files;
- relationships are described in link-bases which are segregated into different categories depending on what is described and how it is done.

“In XBRL, financial data is tagged so that it can be easily understood and processed by computers, for example <Asset>1000</Asset>. The word Asset together with brackets "<" and ">" is called a tag. We distinguish opening tags: <…> and closing tag: </…>. Between the tags there is a value. What computers understand from the example above is that something called an Asset has the content "1000". But how do they know what an Asset is? This is where XBRL uses computer scientists' concept of metadata.”

The following sections discuss each of the elements in more detail:

1. Taxonomy

The word 'taxonomy', according to the Wikipedia, is derived from Greek verb tassein which means to classify and noun nomos that could be translated into English as law or science. Combined and interpreted word for word it would mean classification of some kind of knowledge. Initially, it referred to the science of classifying living things, but later it received wider meaning and is currently applied to either classification of things in general or rules governing this classification.

Frequently, taxonomies are given hierarchical structures or are built in the form of networks so, as well as the elements, they also represent relationships. Virtually everything could be a subject of classification under some taxonomy. The most common example of taxonomy is classification of living creatures. The root element (the most general one) is Organism since all living things are of this group. Its first child is Domain which in turn is a parent of Kingdom whose subgroup is Division that is divided into Classes and so on. One important characteristic of taxonomies is that children (lower level elements) may have many parents (upper level elements). In some classifications, spiders could be categorised as insects, in others as eight-legged creatures and in another as non-flying organisms.

Now, how does this term apply to XBRL?

In XBRL, a taxonomy consists of the core part which is a schema (or more schemas) and linkbases. If you compared it to the physique of a crab, the schema would be its head and trunk (where all the major organs are situated) and the linkbases would be its limbs. Of course, a schema could exist without linkbases in the same way as that a crab could theoretically live without limbs but in order for crab to survive and for the taxonomy to be optimal both parts of the body are necessary. Relating the XBRL taxonomy to the general taxonomy term explained above the schema is the part that contains definitions of elements (such as Assets) whereas linkbases provide relationships between them. In the example of the classification of living things, the explanation of what is an Organism, Domain, Kingdom, Division and Class would be placed in the schema while the hierarchical relationships between them would appear in the linkbases.

2. Schema

An XBRL schema stores information about taxonomy elements (their names, ids and other characteristics). It can be regarded as a container where an unstructured list of elements and references to linkbase files are described. From the technical point of view the XBRL Schema is an XML Schema tailored to particular business and financial reporting needs. The schema itself represents a set of unrelated elements. Schemas are created using XML Schema technology and their physical form is a file with an extension. Together with linkbases it creates an XBRL taxonomy. The root element (the most general one) of all schemas is <schema>. It opens (<schema>) and closes (</schema>) every schema document. It contains some attributes describing it. Because the same element could be defined in many schemas each of which would assign it a different meaning (for example under various GAAPs the concept Assets may be defined differently), to distinguish between the elements we use namespaces. Namespace look like Internet addresses (for example "http://xbrl.iasb.org/int/fr/ifrs/") but they are not.

The reason for using names that look like www locators (URIs) is that they are unique and therefore are appropriate to identify the elements that are unique to a schema. Instead of using the whole, long address we can assign it a prefix. If we define for example that ifrs="http://xbrl.iasb.org/int/fr/ifrs/" then, instead of quoting the whole URI before an element name, we can simply use ifrs (for example <ifrs:Assets/>).

To summarize, the main purpose of XBRL schemas is to provide the computer with information on how it should represent and process accounting terms. As explained in the XBRL section, computers do not have built-in accounting knowledge so they have to be taught what a particular concept means and what its characteristics are. To learn more on how to explain accounting to a computer go to the Element section.

> **"...taxonomy consists of the core part which is a schema (or more schemas) and linkbases. If you compared it to the physique of a crab, the schema would be its head and trunk (where all the major organs are situated) and the linkbases would be its limbs. Of course, a schema could exist without linkbases in the same way as that a crab could theoretically live without limbs but in order for crab to survive and for the taxonomy to be optimal both parts of the body are necessary."**

3. Element

An element is a business concept (such as assets, liabilities, income…) presented to a computer in a way that it could learn its main characteristics. To achieve this, definitions of elements that appear in schemas are constructed according to a specific set of rules. The example below describes simplified (prefixes have been omitted) definition of the element Assets:

<element name = "Assets" id = "Assets" period Type = "instant" balance = "debit" abstract = "false" substitution Group = "item"type= "monetary Item Type"/>

The most important parts provided in this example, from a business perspective, are name, type, balance and periodType. It is easy to guess that the first component assigns an element a unique name. To distinguish between elements defined in different schemas we use namespaces and their prefixes. A name must meet several criteria and cannot contain spaces and other characters that are 'illegal' in XML. XML distinguishes between upper and lower case so 'assets' and 'Assets' are different elements. Apart from the name, for an accountant, the concept Assets is associated with a set of characteristics that are defined by other components presented in the example above.

4. Linkbase

As described in the taxonomy section, linkbases (often referred to as 'layers') are the components of a taxonomy that provide information about relationships between elements and link them with specified external resources. So typically, as well as defining XBRL elements, the creation of an XBRL taxonomy, regardless of its purpose, also involves performing following actions:

- labeling elements in specified languages in order to make taxonomy readable for humans;
- referencing elements to the external resources that justify their existence and that contain an explanation, definition or example of the use of the particular financial concept,
- defining relations between elements according to different criteria.

The figure at the top of the page presents how linkbases relate to the schema. There are unidirectional arrows to the label and reference linkbases and bidirectional ones to the presentation, calculation and definition layers. The actions listed in the bullet points above are the five types of linkbases. Label and reference linkbases connect elements to external resources, while presentation, calculation and definition layers provide descriptions of relationships between elements.

Linkbases use two XML technologies. The first is known as XLink (XML Linking Languages) which as its name suggests, allows for the creation of hyperlinks in XML documents. The second is XPointer (XML Pointing Languages) that helps to localize specific parts of XML and XBRL documents (e.g. elements' definitions in schemas). Basically, in order to create a relation, we need to point to elements or resources that we are interested in and define the type of relationship. A simplified example of a hierarchical relation from a presentation linkbase is provided below:

```
<loc xlink:type="locator"
xlink:href="schema.xsd#Assets"
xlink:label="Assets_Locator"/>

<loc xlink:type="locator"
xlink:href="schema
xsd#CurrentAssets"
xlink:label="CurrentAssets
_Locator"/>

<presentationArc xlink:type="arc"
xlink:arcrole="http://www.xbrl.
org/2003/arcrole/parent-child"
xlink:from="Assets_Locator"
xlink:to="CurrentAssets_Locator"/>
```

Let's analyze this example. First, we create a locator (<loc>) which we label Assets_Locator and we point to the element that is defined in the schema stored in the file schema.xsd whose id attribute value is Assets. Lines three and four repeat this action for the element CurrentAssets. The last three lines describe the relation between the "located" elements by describing the type of connection. An arcrole attribute defines the type of relation which in this particular case is "../parent-child" (hierarchical order). The attributes to and from point to locators. In the example the relation says that <CurrentAssets> is a child of <Assets>.

To sum up, linkbases provide descriptions of connections between elements by localizing them and defining the type of relationships (utilizing arcrole attribute). Each of the five linkbases (layers): presentation, calculation, definition, reference and label contains definitions of different types of relations.

Presentation Linkbase

Business reports are in general prepared in the form of tables or statements or other structures. The presentation linkbase stores information about relationships between elements in order to properly organize the taxonomy content. This allows the elements to be arranged in a structure that is appropriate to represent the hierarchical relationships in particular business data. These groupings can be performed in many ways. For example, a typical Balance Sheet contains Assets, Equity and Liabilities. Assets consist of Current Assets and Non-current Assets. Current Assets are split in Inventories, Receivables and so on. The presentation linkbase, using parent-child relations organizes elements in this way and helps users find concepts they are interested in. The main drawback of a tree-like (hierarchical) structure in a presentation linkbase is that it only allows the presentation of flat lists of elements, while financial statements also contain more sophisticated reports such as Changes in Equity or Movements in Property, Plant and Equipment . The XBRL Consortium is currently working

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on rendering solutions that would provide for the automatic creation of such reports.

Calculation Linkbase

The idea of the calculation linkbase is to improve the quality of an XBRL report. It contains definitions of basic validation rules, which apply to all instance documents referring to a particular taxonomy. A hierarchically calculation linkbase sorts all monetary elements in this way so that lower level elements sum up to or are subtracted from one another so that the upper level concept is the result of these operations.

Gross Profit [by function]	
Revenue, Total [by function]	1
Cost of Sales [by function]	-1

The sign of the relationship depends on the weight attribute that is assigned to the arc connecting two elements. An example is provided below.

<calculationArc xlink:type="arc"
xlink:arcrole="http://www.xbrl.org/2003/arcrole/summation-item"
xlink:from="GrossProfit"
xlink:to="RevenueTotal"
order="1"**weight="1"**
use="optional"/>

<calculationArc xlink:type="arc"
xlink:arcrole="http://www.xbrl.org/2003/arcrole/summation-item"
xlink:from="GrossProfit"
xlink:to="CostOfSales"
order="2"**weight="-1"**
use="optional"/>

The example shows that there are defined two calculation arcs providing details concerning relations between Gross profit, Revenue and Cost of Sales. In Income Statements, Gross profit is a difference between the other two. Therefore, we assign weight attribute value to "1" on the arc connecting Gross profit and Revenue and "-1" between Gross profit and Cost of Sales. The reason why there is a difference between calculation and presentation linkbases, is that the total element that stands for the summation of all others usually appears at the bottom in the financial statements whereas in the calculation linkbase it must be placed as the top concept.

Presentation
Assets (Presentation)
Assets, Non-Current
Assets, Current
Assets, Total

Calculation	
Assets, Total	
Assets, Non-Current	+1
Assets, Current	+1

There two major of rules concerning calculation relations in XBRL:

Firstly, we cannot carry out operations on elements that have different values of the periodType attribute. This is often called the cross-context rule and relates to defining some elements as "For period" (duration) and others as "As of date" (instant). For example, concepts that appear on Balance Sheet are instant which means that their value is presented for a specified day, while elements in the Income Statement or Statement of Cash Flows are duration because they represent actions that took place over a period of time. The problem emerges for example in the Statement of Changes in Equity or Movements in Property, Plant and Equipment where instant elements mix with duration. The solution to this problem is a formula linkbase that will provide taxonomy creators with many more functions than just simple addition or subtraction.

Secondly, the double entry accounting rule requires XBRL taxonomy creators to define the credit/debit nature of monetary elements appearing in the Balance Sheets and Income Statements. This rule does not allow the addition of elements with opposite balance attributes (they must be subtracted). It also defines whether the value contained by an element should be positive or negative.

Definition Linkbase

The definition linkbase provides taxonomy creators with the opportunity to define different kinds of relations between elements. There are four standard types of relationships supported by the definition linkbase. The first one is referred to as "general-special". It distinguishes between concepts that have more generic or more specific meaning. For example Zip Code is the US representation of Postal Code which is used worldwide. Therefore, to indicate that connection, taxonomy creators define Postal Code as a general term to which there is more specialised concept Zip Code. Second available relation type is "essence-alias". By using it, taxonomy creators are able to indicate that two concepts have similar meaning. For example, some airlines may want to use the term Planes to describe their main component of their PPE while other would prefer Aircraft. To state that meaning of these two is the same and that they can be used interchangeably, taxonomy creators may connect them using "essence-alias" arcrole. The third standard type of relation is called "requires-element". As its name indicates, taxonomy builders use it to force instance creators to enter the value of one element, if they provide the content of another. For instance, a regulator may want to require disclosures on a particular component of Assets if it appears on the Balance Sheet. In order to achieve that, the definition linkbase defines "requires-element" relationship between them (for example, Property, Plant and Equipment, Net and Property, Plant and Equipment Disclosures). The fourth relation is "similar-tuples". It resembles "essence-alias" relation but is applied for tuples. It connects two tuples that are equivalents in terms of definition (documentation from label linkbase or reference in reference linkbase) but are diverse from XML perspective i.e. do not have identical content models, for example contain different elements. One of the reasons that this type of relation was introduced is prohibition of schema redefinition which disallows for changes in tuple's content model.

Reference Linkbase

Financial concepts appearing on business reports more often than not stem from regulatory documents issued by authorities. For example, the IFRS Taxonomy describes financial reports prepared based on IFRSs (Bound Volume). Elements defined by this taxonomy refer to the specific terms and concepts explained in the standards. For this reason, a taxonomy is often provided with a reference linkbase that presents relationships between elements and external regulations or standards (the other solution is to enclose documentation in label linkbase). This helps instance creators and users understand the intended meaning of each element and provides support for its inclusion in the taxonomy. The reference layer does not contain the full text of the regulations. Instead, it points to source documents by identifying their name and indicating the relevant paragraphs and clauses. This connection is created using "concept-reference" arcrole.

There are several types of references that could be provided for each element.

```
<reference xlink:type="resource"
xlink:role="http://www.xbrl.org/2003/
role/presentationRef"
xlink:label="CashFlowsFromUsedIn
OperationsTotal_ref">
   <ref:Name>IAS</ref:Name>
   <ref:Number>7</ref:Number>
   <ref:Paragraph>14</
      ref:Paragraph>
</reference>
<reference xlink:type="resource"
xlink:role="http://www.xbrl.org/2003/
role/measurementRef"xlink:
label="CashFlowsFromUsedInOper
ationsTotal_ref">
   <ref:Name>IAS</ref:Name>
   <ref:Number>7</ref:Number>
   <ref:Paragraph>18</
      ref:Paragraph>
   <ref:Subparagraph>a<ref:
      Subparagraph>
</reference>
```

> **"There are four standard types of relationships supported by the definition linkbase. The first one is referred to as "general-special". It distinguishes between concepts that have more generic or more specific meaning. For example Zip Code is the US representation of Postal Code which is used worldwide. Therefore, to indicate that connection, taxonomy creators define Postal Code as a general term to which there is more specialised concept Zip Code."**

The example above indicates references for Cash Flow from (Used in) Operations. First, it provides a reference to a document which explains how and where the element should be presented in terms of its placement and labeling. In IAS 7, paragraph 14 we read that the concept Cash Flows from Operating Activities exists and what it is derived from. Second, the measurement reference provides explanations about what determines the value of the element and how it should be calculated. This description can be found in IAS 7 paragraph 18.a. XBRL also allows an element to be assigned other types of references containing examples, commentaries, etc

Label Linkbase

XBRL aims to become a world-wide standard for electronic business reporting. This requires taxonomies to present business data in many different languages. Therefore it is important to be able to create an element that is assigned with labels for different languages. There may also be different labels for different purposes. All labels are stored and linked to the elements in a label linkbase. Elements defined in a schema are built to convey accounting meaning to computers. In order to make it easier for computers to process their names, they have to obey some rules. For example, the use of spaces is not allowed so 'Cash and Cash Equivalents' would be named 'CashAndCashEquivalents' . Additionally, big taxonomies such as IFRS obey specific rules of naming and labelling to ensure consistency within the schema. For example, there could be a list of words that are excluded from the names (e.g. 'and' , 'of' …) or words that appear only in a particular order (i.e. 'Net' or 'Total' at the end of the label after a comma).

In the label linkbase, elements are connected to human readable labels using "concept-label" arcrole. As mentioned above, elements can be assigned to labels in different languages. An example that describes definitions of labels of the IFRS element AssetsTotal in English, German and Polish is provided below:

```
<label xlink:type="resource"
xlink:role="http://www.
xbrl.org/2003/role/label"
xlink:label="ifrs_AssetsTotal_lbl"
xml:lang="en">Assets, Total</
label>

<label xlink:type="resource"
xlink:role="http://www.
```

> **Taxonomy extensions are built for different purposes mainly by regulators, local authorities or simply by reporting companies. There are several rules that have to be obeyed while building an extension taxonomy. The most important one states that the extension should not physically modify the content of any of the files of the base taxonomy. This is usually made impossible by locating the base taxonomies on their website which prevents other users from making changes to the files.**

xbrl.org/2003/role/
label"xlink:label="ifrs_AssetsTotal_lbl"
xml:lang=**"de"**>**Vermögenswerte, Gesamt**</label>

<label xlink:type="resource"
xlink:role="http://www.xbrl.org/2003/
role/label"
xlink:label="ifrs_AssetsTotal_lbl"
xml:lang=**"pl"**>**Aktywa, Razem**</
label>

To distinguish between languages, XBRL uses the XML attributelang. Taxonomy creators may also define different labels for one element. One of the ideas of XBRL is that the information about the period and currency for which the element is reported is not contained within an element definition but is described by a context in instance documents. In financial reporting on the other hand, many terms express the date for which they are being reported, for instance Property, Plant and Equipment at the beginning of year and Property, Plant and Equipment at the end of year. XBRL allows the creation of different labels depending on the context in which an element will be used.

<label xlink:type="resource"
xlink:role="http://www.xbrl.org/2003/
role/label"
xlink:label="ifrs_AssetsTotal_lbl"
xml:lang=**"en"**>**Property, Plant and Equipment, Net**</label>
<label xlink:type="resource"
xlink:role="http://www.xbrl.org/2003/
role/**periodStartLabel"**
xlink:label="ifrs_AssetsTotal_lbl"
xml:lang=**"en"**>**Property, Plant and Equipment, Net, Beginning Balance**</label>
<label xlink:type="resource"
xlink:role="http://www.xbrl.org/2003/
role/**periodEndLabel"**
xlink:label="ifrs_AssetsTotal_lbl"
xml:lang=**"en"**>**Property, Plant and Equipment, Net, Ending Balance**</
label>

The example above shows how three different labels are assigned to one element by applying different role attributes on labels.

5. Taxonomy Extension

Public taxonomies, such as IFRS, define elements and relationships between them according to particular legislation or standards, for example "International Accounting Standards" (IAS) or "International Financial Reporting Standards" (IFRS). These XBRL-described concepts allow companies to create financial statements that are valid and compliant with the requirements of regulators. But in the diverse world of finance, companies are required to include in their business reports additional concepts (usually related to the area of their activity or the reporting purpose). XBRL, as its name indicates, allows for such extensions without loss of comparability and integrity of data. Extending the taxonomy may involve performing the following operations:

- adding an element that was not described in the base taxonomy but is required;
- modifying the relationship between elements in terms of their order, addition or deletion.

Taxonomy extensions are built for different purposes mainly by regulators, local authorities or simply by reporting companies. There are several rules that have to be obeyed while building an extension taxonomy. The most important one states that the extension should not physically modify the content of any of the files of the base taxonomy. This is usually made impossible by locating the base taxonomies on their website which prevents other users from making changes to the files. Building an extension that involves the modification of linkbases requires that the creators are familiar with the attributes use and priority as well as the concept of equivalency. With these attributes you can prohibit a relation (an arc) or override it. The use attribute may take the values "optional" and "prohibited" of which the latter implies that the relationship will not be processed by a computer. priority assigns relations with ranks that inform the computer about the processing order.

6. DTS

DTS stands for Discoverable Taxonomy Set. It contains one or more taxonomies i.e. a number of schemas together with linkbases related to them. This term was developed as taxonomies became more complicated and more closely related to each other. A complete set of the IFRS Taxonomy (which graphical presentation can be viewed on the diagram placed on the summary page) consists of 47 files (including three schemas). Moreover, this taxonomy is usually approached using another entry schema generated by the ITMM (IFRS Taxonomy Modules Manager). This so-called 'shell' schema imports IFRS main schema that defines all elements and refers to selected linkbases containing presentation and calculation relationships as well as labels in different languages.

7. Instance Document

An XBRL instance document is a business report in an electronic format created according to the rules of XBRL. It contains facts that are defined by the elements in the taxonomy it refers to together with their values and an explanation of the context in which they are placed.

Schema

Element's definition:
<element
id="ifrs_**ProfitLossBeforeTax"**
name="ProfitLossBeforeTax"
type="xbrli:monetaryItemType"
substitutionGroup="xbrli:item"
xbrli:periodType="duration"
xbrli:balance="credit"
nillable="true" />

Instance Document

Business fact:
<ifrs:ProfitLossBeforeTax
contextRef="Current_ForPeriod"
unitRef="U-Euros"
decimals="0">**661000**</ifrs:ProfitLossBeforeTax>
Unit:
<unit id="U-Euros">
<measure>iso4217:EUR</measure></unit>
Context:
<contextid="Current_ForPeriod">
<entity>
<identifier scheme="http://www.sampleCompany.com">
SAMP</identifier>
</entity><period>
<startDate>2004-0101<startDate>
<endDate>2004-12-31<endDate>
</period></context>

The example above states that Sample Company's Profit Loss Before Tax for the year 2004 amounted to 661,000 EUR. As you can see, element's definition is contained in the schema. The instance document assigns it a value and provides additional information about the currency in which it is disclosed and defines a period and the entity that it refers to.

8. Footnote

Footnotes appear on instance documents and provide additional information for some of the elements. If for example, in a business report, several concepts refer to the statement "For more information see Disclosures on Assets", it is possible to create linkages between them and a footnote element containing this block of text.

<Assets id="Assets"
decimals="0" contextRef="Current_AsOf" unitRef="GBP">20000</Assets>
<link:loc xlink:type="locator"xlink:href="#Assets" xlink:label="Assets"/>
<link:footnoteArc xlink:type="arc"
xlink:arcrole="http://www.xbrl.org/2003/arcrole/fact-footnote"
xlink:from="Assets"
xlink:to="AssetsFootnote"
order="1.0"/>
<link:**footnote** xlink:type="resource"
xlink:label="AssetsFootnot"
xlink:role="http://www.xbrl.org/2003/role/footnote"
xml:lang="en">**For more information see Disclosures on Assets**</link:footnote>

In the example above, the first lines provide us with a description of the fact that Assets reported in the current period amounted to 20,000 GBP and creates a locator that point to this statement. The element footnote contains the text of a footnote and the footnoteLink connects the element with this reference.

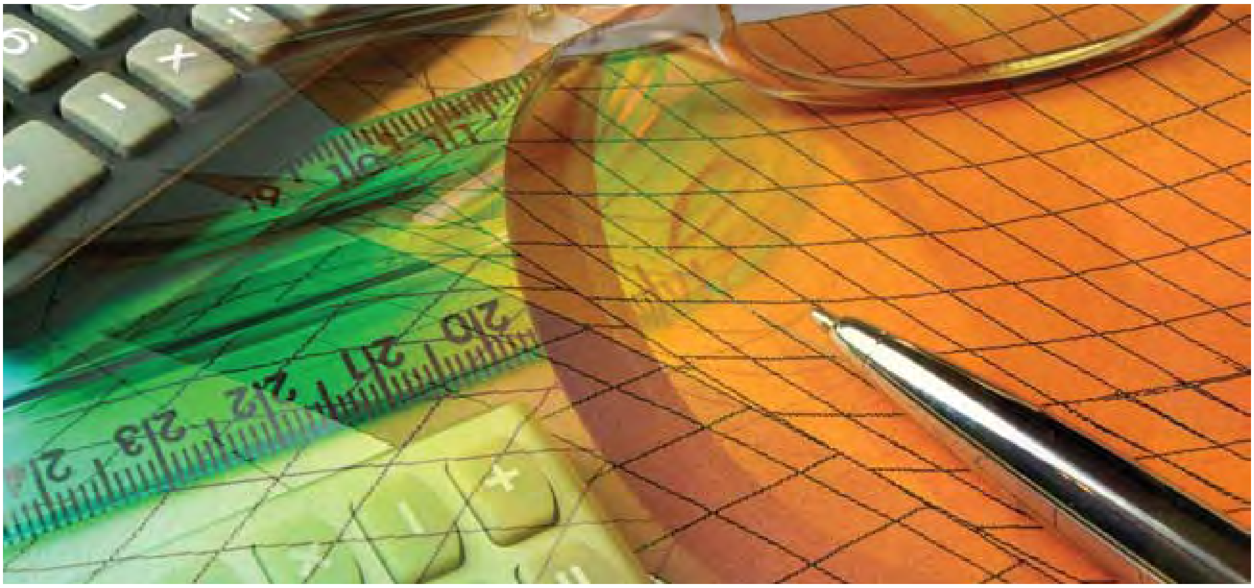
Conclusion

Companies can use XBRL to save costs and streamline their processes for collecting and reporting financial information. Consumers of financial data, including investors, analysts,

DTS stands for Discoverable Taxonomy Set. It contains one or more taxonomies i.e. a number of schemas together with linkbases related to them. This term was developed as taxonomies became more complicated and more closely related to each other. A complete set of the IFRS Taxonomy (which graphical presentation can be viewed on the diagram placed on the summary page) consists of 47 files (including three schemas).

financial institutions and regulators, can receive, find, compare and analyse data much more rapidly and efficiently if it is in XBRL format. XBRL can handle data in different languages and accounting standards. It can flexibly be adapted to meet different requirements and uses. Data can be transformed into XBRL by suitable mapping tools or it can be generated in XBRL by appropriate software. Users of data which is received electronically in XBRL can automate its handling, cutting out time-consuming and costly collation and re-entry of information. Software can also immediately validate the data, highlighting errors and gaps which can immediately be addressed. It can also help in analysing, selecting, and processing the data for re-use. Human effort can switch to higher, more value-added aspects of analysis, review, reporting and decision-making. This way, investment analysts can save effort, greatly simplify the selection and comparison of data, and deepen their company analysis. Lenders can save costs and speed up their dealings with borrowers. Regulators and government departments can assemble, validate and review data much more efficiently and usefully. ■

Financial Reporting, XBRL Way



XBRL is a royalty-free open and de facto standard world over for electronically communicating business and financial data. When you add business rules to XML, you get XBRL. XBRL uses a *predefined dictionary of Tags* called a Taxonomy which is used to define various business and financial terms such as *Share Capital, Net Profit, Cash Flow* and so on. XBRL International is the world wide non-profit making organisation developing, promoting, and regulating the XBRL Standard. It is a consortium of approximately 550 companies and agencies. XBRL India is a provisional jurisdiction of XBRL International created by ICAI to spearhead the promotion and adoption of XBRL in India. Adoption of IFRS and XBRL are seen as mutually reinforcing. Chartered Accountants can become facilitators/implementers of the XBRL technology in India. XBRL is not any more, an issue to be discussed or debated, it is a huge opportunity for us to grab and benefit from.

CA. Prakash C. Dugar
(The author is a member of the Institute. He can be reached at prakashdugar@icai.org.)

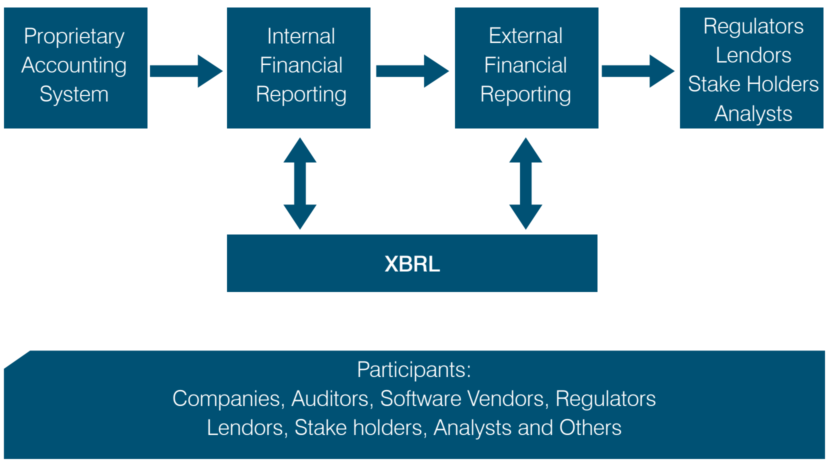
XBRL which stands for *eXtensible Business Reporting Language* is a royalty-free and de facto standard the world over for communicating business and financial data electronically. It has revolutionised the way financial statements are filed with the regulators and is being increasingly adopted as the prime standard for filing financial statements and other business data, world over. AICPA President and CEO Barry Melancon says, "XBRL fundamentally transforms and improves the way companies, investors, lenders, analysts and regulators exchange, aggregate and analyse business information."

The key advantage of XBRL lies in the fact that it can be machine read thereby revolutionising the speed with which financial data can be *read, processed and analysed.*

Printed Statements or Instance Documents

Traditionally, the financial statements have been rather bulky printed documents and, of late, have taken form of computer files, viz. word documents, excel spreadsheets, PDF files, HTML pages, etc., but still they are documents which need to be human read and analysed.

If one had to compare and analyse the financial performance, say of 10 large companies, it could easily take anyone some days if not a couple of weeks. This is where XBRL has made a huge difference. Once a set of financial statements are converted in to an XBRL Instance document, it can be compared with a 100 other such XBRL Instance documents, in a snap. What can be done in days, weeks and months, can now be accomplished in minutes, using the innovative XBRL technology.

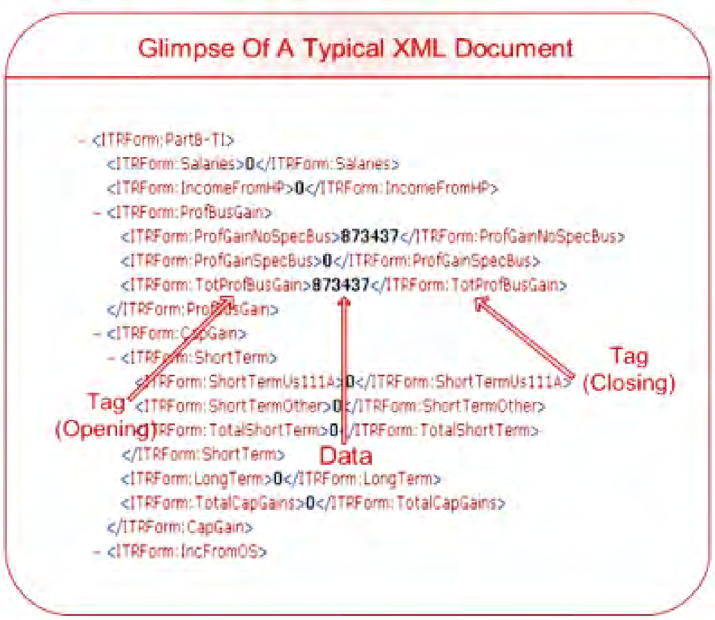


Financial Reporting Overview

> **...taxonomies can be customised by way of extensions to suit individual company requirements. Data file that a corporate creates using tags given in a given taxonomy, is an XBRL *Instance Document* which, once uploaded on a computer, can be read, interpreted and used to make various analyses and comparisons. This *Document* is essentially an XML file containing XBRL elements.**

XBRL is XML

When we add business rules to XML, we get XBRL. XML stands for *eXtensible Markup Language* and has been designed to transport and store data. An income tax e-filer should be familiar with an XML file, which is generated once the Excel-based ITR form is filled-in and validated. If we take a closer look at an XML file generated and uploaded by a taxpayer, we can see highlighted text in black representing *data* and the headings in red with in the blue angle brackets representing the *tags* (see the diagram below).



In contrast to tax-related XML files where the *tags* are defined by the Income Tax Department for its own processing, a predefined dictionary of tags called *taxonomy* (essentially an XML Schema extension) is used for XBRL filings to define various business and financial terms, e.g. Share Capital, Net Profit, Cash Flow, etc. Such taxonomies are normally based on each country's own GAAP (Generally Accepted Accounting Principles). Taxonomy can be industry-specific too, e.g. banking taxonomy. Furthermore, taxonomies can be customised by way of extensions to suit individual company requirements. Data file that a corporate creates using tags given in a given taxonomy, is an *XBRL Instance Document* which, once uploaded on a computer, can be read, interpreted and used to make various analyses and comparisons. This *Document* is essentially an XML file containing XBRL elements. The term *eXtensible* in XBRL means that the XBRL elements can be extended to carry more information and that the extension of the elements wouldn't break or crash the software application.

Advantages of XBRL

Key advantages of XBRL include:

- Transparent filing of financial statements;
- Universally-accepted data format;

- Efficient and timely transfer of data;
- Facilitates interactivity;
- Quick and easy analysis of financial data, both internally and across companies;
- Improved monitoring by regulators, viz. SEBI, RBI, MCA, Stock Exchanges, etc.;
- Easier detection of errors and inconsistencies;
- Greater access to business and financial data;
- Significant cost reduction in data collection and data analyses;
- Reduces administrative burden;
- Trespasses language and regional barriers;
- Increased accuracy of financial data;
- Easier access to data by auditors and management;
- Improved performance measurement, cost accounting and decision making;
- Easy availability of qualitative information to investors;
- Easy availability of reliable information to foreign investors and regulators;
- Easier and more efficient financial analysis by auditors;
- Real time reporting and validation of data;
- Globalisation of financial and business data;
- Comparison of financial results across the world;
- Can be used for tax and statistical reporting;
- Global sharing of resources.

XBRL International

Founded in 1998, XBRL International (www.xbrl.org) is a worldwide nonprofit organisation developing, promoting and regulating the XBRL Standard. It is a consortium of approximately 550 companies and agencies with an objective to build, promote and support the adoption of XBRL across the world. Interestingly, XBRL was born out of an individual effort made by Charles Hoffman. The project was later funded and adopted by the AICPA (American Institute of Certified Public Accountants). To allow its structured growth and worldwide acceptance, it was later allowed to become and function as an independent international organisation known as XBRL International.

XBRL India

XBRL India is a provisional jurisdiction of the XBRL International created by The Institute of Chartered Accountants of India (ICAI) to spearhead the promotion and adoption of XBRL in India. Members of XBRL India include the premier organisations, viz. Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI), Ministry of Corporate Affairs (MCA), Bombay Stock Exchange Limited (BSE), National Stock Exchange of India Limited (NSE), Insurance Regulatory and Development Authority (IRDA), etc. XBRL India has already developed an Indian GAAP Taxonomy. Exposure draft of a banking taxonomy complying with Basel-II Reporting Requirements was also published a few months back and, further, it has received *acknowledged* status from the XBRL International. Taxonomy for non-banking financial companies is also in the offing.

Global Acceptance

Countries like China, Israel, Japan, USA, Singapore, Korea, Italy, Belgium, India, etc., have already mandated XBRL-based filing of financial statements. In Israel, all public companies are mandatorily required to do their filing using XBRL-based interface called MAGNA. In Japan, beginning financial year 2008-09, approximately 5,000 companies and 3,000 investment funds are compulsorily required to do their filings using XBRL-based EDINET system. USA has already mandated XBRL-based filing for its top 500 companies effective June 2009. By the middle of 2012, all domestic and foreign companies that are publicly traded in the United States are required to provide their SEC filings using the XBRL format beginning with simple

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block tagging but progressing to more complex detail tagging of financial information including footnotes and schedules. In countries like China, Singapore, Germany, Italy, Korea, India, etc., XBRL filing is currently mandatory for only select companies. Interestingly, China was the first country to mandate XBRL filing.

XBRL in India

Beginning January 1, 2008, 100 top-listed companies have been mandated by the SEBI to do their filing, e.g. financial statements, corporate governance reports, shareholding pattern, etc., in XBRL-enabled CFDS (Corporate Filing and Dissemination System). Investors can anytime log on to the CFDS website and access information about the select 100 top companies as also about other listed companies who are voluntarily registered with CFDS. SEBI has said that the existing *electronic data information filing and retrieval* (EDIFAR) system will be gradually phased out, and all listed companies would have to eventually do their filings under the new XBRL-enabled CFDS Systems. This will surely pave way for all the companies, listed or not, to do their filings under an XBRL-enabled system. In fact, the MCA, has already resolved to implement XBRL-based e-filing for all companies in India from 2011.

Effective October 2008, the RBI has also mandated XBRL-based reporting by banks. Under its *online returns filing system* (ORFS) for banks, the RBI has already mandated XBRL-based filing of *returns on capital adequacy* (RCA2), Form 'A' and GPB. The RBI is currently in process of implementing XBRL-based filing for several other returns, including annual and quarterly financial statements. Eventually, the RBI is likely to migrate the entire bank regulatory reporting into an XBRL framework.

XBRL Filing: Simple and Inexpensive

There are numerous ways in which an XBRL Instance Document can be prepared. In Israel, a local language internet-based HTML interface is used to fill in the data about a company and their MAGNA interface converts the data to XBRL. In Japan, private software tools are used to prepare an XBRL *instance documents.* In India, under the CFDS, an Excel-based template is used to fill in data and generate XBRL instance documents.

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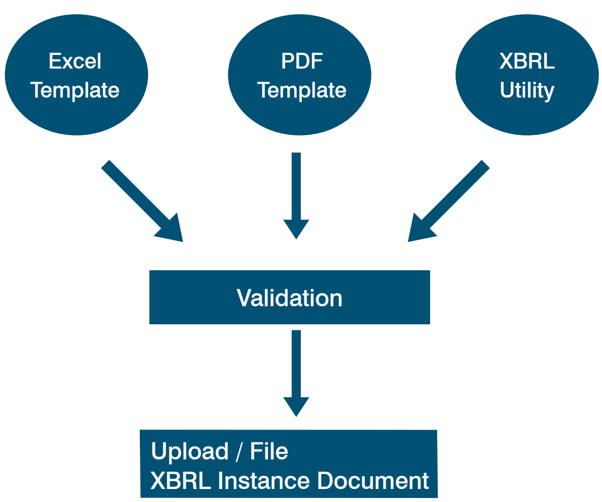

XBRL Instance Document Preparation Process

XBRL and IFRS

Though, XBRL and IFRS are two independent issues, they are interlinked. Financial statements can truly become comparable only when they adhere to globally accepted accounting standards like IFRS. Presently IFRS are adopted in nearly 110 countries and by 2011 this tally is likely to go up to 150 countries including India. Experts see adoption of IFRS and of XBRL as mutually reinforcing.

Presently, XBRL compliances are based on *taxonomies* developed by the respective countries following their own GAAPs. However, once a country becomes an IFRS compliant, it would be imperative for it to adopt an IFRS-based taxonomy. IASCF (International Accounting Standards Committee Foundation) has already developed and released the latest IFRS *Taxonomy 2009* which has already been adopted by a number of countries, e.g. Israel, and, gradually, all IFRS-complying countries are likely to adopt the *taxonomy*. To allow its easy adoption, the *taxonomy* has also been translated into many other languages including Chinese, French, Italian, Arabic and Spanish.

XBRL is Data

In contrast to a spread sheet, a word document or a PDF file, an XBRL instance document is a computer data file meant to be read and interpreted by a computer. It doesn't contain any formatting or layout information, viz. font, size, colour, texture, etc. To make an XBRL instance document humanly readable, it has to be rendered by a software tool. While future XBRL taxonomies might come with rendering link bases to make an XBRL instance document human readable, presently iXBRL and other such tools may be used to render, as also to export an XBRL instance document to other formats, viz. Excel, PDF, etc. Raw XBRL files can, however, be viewed using an Internet Explorer browser, Notepad, WordPad, etc.

XBRL GL

XBRL GL is essentially an extension of XBRL technology which allows accounting to be portable and easily communicable. It can be used to consolidate accounting data coming from multiple sources (even multiple countries) to make a switchover to a new accounting application, to make analyses, to generate XBRL reports, and so on. Significantly, XBRL GL enriches business and accounting data by retaining *metadata* (data about data) of transactions which never get separated from it. It can be used as an audit tool, a data exchange format and as a data repository for recording and storing transactional data in an open standard environment. Like XBRL, XBRL GL is also an XML-based standard and it can work with any XML-enabled application. XBRL GL is being seen as a next most important development in the field of accounting after the invention of double-entry system in Italy in the 15th century.

“In contrast to a spread sheet, a word document, or, a PDF file, an XBRL instance document is a computer data file meant to be read and interpreted by a computer. It doesn't contain any formatting or layout information, viz. font, size, colour, texture, etc. To make an XBRL instance document humanly readable, it has to be rendered by a software tool.”

XBRL is a Huge Opportunity

Chartered accountants can and should become facilitators/implementers of the XBRL technology in India and can also become part of the XBRL development efforts in India and abroad. Time is not far away when knowledge of XBRL would be mandatory for doing XBRL-related attestation work. With IFRS convergence knocking at our door steps, XBRL is the first step that we as chartered accountants can take toward successful IFRS implementation.

As internal auditors, chartered accountants can not only aid in implementing the XBRL but use it as an internal audit tool. As investors, XBRL opens a treasure of financial data for us to explore and analyse. XBRL makes regulators' job very easy and effective. An analyst can't do without XBRL, because the world has already been switching over to XBRL. ■

eXtensible Business Reporting Language: An Overview

Imagine this: Pick up a paper report or a spreadsheet and shake all the numbers off it. Got it? Lot of information piled up on the carpet all over the place? Now try to get those numbers back into the report. Does this *'50,000'* go against *Sales or Salaries?* Where did this number come from? What about that footnote? Pretty much impossible, isn't it? But it's not far off from the everyday reality of moving business information around today. This is the business problem XBRL solves. It creates agreement on how to identify reporting concepts and allows disparate systems and different organisations to reuse the numbers that relate to those concepts. Read on to know more…

An alphabetical discussion on the key concepts forming the building blocks of XBRL is:

(i) eXtensible

The first key term in XBRL is the property of 'extensibility' which is alternatively termed as 'expandability' of the language. Conceptually, exte-nsibility refers to the capability of the XBRL in permitting incorporation of new language elements. This capability of the language allows the users to enrich the language by introducing new features and modifying the existing ones.

To illustrate, let *Current Liabilities* in the balance sheet be divided into seven items with *Sundry Creditors* being one. Now, let it be presumed that two additional items dividing the amount of *Sundry Creditors* into:

(i) total outstanding dues of small scale industrial undertaking(s) and
(ii) total outstanding dues of creditors other than small scale industrial undertaking(s) are additionally required to be presented.

The extensibility feature of XBRL permits linking-up of the instructions for the two new items to the XBRL instructions already written for the earlier set of items called XBRL taxonomy, i.e. XBRL taxonomy (accounting concepts and their inter-relationships) need not be written once again for the enlarged list of data-items. Rather, linkbase feature of the XBRL allows linking up of the accounting concepts and relationship(s) of the new items with the accounting concepts and relationship(s) defined in the earlier taxonomy.

The property of extensibility is very handy in situations when list of items reported for various elements of the financial statements are not the same across firms, industries and countries.

Source: http://www.icai.org/; http://www.xml.gov/; http://www.icasrilanka.com/;http://www.xbrl.org/ and other related websites.

For example, many an item constituting non-current assets in oil and gas industry, e.g. rigs, exploratory oil, gas wells, etc., may not be applicable to companies in general. In this situation, XBRL may prepare a taxonomy called a *Global Common Document* (GCD) for items common to all the firms, industries, and countries. And, any country specific, industry specific and firm-specific variations (extensions/limitations) can, then, be written as independent taxonomies that can be imported and incorporated with the GCD. This blended set of instructions is then used for validating an *Instance Document* (an XBRL coded electronic business report), say a balance sheet or a profit and loss account or a cash-flow statement.

(ii) Markup Language

The second important feature of XBRL is that it is a markup language that is a collection of codes (or tags), which may refer to the structure and format of an electronic document as well as context of data. Notably, the source of all markup languages is the *Standard Generalized Markup Language* (SGML). Two popular and widely-used markup languages are *Hyper text Markup Language* (HTML) and *Extensible Markup Language* (XML). Notably, HTML uses tags that govern appearance, e.g. size, shape, color, etc., of data on the Web, while XML describes data by offering the feature of flexibility, e.g. to describe data for amount owed to a supplier, a company may adopt the tags '<seller> and </seller>'. However, to describe the same kind of data, another company may choose some other tags, say '<vendor> and </vendor>', or '<creditor> and </creditor>'. Since XBRL is based on XML, it too offers the flexibility in devising the tag names. Hence, to describe data on, say, *Current Liabilities,* two different bodies developing XBRL taxonomies may devise different tag names. But obviously, for achieving comparability of business data across different taxonomies, an interface equating two different sets of tags would be required.

Thus, XBRL can be viewed as a system of bar codes for financial statements. Instead of treating financial information as a block of text, it provides a computer-readable tag to identify each individual item of data. By attaching identifying tags to individual pieces of data, a business reporting document becomes *intelligent data,* allowing the exchange of business reporting data by encoding the information in a meaningful way. Information that is coded in this way can be instantly and accurately exchanged between systems. XBRL facilitates the communication of entire reports, avoiding *template reporting,* which can be misleading and inaccurate. In case, aspects of a particular business demand unique tags, report owners can create them communicating the definition of a concept as well as its relationship to other parts of a report.

(iii) XML

As XBRL is based on XML, some important additional features of XML will be discussed. Since, XML (and, hence, XBRL too) describes data, it is a technology aptly designed to store, carry and exchange data. It achieves this capability by storing data in plain text files with the addition of markups or tags. And, storing of data in plain text files, in turn, permits smooth and efficient exchange of data amongst incongruous operating systems, e.g. Windows, Unix, GNU/Linux, etc., and incompatible computer systems, e.g. Macintosh and IBM PC. This is arguably one of the important reasons for several companies converting their HTML-coded business information into XML coded ones for delivering them electronically through Intranet as well as Internet. It is also possible to transform XBRL reports into any other format including those more commonly used such as HTML and PDF.

> **The extensibility feature of XBRL permits linking-up of the instructions for the two new items to the XBRL instructions already written for the earlier set of items called XBRL taxonomy, i.e. XBRL taxonomy (accounting concepts and their inter-relationships) need not be written once again for the enlarged list of data-items.**

Thus, in nutshell, XBRL is an open technology standard for reporting and analysing business and financial information, software agnostic, or, independent, and accounting framework neutral. But it is not a standardised chart of accounts and a way to require the reporting of specific information.

The Process

XBRL is a technology that describes business information in a manner where, irrespective of the operating systems and computing systems involved in the information supply chain, information can be exchanged with greater speed, higher efficiency and improved reliability. In fact, it enables gathering and analysis of business information to match precisely to needs of the users which is accomplished with the help of an *instance document* and XBRL *taxonomy:*

Instance Document:

In simple terms, an electronic version of the XBRL-tagged business report is called an *instance document* that essentially contains factual data. That is, an electronic (digital) version of each of the financial statements (such as a balance sheet, a profit and loss account, or a cash flow statement) and other business reports (such as a budget) created within the XBRL environment.

XBRL Taxonomy:

At the root of an *instance document* is the core XBRL technology in the form of XBRL taxonomy that is essentially an XML-schema document. As an XML-schema document, taxonomy is an extensible dictionary or vocabulary of financial and business terms. It maps and pre-defines various accounting concepts and inter-relationships amongst them (each accounting concept is referred as an 'element' in taxonomy). For instance, XBRL taxonomy may predefine the accounting concepts (termed elements) *receivables* (Gross), *provision for doubtful debts* and *receivables* (Net) and establish inter-relationships amongst these elements in terms of XBRL tags. A computer, in turn, accesses this taxonomy for validating and understanding factual data on various elements that constitute an *instance document,* e.g. amounts of assets, liabilities and equity in a balance sheet coded with XBRL tags. In short, the *taxonomy* enables a computer (program) to talk to the business reports. It may be emphasised again that an instance document might be governed by two or more XBRL taxonomies.

XBRL taxonomy is a classification system that can be considered as an electronic dictionary for business and financial terms. It consists of a delineation of all the business and financial concepts along with their basic accounting and XBRL properties as well as the interrelationships amongst the concepts. It should be noted that *taxonomy* does not contain any factual financial information reported by the entities; it contains only concepts. *Taxonomy* is made up of schemas and linkbases. A schema is the set of all the concepts with their XBRL attributes and documentation. All attributes required for the XBRL software to understand the meaning of a concept have to be defined. The linkbases provide the relationship amongst various concepts.

The XBRL community is creating a growing number of shared, royalty-free taxonomies, each of which has thousands of data elements, covering many accounting standards in many languages. XBRL taxonomies have already been created for:

- GL (Global Ledger), modeling the contents of accounting ledgers, sub ledgers and other kinds of transaction journals;
- US-GAAP, encompassing US financial statements, notes and disclosures, and management discussion and analysis;
- IFRS representing core disclosures that are then augmented on country-basis meeting local statutory requirements;
- COREP (Common Reporting), covering the requirements of 25 European banking supervisors' Basel II reporting; and
- National GAAP taxonomies in Japan, Germany, Korea, and Sweden.

Why XBRL and not Just XML?

The answer lies in the term *metadata* that is used for data that provides information about other data. XML supports metadata through a mechanism know as an XML schema which allows some information about the data to be captured such as format of data, valid values and relationships between data elements. XBRL leverages the same mechanism, as it is based on XML, but augments it with an extensive metadata infrastructure for capturing a greater breadth and variety of information about the data. XBRL can capture and represent

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information about relationships (hierarchical and nonhierarchical), presentation formats, calculations and rules.

XBRL enables software to enforce relationships that XML could not. Unlike XML, XBRL requires data elements to be 'normalised' so that data can be easily stored and managed in a relational database or a spreadsheet.

History and Governance

XBRL's beginning can be traced to the initial efforts of Charles Hoffman, a certified public accountant from Tacoma, Washington. The American Institute of Certified Public Accountants (AICPA) was also instrumental in pulling together what eventually became XBRL International. XBRL has been developed by XBRL International, a not-for-profit consortium of over 450 companies and organisations, which is promoting its worldwide use.

XBRL India is the provisional jurisdiction of the XBRL International, whose objectives are:

- To promote and encourage the adoption of XBRL in India as the standard for electronic business reporting in India
- To facilitate education and marketing of XBRL
- To develop and manage XBRL taxonomies
- To keep the developed XBRL taxonomies updated with regard to international developments
- To represent Indian interests within XBRL International
- To contribute to the international development of XBRL

Setting-up of Section 25 Company for XBRL India

The Institute of Chartered Accountants of India (ICAI) is in the process of incorporating a separate Company under the Indian Companies Act, 1956 to manage the Indian jurisdiction of the XBRL International. The said-company shall be a Section 25 company and it has already been granted name approval as *eXtensible Business Reporting Language (XBRL) India* by the Registrar of Companies (ROC). Upon the incorporation of the said-company, the jurisdiction shall open up its membership as per its byelaws.

What are the benefits?

The seven fundamental benefits of XBRL are:

1. *Accuracy:* The taxonomy specifies the meaning and rules of valid data, while automated tools can insure the compliance with the taxonomy.
2. *Consistency:* The taxonomy acts as a dictionary, providing an explicit definition for each data element that can easily be shared to assure consistent interpretation.
3. *Efficiency:* The combination of taxonomies, XML-based documents, and automated tools enable the automated processing of business information and eliminate the manual processes of validation, re-entry, and comparison.
4. *Reuse:* By marrying an XML document with taxonomy, XBRL is able to provide information in a format optimized for reuse, letting format, level of detail, and presentation be the choice of the end user rather than the information provider.
5. *Flexibility:* Unlike other XML standards, XBRL was architected for agility in many different contexts:
   - letting end users determine how they wish to view and manipulate information
   - allowing information providers to extend taxonomies for new information exchanges without undermining existing taxonomies or compatibility with existing tools
   - enabling taxonomy updates to be applied rapidly and without programmatic changes.
6. *Traceability:* The fact that data is provided with a mapping to taxonomy allows for greater traceability in determining both:
   - From where it was derived and
   - To what it relates.

   No longer does data have to be stripped of all supporting information and become just a number.
7. *Visibility:* The ease with which information can be accessed and manipulated for analytical purposes defines the degree of visibility into any organization, issue, or, subject of interest. Thus, XBRL can dramatically enhance the visibility into financial matters, e.g. such as an organisation's performance or effectiveness, through its layered component-based architecture.

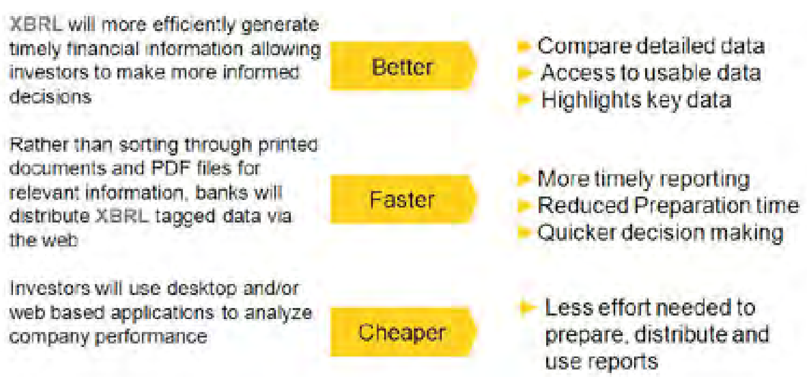
"...*taxonomy* does not contain any factual financial information reported by the entities; it contains only concepts. *Taxonomy* is made up of schemas and linkbases. A schema is the set of all the concepts with their XBRL attributes and documentation. All attributes required for the XBRL software to understand the meaning of a concept have to be defined. The linkbases provide the relationship amongst various concepts."

Specific benefits

Once the XBRL standard is accepted, management, investors, regulatory agencies and others will reap significant benefits irrespective of sharing information within a single organisation or trading documents across company lines.

Investor Reporting: Meeting Investor and Analyst Needs

Companies need to efficiently and effectively communicate financial and operational results to their investors. XBRL will provide investors better access to information with which to evaluate and, perhaps, better value a company's performance.



Borrowers Reporting

Banks require most commercial borrowers to submit certain financial and operational information on a quarterly basis in order to assess the ongoing credit worthiness of loans. Over the years, depository institutions have implemented business processes around the collection, normalisation and analysis of borrowers' financial information. Currently, this effort-intensive process creates difficulties all along the information supply chain. XBRL will provide the opportunity for breakthrough improvements in how institutions process borrowers' financial statements.

Accountants and XBRL

Through the use of XBRL in companies, accountants will be able to:

- Obtain more rapid and reliable data on company financial performance
- Greatly reduce effort and costs in gathering and analysing data
- Simplify and automate tasks
- Focus effort on analysis and value-added work
- Make better use of software to improve efficiency and speed

Financial Information Companies and XBRL

Through the adoption of XBRL, companies in the financial information industry will be able to:

- Obtain company financial data in a standardised and predictable form
- Significantly reduce costs by automating many aspects of the gathering and storage of financial data
- Provide a faster, clearer, deeper and more accurate view of company financial performance

Stock Exchanges and XBRL

Stock Exchanges can use XBRL to:

- Make their process of company data collection more efficient, comprehensive and reliable
- Increase the value and competitiveness of data products which they offer to institutions and investors
- Strengthen the transparency and robustness of information on their markets

Regulatory Reporting: Breaking the Cycle of Inefficiency

By introducing XBRL for reporting, regulators and other authorities can:

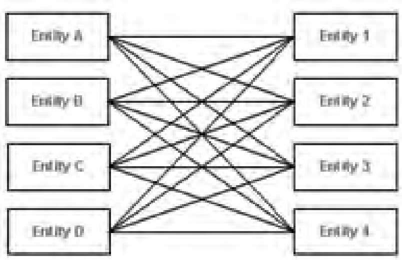
- Dramatically reduce costs by automating routine tasks
- Analyse and compare data much more quickly, efficiently and

reliably
- Monitor data and activities and reach judgments with far greater speed and confidence
- Promote efficiencies and cost savings throughout the regulatory filing process

Company Reporting and XBRL

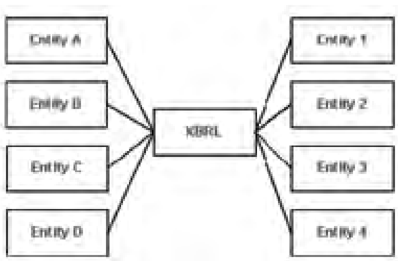
Companies of all sizes can benefit from XBRL. They will be able to:

- Save costs by preparing data in one form and automatically generating many outputs and avoid re-keying of data and other manual tasks
- Consolidate results across divisions and subsidiaries with much greater speed and reliability
- Improve accuracy and reliability of financial data
- Focus effort on analysis, forecasting and decision making, rather than on laborious tasks in gathering, compiling and preparing data
- Achieve quicker and more efficient decisions
- Simplify the process and reduce the costs involved in regulatory reporting to tax and other



authorities

Information Exchange in Traditional



Reporting without Reuse

Information Exchange via XBRL with Reuse

> **Banks require most commercial borrowers to submit certain financial and operational information on a quarterly basis in order to assess the ongoing credit worthiness of loans. Over the years, depository institutions have implemented business processes around the collection, normalization and analysis of borrowers' financial information. Currently, this effort-intensive process creates difficulties all along the information supply chain.**

Risks of XBRL

As with any technology framework/ solution, the use of XBRL also comes with its own risks that need to be addressed by its users.

- *Generic* risks such as security risks associated with any technology and vendor risks when it comes to procurement of solutions, and
- *Unique* risks such as risk of using the wrong taxonomy or errors in tagging

How to implement XBRL?

Executives, financial reporting process owners and IT professionals should consider the following points when developing an implementation strategy for XBRL:

1. Identify business-reporting areas that could benefit from XBRL:
   - Would the company's business reporting functions benefit from XBRL?
   - Is the company considering publishing financial information on the web?
   - Are there areas where additional disclosure of financial or non-financial performance indicators would increase the shareholders value of the company or help differentiate the company?
   - What is the status of the respective industry for XBRL business reporting?
2. Determine whether the current ERP or other financial applications are XBRL enabled:
   - Are the organisation's financial systems capable of generating XBRL instance documents?
   - What level of setup will be required to configure each software application?
   - What ongoing maintenance is required for each software package to keep in sync with changes in accounts and or the XBRL standard?
3. Identify a pilot reporting process and assess whether XBRL should significantly:
   - Improve the quality/accuracy and timeliness of the reporting.
   - Enhance the efficiency and effectiveness of acting on the data.
   - Reduce preparation and processing efforts.
   - Shorten user time spent reading, comprehending and analysing financial data.
4. Check www.xbrl.org for appropriate taxonomy required by the pilot
5. Determine whether to move forward with an XBRL pilot project:
   - What is the estimated ROI for implementing the changes being considered?
   - Is the taxonomy required by the pilot ready? Will additional tags need to be developed?
   - Does the company have trained resources that understand the taxonomy and refine it if needed?

If the company decides to move forward, it should complete a project charter, implementation plan, etc. In addition, management should consider independent verification of its instance

By introducing XBRL for reporting, regulators and other authorities can dramatically reduce costs by automating routine tasks, analyse and compare data more quickly, efficiently and reliably, monitor data and activities and reach judgments with far greater speed and confidence, and promote efficiencies and cost savings throughout the regulatory filing process.

documents to provide assurance to third parties that the information is complete, accurate, reliable and timely.

Latest Developments

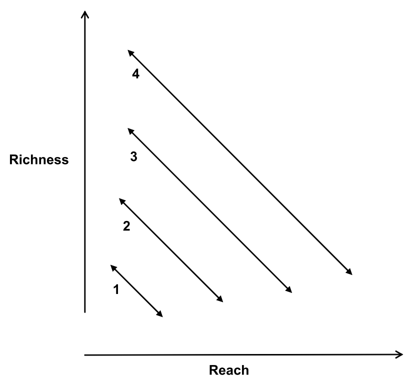
Internationally

- US *Securities and Exchange Commission (SEC):* On January 30, 2009, the US Securities and Exchange Commission (SEC) published a final rule for the mandatory use of eXtensible Business Reporting Language (XBRL) in reporting financial information to the SEC. From mid June 2009, primary financial statements, notes and schedules filed with the SEC for certain companies are required to be submitted in XBRL.
- *The National Bank of Belgium:* Filing of accounts by the Belgian companies to the National Bank of Belgium that is responsible for collecting financial statements from the nation's firms switched to XBRL from April 2007.
- *The Bank of Japan:* Financial services companies in Japan have been reporting monthly data in XBRL to the Bank of Japan since February 2006.
- *The Bank of Spain:* More than 400 banks are filing monthly financial statements in XBRL to the Bank of Spain, which is responsible for overseeing the country's banking system. The introduction of XBRL for this reporting has enabled automatic data validation, achieved better quality of data and reducing manual effort.
- *The Tokyo Stock Exchange:* The Tokyo Stock Exchange has launched a pilot system which demonstrates the use of XBRL for company financial statements and the benefits it can offer. The exchange is aiming to promote wider understanding and acceptance of XBRL among investors, companies and public as a step towards the introduction of full XBRL reporting by all companies.
- *US Banking Regulation:* The introduction of XBRL for banking regulation in the United States has proved to be a huge success. More than 8,000 banks have been filing quarterly call reports in XBRL since October 2005.

In India

- *The Institute of Chartered Accountants of India (ICAI):* The ICAI has developed a General Purpose Financial Reporting Taxonomy for Commercial and Industrial Companies and Banking Taxonomy. Both the above taxonomies have been acknowledged by the XBRL International Inc. (XII).
- *Reserve Bank of India (RBI):* Filing returns through RBI's legacy Online Returns Filing System (ORFS), which is XBRL-enabled.
- *Securities and Exchange Board of India (SEBI):* Filing of specified information by listed companies through the Corporate Filing and Dissemination System (CFDS) which is XBRL technology enabled.
- *Stock Exchanges:* Both BSE and NSE offer a XBRL-enabled platform *CorpFiling*, which enables companies listed in either or both of the exchanges to electronically file their disclosures.
- *Ministry of Corporate Affairs (MCA):* Its project MCA-21 using XBRL targets to create an information sharing platform with regulators and ministries to provide an early warning system for the ministry.

Richness vs. Reach (Graphical Representation)



Legends:

1 - Printed Media
2 - Television
3 - Internet
4 - XBRL

Conclusion

XBRL is not about sharing more information, but about improving the way information is shared. ■

XBRL: New Era of Business Reporting

XBRL is like watching high definition television. Our financial story has never been so clear. In the age of computerisation and IFRS, reporting of entities financial information has acquired new importance. Financial reporting is like a sharp-edged sword in which balance has to be maintained between confidentiality and transparency. In the past, efforts have been made by various regulators to develop a mechanism of transparent reporting system with least resource wastage. XBRL has emerged as an answer to all those queries. It is a complete package which satisfies all needs. It is a standard way to communicate and exchange business information between business systems. It is already being put to practice in many countries. Its implementation is growing rapidly globally.

CA. Naveen Garg
(The author is a member of the Institute. He can be contacted at eboard@icai.org.)

Meaning of XBRL

XBRL (Extensible Business Reporting Language) is a technology standard that can be applied to the creation of financial statement data and other reporting situations. It is used for the reporting of business and financial information and can make the process of creating, distributing, reporting and analysing information more efficient and effective. It is an application of XML to business information and uses tags or structure to describe the data, making it immediately reusable, interactive and intelligent. In XBRL, 'X' stands for "extensible" which means that it can be customised for unique situations and reporting concepts.

XBRL is not an accounting standard, though it can be used to represent reporting concepts and provide an explicit link from a reported concept to the relevant accounting standard. It is not a software program, though it can be used to enable the seamless exchange of information between disparate software applications. XBRL data is more accurate and transparent than that in financial statements, which appear on internet through electronic and paper reports. XBRL has the ability to tag individual concepts (text or numbers) with context, so that financial reports available over the websites or elsewhere can be found quickly and interpreted accurately. For example, the word *bank* can refer to a financial institution and also stands for the side of a river.

XBRL tags both numbers as well as textual information that mean both financial statements as well as information given in notes and schedule.

Need of XBRL

Global XBRL movement has innovated the age of financial reporting, as it provides us with interactive data that give financial community a standards-based method to prepare, publish, exchange, search and analyse all types of financial statements of reporting entities across all software formats and technologies.

XBRL standards have been adopted by various regulatory bodies throughout the world. Early users of XBRL include US Federal Deposit Insurance Corporation and Securities and Exchange Commission, and Committee of European Banking Supervisors. XBRL frees data from paper-based reports and allows it to flow seamlessly between XBRL-enabled software applications. It automates financial analysis. Computers can be used intelligently to interpret an XBRL report to make various analyses and, further, it can be converted into various formats. This all can take place in real time allowing users to instantly compare hundreds of companies, industry sectors, topics and issues with automatic updates.

Potential Uses of XBRL

XBRL can be applied to a very wide range of business and financial data. Among other things, it can handle:

- Company internal and external financial reporting
- Business reporting to all types of regulators, including tax and financial authorities, central banks and governments
- Filing of loan reports and applications, and credit risk assessments
- Exchange of information between government departments or between other institutions, e.g. central banks
- Authoritative accounting literature providing a standard way of describing accounting documents provided by authoritative bodies
- A wide range of other financial and statistical data which needs to be stored, exchanged and analysed

(Source: www.xbrl.org)

ADVANTAGES OF XBRL

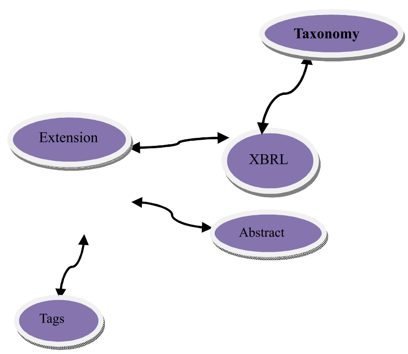
XBRL offers a wide range of benefits to the adopters. A short list of its benefits is:

- *Regulated Financial Reporting:* XBRL International has created taxonomy in conformity with different globally-accepted standards, e.g. US GAAP and IFRS, and standards issued by various other regulators. The uses of XBRL financial statements remove conflicts arising due to specific industry requirements, as all reporting entities use the same taxonomy.
- *Accessibility:* Data filed in XBRL format accumulate into a database and these can be easily accessed over and over by authorised users for multiple purposes as and when required.
- *Data Analysis:* By using single database, user, e.g. analyst, financial institutions, investor, etc., can make various analyses of individual companies on year-to-year basis or for different companies in same industry. Various charts and ratios can be

"XBRL frees data from paper-based reports and allows it to flow seamlessly between XBRL-enabled software applications. It automates financial analysis. Computers can be used intelligently to interpret an XBRL report to make various analyses and, further, it can be converted into various formats. This can all take place in real time allowing users to instantly compare hundreds of companies, industry sectors, topics and issues with automatic updates."

  efficiently utilised.
- *Transparency:* XBRL is used to present financial data into more transparent manner. Different data having same name in financial statements can be presented in more specific manner. This helps in increasing the efficiency in capital market.
- *Automation:* XBRL automates the process of data collection, processing and analysis, which save lots of time and resources.

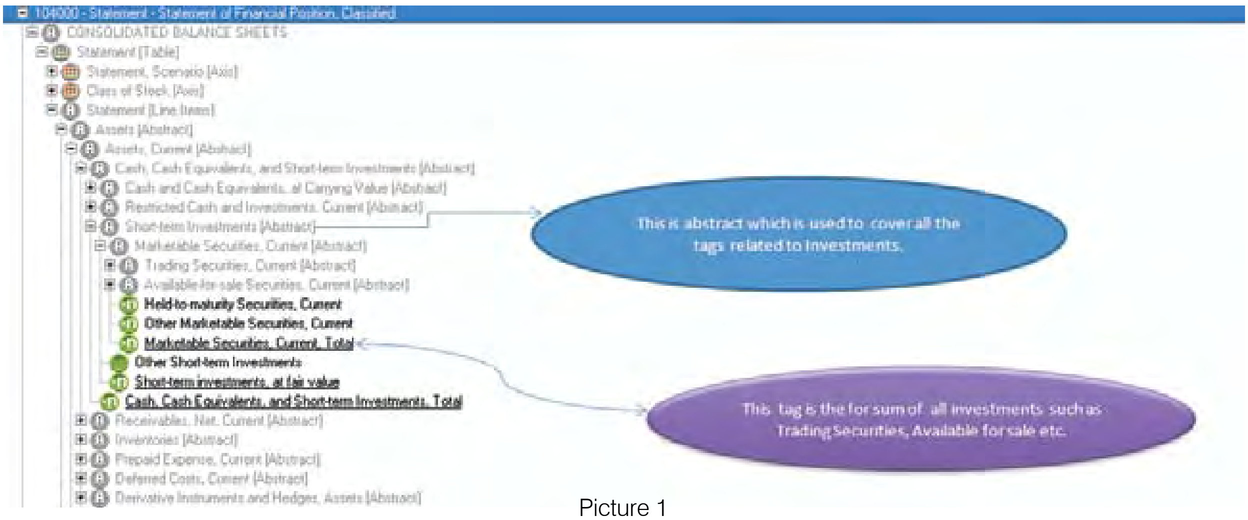
Four Fundamental Terms in XBRL Financial Statement



1. *Taxonomy:* Taxonomy is a hierarchal structure of financial definitions. It is like a dictionary from which definition of business concepts can be extracted. It also depicts the relationship between the total item and the sub items.

2. *Abstract:* Abstract is used to cover all tags of same group under one heading/roof, in such a way that hierarchy between the elements can be depicted in a systematic and logical manner.
3. *Tags:* Element that is used to identify/map and describe the elements of financial statements or any business term. The process of mapping the financial data to unique element is called tagging.
4. *Extension:* Extensibility is one of the important aspects of XBRL. When there is no tag available in public taxonomy to identify an element of financial statements of reporting entity, extension tag is used to identify/map the same element.

Example: Below in *Picture 1*, short-term investment abstract is highlighted that covers all tags and sub-abstracts of short-term investments. Further, marketable securities current tag is highlighted, which can be used for mapping/identifying marketable securities classified as current. This whole screenshot is a part of US-GAAP taxonomy that shows tree location of the balance sheet.



Picture 1

Screenshot of Balance Sheet in Taxonomy

Picture 2 shows the hierarchal structure of US-GAAP taxonomy. Balance Sheet is divided in two broader categories: *Assets and Liabilities and Equity*. In the picture, there are two major abstracts. Assets abstract covers all type of assets, whereas liabilities and stockholder's equity abstract covers liabilities and equities. Further, assets abstract is classified into current and non-current abstract. Current assets abstract covers all the data points (tag) related to current assets. Non-current assets abstract covers all the data points (tags) related to non-current assets. In taxonomy, interrelated tags are merged into a single abstract which is populating with the plus sign (+) in the taxonomy and, then, all related abstracts are merged into a border abstract.

Picture 2

Below is an example of practical insight of tagging with its benefits where there are two balance sheets of the companies ABC Inc. and XYZ Inc.:

ABC Inc.
CONDENSED CONSOLIDATED BALANCE SHEETS

Liabilities and Equity	Amount(In $)	Assets	Amount(In $)
		Short Term Investments	10,000.00
	******		******

XYZ Inc.
CONDENSED CONSOLIDATED BALANCE SHEETS

Liabilities and Equity	Amount(In $)	Assets	Amount(In $)
		Short Term Investments	10,000.00
	******		******

Details of the both companies Investments is as under :

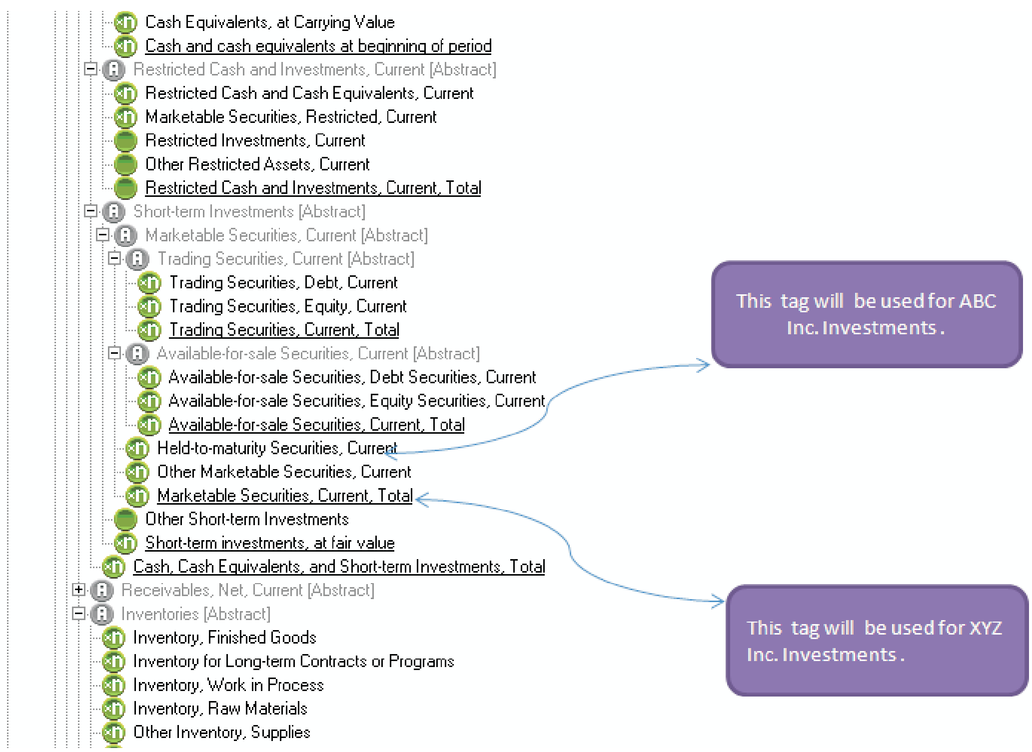
ABC Inc.

Particulars	Amount(In $)
Short Term Investments:	
Held to Maturity Securities	10,000.00
Total Short Term Investments	10,000.00

XYZ Inc.

Particulars	Amount(In $)
Short Term Investments:	
Available for Sale Securities	3,000.00
Held to Maturity Securities	4,000.00
Trading Securities	3,000.00
Total Short Term Investments	10,000.00

Tags available in US GAAP Taxonomy for Investments taken in above examples are shown in Picture-3



Picture 3

In the above *Picture 3*, there are separate tags available in taxonomy for each type of investments and we will use the most specific tags. Since ABC Inc. investments has only held to maturity securities, we will use specific tag for the same. Since XYZ Inc. investment is the sum of three different kinds of investments, tag will be used of total, i.e. marketable securities. This is one of the features of XBRL that in case of two companies showing their various investments as same item in balance sheet, XBRL will provide the exact picture of a company's investments. ■

Accounting Treatment of Deferred Tax Liability-Special Reserve Under Income-tax Act, 1961: Issues and Analysis*

The accounting treatment of Deferred Tax Liability in respect of special reserve created and maintained by some eligible companies under Income-tax Act, 1961 has been a matter of concern for some of the companies on account of difference of opinions and interpretations. The article highlights how an interpretation of accounting standard can have significant impact on bottom-line of a company while its better appreciation could improve its bottom line and net worth besides bringing uniformity, consistency and comparability of the financial statements of the companies in the same sector in similar circumstances. Accounting Standard 22 relates to Accounting of taxes on income and also governs accounting of deferred tax assets and liabilities. An attempt has been made in the article to highlight and analyse the related issues. *The views of ICAI's Technical Director have also been separately given for a better understanding of the issue*.

K. P. Sasidharan and Mahesh Gupta

(The authors are Director General (Commercial), CAG office and Sr. Admn. Officer, CAG office in New Delhi respectively. They can be reached at sasidharanKP@cag.gov.in)

The article highlights how an interpretation of accounting standard can have significant impact on bottomline of a company while its better appreciation could improve its bottom line and net worth besides bringing uniformity, consistency and comparability of the financial statements of the companies in the same sector in similar circumstances.

Accounting Standard 22 relates to accounting of taxes on income and also governs accounting of deferred tax assets and liabilities. In succeeding paragraphs, we will discuss provision relating to deferred tax liability with specific reference to reserve under Section 36(c)(ii) of the Income-tax Act, 1961 and different interpretations by various companies and their statutory auditors leading to different accounting treatments by companies and efforts made by overseeing body to streamline the accounting treatment to bring uniformity, consistency and presentation of true and fair view of profitability and state of affairs as intended by legislature.

* The issues expressed in the article are views in the personal capacity and are not in any way endorsed by the institution they belong to.

“The Attorney General opined that ‘to amount a timing difference there must be certainty that the difference would be adjusted in future years. From the very expression timing difference, it is clear that the difference has arisen only because of the way certain heads of income/expenditure are treated differently by accounting standard and income tax laws. However, over a period of time, the difference has to be necessarily evened out. That is why the expression ‘timing differences’ is used, meaning thereby that is only a question of time which is known and ascertained, over which this difference is the accounting income and taxable income is neutralised. Consequently, if the difference may not be neutralised over ascertainable period of time and indeed may not ever be neutralised, it cannot be called a timing difference. Naturally, for the years in question, the difference would have to be shown as permanent difference under AS-22”.

Provisions of the Income-tax Act, 1961

Section 36(c)(viii) of the Income-tax Act, 1961 states as under:

‘In respect of any special reserve created and maintained by a specified entity (specified entity means a financial corporation which is engaged in providing long-term finance for industrial or agricultural development or development of infrastructure facility in India or by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes), an amount not exceeding twenty per cent of the profits derived from eligible business computed under the head “Profits and gains of business or profession” (before making any deduction under this clause) carried to such reserve account’.

The Company can claim a deduction under Section 36(1)(viii) of the Income-tax Act, 1961 on account of special reserve created and maintained on profits derived from the business of long-term finance from taxable income every year.

According to Section 41(4A) of the Income-tax Act, 1961, ‘in case the special reserve is utilised/ withdrawn the same will become taxable in the year in which it is so utilised and the companies will have to pay tax in the year of such withdrawal’.

Accounting Standard 22

According to Para 13 of AS 22, *the deferred tax should be recognized for all the timing differences. Para 4.6 of the AS 22 defines the timing difference as differences between the taxable income and accounting income for a period that originate in one period and are* ***capable of reversal in one or more subsequent periods***.

Application of Accounting Standard 22 by Companies

A Central Public Sector Enterprise (CPSE) was engaged in providing long term finance for power generation projects, transmission and distribution works, and renovation and modernisation of power plant in India. The CPSE was also notified as a ‘Public Financial Institution’ under Section 4A of the Companies Act, 1956 was carrying reserve under Section 36(c)(ii) of Income-tax Act, 1961 and was not making any provision for Deferred Tax Liability in this regard on the analogy that it had been making profits and having sound financial position and therefore, to save tax, it will not withdraw Reserve created and maintained under Section 36(c)(ii) of the Income-tax Act, 1961. However, their statutory auditors were of the view that the reserve was capable of being withdrawn and there is difference between taxable income and accounting income originating in one period and difference so originated should be capable of reversal in one or more subsequent periods. Therefore, Deferred Tax Liability should be created in this case.

Due to difference of opinion of the CPSE and its statutory auditors, the matter was referred to Expert Advisory Committee of ICAI for their opinion whether Deferred Tax Liability is to be created for carrying amount of reserve created under Section 36 of the Income-tax Act, 1961.

Opinion of the Expert Advisory Committee of ICAI

Upon the matter being referred to Expert Advisory Committee of ICAI, the matter was examined in detail, the Committee after considering all the arguments presented by the company (including principals of recognition of liabilities as per AS 29 and also its intentions as demonstrated by passing a resolution of the board that it will not utilise or withdraw the special reserve created under Section 36 of the Income-tax Act, 1961 and industry practice not to make deferred tax liability in respect special reserve created and maintained under ibid section of the Income-tax Act, 1961) and their statutory auditors, the Committee held (November 2004) that as the special reserve created and maintained by the company is capable of being withdrawn resulting into reversal of difference between accounting income and taxable income. Therefore, the company is required to create deferred tax liability on the special reserve created and maintained under Section 36 of the Income Tax Act irrespective of the fact that withdrawal may or may not happen.

The CPSE did not agree with the opinion of the Committee of ICAI and referred the matter for reconsideration. The Committee reiterated (May 2006) its earlier decision.

Impact of the opinion of the Expert Advisory Committee of ICAI

At the time when opinion of the Committee was announced, most of the companies whether in the public sector or private sector were not making provision for Deferred Tax Liability in respect of special reserve under Section 36 of the Income Tax Act, 1961. On the basis of the opinion of the Committee of ICAI, most of the CPSEs started making provision for Deferred Tax Liability, however, private sector companies even though in the similarly placed circumstances did not make any provision for Deferred Tax Liability in this regard nor their statutory auditors qualified their audit report. This brought incomparability of the financial statement of these companies and also adversely affected bottom-line, net worth and market price of the companies which were making provision for DTL in respect of special reserve.

> **Most of the companies and banks were either not making provision for Deferred Tax Liability in respect of special reserve created and maintained under Section 36 of the Income-tax Act, 1961 or started reversing the existing such provision for Deferred Tax Liability. In respect of the two companies, referred above, their bottom-line and net worth increased and became comparable with other companies in the field and their accounting treatment also fell in line with industry with or without qualifications of the statutory auditors.**

Issues Involved

- Whether accounting treatment of the similarly placed companies in the private sector and public sector companies are comparable in above circumstances?
  a. If not, who has been entrusted this responsibility?
  b. What role is played by such a regulator?
  c. What should be done to avoid such an incidence?

Opinion of the Accounting Standard Board

The CPSE stated that similarly placed other companies had not been making provision of Deferred Tax Liability in respect of special reserve created and maintained under Section 36 of the Income-tax Act, 1961 and therefore, referred the matter to ICAI. The matter was referred to Accounting Standard Board. The Board had decided the revision of the AS-22 on the line of IAS-12 as a part of convergence with IFRS. Since the convergence was a time consuming exercise, the Accounting Standard Board communicated its decision that the CPSE need not create Deferred Tax Liability on special reserve maintained under Section 36 of the Income-tax Act, 1961, **if it is clearly demonstrated that reserve is not capable of being reversed and the fact supported by Board resolution and disclosure in Accounting policy**.

In line with the opinion of the Accounting Standard Board of ICAI, the CPSE stopped creating provision for Deferred Tax Liability and also withdrew the existing provision of more than ₹1200 crore and did not make provision of more than ₹100 crore in that accounting year. The Statutory Auditor qualified this treatment as accounting treatment by the CPSE as contrary to the mandatory provisions of the existing Accounting Standard 22.

Whether There Timing Difference is Permanent or Temporary?

Opinion of the Attorney General for India

Based on the above accounting treatment, another CPSE, which was

making provision for Deferred Tax Liability and had not utilised the same for past 35 years, obtained opinion of the Attorney General for India in the matter. After considering provisions contained in the Income Tax Act, 1961 and Accounting Standard 22, the Attorney General opined that *'to amount a timing difference there must be certainty that the difference would be adjusted in future years. From the very expression timing difference, it is clear that the difference has arisen only because of the way certain heads of income/expenditure are treated differently by accounting standard and income tax laws. However, over a period of time, the difference has to be necessarily evened out. That is why the expression 'timing differences' is used, meaning thereby that is only a question of time which is known and ascertained, over which this difference is the accounting income and taxable income is neutralised. Consequently, if the difference may not be neutralised over ascertainable period of time and indeed may not ever be neutralised, it cannot be called a timing difference. Naturally, for the years in question, the difference would have to be shown as permanent difference under AS-22".* Applying the above, to the facts of the present case, it appears that the CPSE, which has availed of the benefit of deduction under Section 36 of the Income-tax Act, 1961 may or may not reverse the special reserve fund. In case it chooses to do so, then consequences under Section 41(4A) of the Income-tax Act would follow. Therefore, **this is case of permanent difference arising between the accounting income and taxable income** and in view of clause 12 of AS-22, it does not result in Deferred Tax Liability.

Opinion of the Statutory Auditors of other CPSE

The statutory auditors of the second CPSE were of the opinion that once the Company demonstrates its intention to make the accounting income and taxable income as a permanent by passing a special resolution and appropriate disclosures in its financial statements, there was no need for Deferred Tax Liability. Accordingly, in consultation with the statutory auditors, second CPSE also reversed cumulative provision of Deferred Tax Liability of about ₹1000 crore and did not create provision of more than ₹150 crore in that financial year.

Industry Practice

Most of the companies and banks were either not making provision for Deferred Tax Liability in respect of special reserve created and maintained under Section 36 of the Income-tax Act, 1961 or started reversing the existing such provision for Deferred Tax Liability. In respect of the two companies, referred above, their bottom-line and net worth increased and became comparable with other companies in the field and their accounting treatment also fell in line with industry with or without qualifications of the statutory auditors.

Conclusion

In view of different interpretation by various statutory auditors and some of the agencies assigned to govern the implementation of the Accounting Standard and provisions of the IFRS and the fact that convergence of the Indian Accounting Standard with IFRS was going on, the matter was again reconsidered by the overseeing body, responsible for audit of CPSEs with a view to bring uniformity and consistency in accounting treatment by various companies. After considering the intent of the law to provide relief to the companies that were providing long term finance for the infrastructural development, different interpretations of statutory auditors, different interpretations of the Committee and Board of ICAI and deliberations on the provisions of the Accounting Standard, it was decided that if the intention and conduct of the company duly demonstrated by the resolution

"In view of different interpretation by various statutory auditors and some of the agencies assigned to govern the implementation of the Accounting Standard and provisions of the IFRS and the fact that convergence of the Indian Accounting Standard with IFRS was going on, the matter was again reconsidered by the overseeing body, responsible for audit of CPSEs with a view to bring uniformity and consistency in accounting treatment by various companies. After considering the intent of the law to provide relief to the companies that were providing long term finance for the infrastructural development, different interpretations of statutory auditors, different interpretations of the Committee and Board of ICAI and deliberations on the provisions of the Accounting Standard, it was decided that if the intention and conduct of the company duly demonstrated by the resolution of the Board of the Directors that the special reserve would not be utilised or reversed and it is established that the difference of the accounting income and taxable income in foreseeable future is permanent, there is no need to make provision for Deferred Tax Liability. This would bring consistency, uniformity and objectivity in the financial statement of the concerned companies in the private and public sector."

of the Board of the Directors that the special reserve would not be utilised or reversed and it is established that the difference of the accounting income and taxable income in foreseeable future is permanent, there is no need to make provision for Deferred Tax Liability. This would bring consistency, uniformity and objectivity in the financial statement of the concerned companies in the private and public sector.

It become obvious that the agencies responsible for regulating accounting treatment are required to play more proactive role to ensure uniformity, consistency and comparability of the accounting treatment by different companies in the similarly placed circumstances by closely coordinating with other regulators. ■

Views of the Technical Director, ICAI on creation of Deferred Tax Liability in respect of special reserve under Section 36 (1) (viii) of the Income-tax Act, 1961

Whether a company is required to create Deferred Tax Liability on the special reserve created and maintained under Section 36(1)(viii) of the Income-Tax Act, 1961, depends upon the interpretation of the definition of the term 'timing differences' and the other requirements of Accounting Standard (AS) 22, *Accounting for Taxes on Income*. The definition of the term 'timing differences' has the following two ingredients:

(i) There should be difference between taxable income and accounting income originating in one period; and

(ii) The difference so originated should be capable of reversal in one or more subsequent periods.

With regard to (i) above, it may be noted that in the period in which special reserve is created, the accounting income remains unaffected as the same is created below the line. However, the taxable income for the same year gets reduced by the amount of the special reserve thus resulting into lesser tax liability. Thus, there is difference between taxable income and accounting income originating in the period in which the company creates the special reserve. The condition at (ii) above would be met in the present case in the period in which the special reserve so created is utilized or withdrawn as it would be put to tax in that period. In this context, it may be noted that the definition of 'timing differences' requires the *capability of reversal* of the timing differences. It does not lay down either the time horizon over which the originating differences should reverse or whether there should be any reasonable or virtual certainty for reversal of the differences. In other words, even if the capability of reversal of timing differences is remote, the originating differences would be considered as 'timing differences' and not permanent differences. Thus, creation of deferred tax liability is not exempted in such a situation. Had the intention been to grant exemption, the accounting standard would have stated so or would have used expressions indicating the extent of certainty of reversal of originating differences. The above view is supported by the 'Basis for Conclusion' of Accounting Standards Interpretation (ASI) 6, 'Accounting for Taxes on Income in the Context of Section 115B of the Income-Tax Act, 1961,' which though has been withdrawn by ICAI, the 'consensus', portion thereof appears as Explanation to paragraph 21 of the AS 22 notified in the Companies (Accounting Standards) Rules, 2006. Paragraph 8 of the said ASI, which describes the conceptual basis of AS 22, stated as follows:

> "There are two methods for recognition and measurement of tax effects of timing differences, viz., the 'full provision method' and 'partial provision method'. Under the 'full provision method, the deferred tax is recognised and measured in respect of **all** timing differences (subject to consideration of prudence in case of deferred tax assets) without considering assumptions regarding future profitability, future capital expenditure, etc. On the other hand, the 'partial provision method' excludes the tax effects of certain timing differences which will not reverse for some considerable period ahead. Thus, this method is based on many subjective judgements involving assumptions regarding future profitability, future capital expenditure, etc. In other words, partial provision method is based on an assessment of what would be the position in future. Keeping in view the elements of subjectivity, the 'partial provision method' under which deferred tax is recognised on the basis of assessment as to what would be the expected position, has been discarded the world-over. AS 22 also does not consider the above assumptions and, therefore, is based on 'full provision method."

On the basis of the above, even if an enterprise expects that a difference between accounting income and taxable income will not reverse within a reasonable period (partial provision approach), the difference should be recognised as timing difference if it is capable of reversal at any time in future (full provision approach). Thus, deferred tax is to be provided for *all* timing differences. Accordingly, in the present case, so long as the utilization/withdrawal of special reserve is capable of taking place, the creation of special reserve results into timing differences for which deferred tax liability should be provided.

It may also be noted that keeping in view the above conceptual basis of AS 22, there is no room for consideration such as a special resolution passed by the board of a company, as another resolution of the board can undo the previous resolution. Also, the question of clearly demonstrating that the reserve is not capable of reversal, is not relevant as AS 22 does not envisage such an exemption

Accounting & Valuation for Brand as Intangible Assets: A Case Study for IPL[1]

Indian Premier League is the latest sports innovation of BCCI. The IPL is a professional Twenty-20 cricket league created and promoted by the BCCI and supported and recognised by the ICC. The brand is an important element of intangible assets which is very popular in developed as well as developing country in the present era of globalisation. That's why it is needed to calculate the value for brand IPL to communicate better information about revenue and performance of the players associated with various franchises. After the inception of IPL, Intangible Business, the leading international brand valuation specialist, and MTI Consulting, the management consultancy and Intangible Business partner in the Indian markets, have done in depth analysis in this regard and valued the new brand of IPL. This article highlights the concept of the brand value especially for sports brand IPL and their various franchises with the help of various attributes and detailed discussion of the brand valuation methodology adopted by research agencies.

Dr. Pradeep Kumar Singh

(The author is Asst. Professor and Head, Department of Commerce, Mahatma Gandhi Government Arts College, Chalakkara, New Mahe, Pondicherry. He can be reached at drpks3@rediffmail.com)

Brand is an important element of intangible assets which is very popular in developed as well as developing country in the era of globalisation. Intangible assets are very important for the earning and to enhance market share and that's why more and more importance is given by the shareholders as well as management to the accounting and valuation of Brands. Increasingly, the majority of business value is derived from intangibles, and brands are one of the most important of them, because of their far-reaching economic impact. Intangible assets accounting attempts to explain the excellence achieved by a company in augmenting shareholders value creation through its intellectual properties measured in terms of certain indicators such as Economic Value Added (EVA), Market Value Added (MVA), Total Shareholders Return (TSR), Brand Valuation, Human Resource Accounting, etc. Brands have a powerful influence on customers, employees, investors, and in a world of multiple choice, such influence is crucial and strategic for commercial success and creation for shareholder value. In current competitive environment, particular customers asking for a

[1] Author sincerely acknowledges 'Intangible Business UK' for giving permission to use the data related with brand valuation for IPL.

particular brand, even though similar other products are available in the market at same price or even less then that. The simple answer is attraction towards a particular Brand. This brand is a composition of several internal and external factors which differentiate them from other product. Reporting of brands are also important because all brands have the capacity to add value to their current businesses and secure future earnings.

Concept of Brand

The American Marketing Association defines a Brand as *"a name, term, sign, symbol or design or a combination of them, intended to identify the goods or services of one seller or group of sellers and to differentiate them from those of competitors."* Brand is a complex symbol that can convey up to six levels of meaning as; attributes benefits, values, culture, personality and users. According to Murphy[2] *"A brand is a complex thing. Not only is it the actual product, but it is also the unique property of a specific owner and has been developed over a time so as to embrace a set of values and attributes (Both tangible and intangible) which meaningful and appropriately differentiate products which are otherwise very similar".* The intangible assets represented by brands should be assessed by the extent of their usefulness in the current year as compare to the previous years. Brands are those non-physical elements of a business, which have potential future earnings. They are separately identifiable intangible assets that one capable of being reliably measured. "A brand is a recognized name associated with a product, which projects an image to the consumer such that he or she rates the product associated with the brand higher than comparable products[3]. A perusal of the above definitions yields the following essentials of a "brand":

(i) it is a mechanism of "identification";
(ii) that enables the consumer to relate the relevant product to a particular seller;
(iii) such identification has the impact of influencing the buying decision of the consumer in favour of the owner of the brand.

Rationale of Brand Valuation

Today, it is possible to argue that, in general, the majority of business value is derived from intangibles. Management attention to these assets has certainly increased substantially. Leading companies focus their management efforts on intangible assets. For example, the Ford Motor Company has reduced its physical asset base in favour of investing in intangible assets. The brand is a special intangible that in many businesses is the most important asset. This is because of the economic impact that brands have. The financial position of an enterprise is influenced by the economic resources it controls, its financial structure, liquidity and solvency, and its capacity to adapt to changes in the environment. However, it is becoming increasingly clear that intangible assets have a significant role in defining the growth of a hi-tech company. Hence, quite often, the search for the added value invariably leads us back to understanding, evaluating and enhancing the intangible assets of the business. Best global brands have taught us time and time again that brand remains a far less volatile asset than other business assets – tangible or intangible.

Exhibit I: Types of Intangible Assets

Knowledge Intangibles:	Business Process Intangibles:	Market Position Intangibles:	Brand & Relationship Intangibles:
Patents, software, recipes, specific know-how, including manufacturing and operating guides and manuals, product research including product trials data, information databases etc.	Unique ways of organising the business including innovative business models, flexible manufacturing techniques and supply chain configurations.	Retail listings and contracts, distribution rights, licenses such as landing slots, production or import quotas, third generation telecom licenses, government permits and authorisations and raw materials sourcing contracts.	Trade names, trademarks & trade symbols, domain names, design rights, trade dress, packaging, copyrights over associated colours, smells, sounds, descriptors, logotypes, advertising visuals, and written copy.

Valuation for 'Brand IPL'

The Indian Premier League (IPL) is set to transforming the cricketing economy, draw in a new bunch of younger audiences with the T20 format, reinforce India's superpower status, create club cultures, and build market values that are in line with the English Premier League (EPL). Twenty-20 has taken the cricketing world by storm ever since its inauguration in 2003. It has quickly become a permanent part of both the domestic and international cricket calendars and has reignited and attracted wider interest in this most gentrified of sports. Indian Premier League is latest sports innovation of BCCI. The entire concept of IPL is based on the hypothesis that the public will take a fancy to supporting league

[2] John M. Murphy (1990): "Brand Strategy", Directors Books, P 2.
[3] Mainz, A, & Mullen, M, Acquisitions Monthly, 1989 April, 24;

teams as opposed to national teams, and come out in large numbers to watch their favourite players irrespective of their nationality. The BCCI launched the Indian Premier League (IPL) on the emergence of football's English Premier League and the National Basketball League (NBA) of the United States. The IPL is a professional Twenty-20 cricket league created and promoted by the BCCI and supported and recognised by the ICC. The Twenty-20 league was introduced in April 2008, with eight teams comprising a minimum of 16 players each team. The IPL works on a franchise-system based on the US style of hiring players and transfers. These franchises were put for auction, where the highest bidder won the rights to own the team, representing each city.

MAIN FEATURES OF IPL

Title Sponsorship Rights: Indian real estate developer DLF Universal secured exclusive rights to the IPL title sponsorship worth ₹200 crore (over $50 million) for five years.

Television Rights: It was announced that a consortium consisting of India's Sony Television network and Singapore-based World Sports Group secured the rights of the IPL. The record deal has duration of ten years at a cost of $1.026 billion.

Auction of players: The auction of 77 players took place in Mumbai. Team India ODI and Twenty-20 skipper Mahendra Singh Dhoni and Australian all-rounder Andrew Symonds emerged the costliest Indian and overseas players respectively.

Each team will play the other seven teams home and away, the top four teams at the end of the group stages will proceed through to the semi-finals.

Team Composition: All teams must have at least four players from their respective Catchment's Areas and four Under-22 players. The players from Catchment's Areas could be an iconic player, a Ranji player or a U-22 player. Each team can buy a maximum of eight overseas players but only four would be able to take the field in a match.

Board of Governors for IPL

BCCI has formed an IPL council that comprises former BCCI president IS Bindra, vice-presidents Rajiv Shukla, Chirayu Amin, and Arun Jaitley, and former cricketers Mansur Ali Khan Pataudi, Sunil Gavaskar and Ravi Shastri. While the BCCI officials are honorary members, Pataudi, Gavaskar and Shastri will be paid for their services. The IPL governing council will have a five-year term and will run, operate and manage the league independently of the BCCI.

Exhibit II: IPL - Teams and Financial Cost (Cost of Acquisition)

S.N.	Teams	Price ($Mn)	Owners
1.	Mumbai Indians	111.9	Reliance Industries/ Mr. Mukesh Ambani.
2.	Royal Challengers Bangalore	111.6	Mr. Vijay Mallya/ UB Group.
3.	Deccan Chargers Hyderabad	107.0	Deccan Chronicle Group.
4.	Chennai Super Kings	91.0	Indian Cements/ Mr. Srinivasan
5.	Delhi Daredevils	84.0	GMR Group
6.	Kings XI Punjab	76.0	Ms Preity Zinta/ Mr. Naresh Wadia.
7.	Kolkata Knight Riders	75.0	Red Chillies Entertainment/ Mr. Shahrukh Khan.
8.	Rajasthan Royals	67.0	Emerging Media/ Shilpa Shetty.

After the inception of IPL first time, Intangible Business, the leading international brand valuation specialist, and MTI Consulting, the management consultancy and Intangible Business partner in the Indian markets, have done in depth analysis of brand IPL and valued the new brands of IPL.

Methodology for Valuation for Brand IPL

Brand accounting implies determining the value of a brand and displaying it as an asset in the balance sheet of the firm. It helps shareholders, potential investors and other interested parties in assessing the worth and earning potential of a company. Brand value is a mirror image of a brands ability to create future income. It is an onward looking study that uses historic performance and future trends to predict future activity. For the valuation of the brands related with various franchises for the year 2008 publicly available sales data was gathered from various sources. To determine the strength of the brands, a series of various attributes allocated and accordingly scores are allotted to the each franchise. These attributes are a mixture of hard measures such as heritage, popularity, IPL records, loyalty, price premium, Indian salience and international salience had been taken for the valuation point of view, similarly some panel measures such as owners equity, awareness and perception of brand strength, etc. sourced from publically available information and from a qualitative panel of cricket fans from each test playing nation (exhibit III). Based on these data, each brand was then valued using the relief-from-royalty methodology[4] by the Intangible Business & MTI in the year 2009.

[4] Relief-from-royalty is another method used by financial analysts. It is based on the concept that, if the company did not have the use of its brand name, it would need to license that right in exchange for a royalty fee. These royalty fees are usually based on a percentage of sales (not profits). The valuation consists of first estimating the fee as a percentage of sales and then projecting that fee over the useful life of the brand.

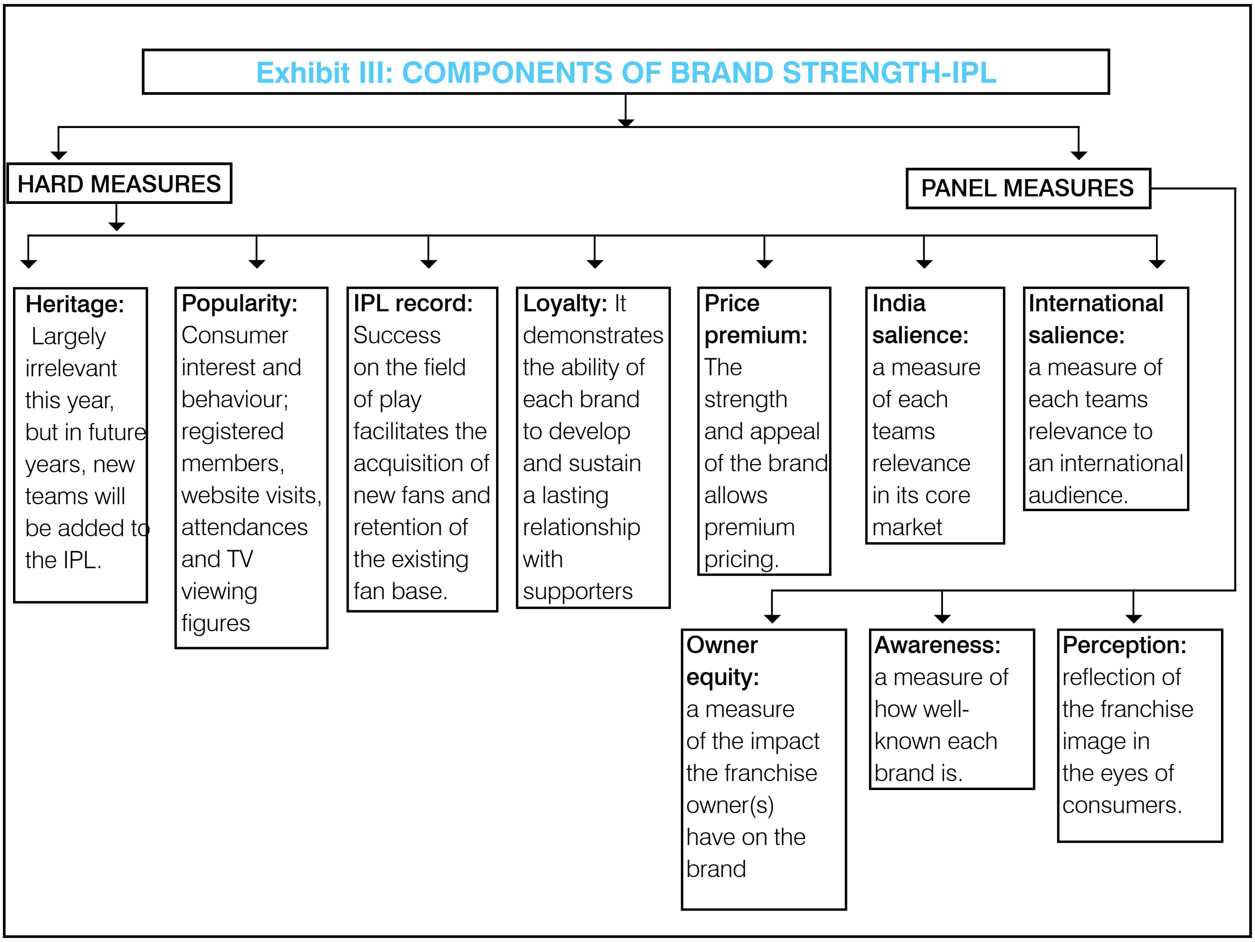


Exhibit III: COMPONENTS OF BRAND STRENGTH-IPL

The stronger a brand, the lower is its risk, and thus the more certain are future brand earnings. There are various strength attributes such as Heritage, Popularity, IPL record, Loyalty, Price premium, India salience, International salience, Owner equity, Awareness, Perception etc. In fact, a broad range of measured attributes explains the hard measures and penal measures and facilitates an all-round diagnosis of a brand's competitive position. This step results in the Brand Strength Score (BSS). Exhibit IV indicates the detailed brand strength score of the various franchises for the year 2008.

When we are evaluating the marks scored by the different attributes it is always different from franchise to franchise. As far as heritage is concerned an equal weight of 10 per cent is given to all the franchises due to the first year of the tournament. Popularity depends upon the consumer interest and behaviour; registered members, website visits, attendances and TV viewing figures, etc. Popularity wise, Kolkata Knight Riders are the leader due to the iconic player's Saurav Ganguly and brand image of the owner Shahrukh Khan both are very popular in Kolkata as well as the rest of the country. Promotional strategy also helps them to gain more and more popularity. As far as International salience is concerned; it is based on a measure of each team's relevance to an international audience. As per this attribute highest score is obtained by Deccan Chargers Hyderabad, with 64 per cent score. Second and third positions were bagged by Delhi Daredevils 61 per cent, Chennai Super Kings 61 per cent respectively and so on. Indian salience is a measure of each team's relevance in its core market. Similarly as far as Indian salience is concerned, Mumbai Indians is the leader with 98 per cent score due to ownership by the Reliance Industry as well as support of iconic player Sachin Tendulkar along with popularity in that region. Then it is followed by Royal Challengers Bangalore 79 per cent, Delhi Daredevils 77 per cent, and so on. Loyalty is another attribute which depends upon the ability of each brand to develop and sustain a lasting relationship with supporters. As per Loyalty criterion, Kings XI Punjab is the leader with 93 per cent score and the second and third places are held by Delhi Daredevils 87 per cent) and Chennai Super Kings 80 per cent respectively. Price premium is the monetary aspect of the brand, based on the strength and appeal of the brand allows premium pricing. As far as Price Premium is concerned, Delhi Daredevils scored 74 per cent, but others are far behind with Mumbai Indians 53 per cent, Chennai Super Kings 42 per cent, and Royal Challengers Bangalore with 42 per cent. IPL record is major attribute related with their performance in the year 2008, as we know that Rajasthan Royals they are the winners and they secured 100 per cent marks for that. The second place was secured by runners up Chennai Super Kings and then followed by Kings XI Punjab 70 per cent, Delhi Daredevils 60 per cent and so on.

The major panel measures are owner's equity, awareness and perception regarding different franchises. Owner equity is a measure of the impact the franchise owner(s) have on the brand. In this regard Kolkata Knight Riders is the leader with 57per cent weight, followed by Royal Challengers Bangalore 56 per cent, Mumbai Indians 53 per cent and so on. Awareness is a measure of how well-known each brand among their fans and well wishers. In this attribute, Kolkata Knight Riders is the leader with 61 per cent weight, followed by Mumbai Indians 56 per cent, Rajasthan Royals 56 per cent, and so on. Perception is another panel measure which is the reflection of the franchise image in the eyes of consumers. According to perception, Rajasthan Royals is the leader with 56 per cent weight, followed by Kolkata Knight Riders 54 per cent, Mumbai Indians 52 per cent, Royal Challengers Bangalore 52 per cent and so on.

Exhibit IV: IPL: Brand Strength & Scores By Measures

Brand Name	HARD MEASURES							PANEL MEASURES		
	Heritage	Popularity	Int. Salience	Indian Salience	Loyalty	Price Premium	IPL Record	Owners Equity	Awareness	Perception
Kolkata Knight Riders	10%	63%	32%	60%	71%	40%	40%	57%	61%	54%
Delhi Daredevils	10%	36%	61%	77%	87%	74%	60%	38%	40%	50%
Chennai Super Kings	10%	41%	61%	61%	80%	42%	80%	34%	49%	49%
Mumbai Indians	10%	45%	11%	98%	68%	53%	50%	53%	56%	52%
Kings XI Punjab	10%	47%	51%	72%	93%	35%	70%	44%	48%	49%
Royal Challengers Bangalore	10%	42%	50%	79%	78%	42%	30%	56%	50%	52%
Deccan Chargers Hyderabad	10%	42%	64%	52%	78%	40%	20%	35%	40%	41%
Rajasthan Royals	10%	30%	54%	48%	50%	24%	100%	42%	56%	56%

Source: IPL brand value scoreboard 2009 by Intangible Business & MTI Consultant.

Determination of Brand Value

This innovative form of the cricket has attracted a huge fan following across the globe. The IPL is a now a product with a 'made in India' tag and a huge brand value. Brand values are an expression of a brand's capacity to generate future income without much more efforts with the help of their logo or symbol, etc. So this is a frontward approach study based on historic performance and future trends to predict future activity. The brand valuation is an attempt to develop the amount the brand owner would be willing to pay for their brands which will generate some additional income. This approach is called the relief from royalty methodology as it calculates how much the brand owner is relieved from paying by virtue of owning the brand. Exhibit IV indicates the three more important parts of the brand valuation of the IPL i.e. forecast sales, royalty rate and discount rate. Valuation methodology for brand IPL by Intangible Business & MTI Consultant is as follows:

1. **Forecast Sales:** Sales forecast is one of the key components of the brand valuation of IPL. Previous years data are collected from the various franchises regarding sales and based on that future sales fore cast estimated. Here assumption is that brands have indefinite lives in line with established brands which are popular and have a long life. Another element is that the compound annual growth rate (CAGR) is adjusted to reflect the brand's long term ability for growth. This reflects more accurately a brand's growth prospects based on its current and historical performance

> **"The intangible assets represented by brands should be assessed by the extent of their usefulness in the current year as compare to the previous years. Brands are those non-physical elements of a business, which have potential future earnings. They are separately identifiable intangible assets that one capable of being reliably measured. "A brand is a recognized name associated with a product, which projects an image to the consumer such that he or she rates the product associated with the brand higher than comparable products."**

2. **Royalty Rate:** Royalty rate is based on the brand strength which is supported by qualitative data related with hard measures and panel measures. Panel measures such as owner equity, awareness and perception related data are colleted and hard measures data such as heritage, popularity, salience, loyalty, price premium and IPL record were considered. The average of the two measures are taken to determine the relatively royalty rate range. This process determines the individual royalty rate for the each franchises brand. This rate determines the profits or cash flow generated by the each franchise in the future with the help of their brand other than their performance.

Exhibit V: Brand Valuation Model For IPL

Future Sales	→	Royalty Rate	→	Discounted	→	Brand Value
Based on: • Historical sales • Adjusted CAGR	→	Based on: • Brand strength • Royalty rate range	→	Based on • Risk analysis • Tax deduction	→	Based on • Sum of future royalty income • Testing and be-nchmarking

Source: IPL brand value scoreboard 2009 by intangible business & MTI Consultant.

3. **Discount Rate:** Discount rate is another important criterion which reduced the future's expected profit on the bases of anticipated inflation. The discount rate reflects the time value and risk attached to those cash flows and for the purpose of valuation for IPL brands a 14 per cent discount rate has been applied by the intangible business.

Based on above mentioned formula; brand value for various IPL franchises are determined as follows:

(a) **Kolkata Knight Riders: (Brand Value $22.3 mn):** Kolkata is represented by the franchise Kolkata Knight Riders in the IPL owned by Bollywood actor Shahrukh Khan's Red Chillies Entertainment for USD 75.09 mn. The KKR had a good start to the 2008 season but the team failed to capitalise on this and went on to finish 6th in the tournament with 13 points. Financially, the Knight Riders were the most successful franchise in the IPL because they are having at least 12 sponsorships/brand associations such as Nokia, Belmonte, Star Plus, Gitanjali Jewellers, Sprite, Boomer, Reebok, Bilt, Tag Heuer, PlanetM, Next. They had achieved a profit of ₹65 crore in the season 2008. "SRK brand and the in-stadium marketing strategies of the teams have influenced the team's brand value, resulting in higher income from gate receipts, merchandising revenues and attracting new team sponsors," says study. They had over brand score is 52 per cent in the year 2008 but in 2009 performance of KKR was not up to the standard out as of 14 matches the won only three and secured only seven points which will negatively affect their ranking in the succeeding years.

(b) **Delhi Daredevils (Brand value $18.7 mn):** Delhi Daredevils is the franchise having second highest brand value of $18.7 mn. Delhi is represent by the Delhi Daredevils in IPL and is owned by the GMR group which acquired the rights of the Delhi team for USD 84 mn. In the year 2008 their total income is ₹50 crore with good sponsorships/brand associations such as Hero Honda, Kingfisher, Royal Challenge, Coca-Cola, Adidas, Fever 104 FM, Orbit, IBN7, CNN IBN, cicketnext.com, designer Karan Nasir, Buzzintown.com. Delhi Daredevils earned a good brand value score 55 per cent that was depicted by higher income from gate receipts and merchandising comparing to other teams. According to the study 'a strong squad, a popular brand ambassador and a well-known owner helped Delhi Daredevils create a good awareness and perception about the team'. Even cricket experts hailed Delhi Daredevils as one of the most balanced teams on the field. In the coming year their brand value may also increase because in the year 2009 out of 14 matches they won 10 matches and secured 20 match points.

"Brand accounting implies determining the value of a brand and displaying it as an asset in the balance sheet of the firm. It helps shareholders, potential investors and other interested parties in assessing the worth and earning potential of a company. Brand value is a mirror image of a brands ability to create future income. It is an onward looking study that uses historic performance and future trends to predict future activity."

Exhibit VI: IPL Brand Value For IPL Franchises

Rank	Brand Name	Value
01	Kolkata Knight Riders	$ 22 m
02	Delhi Daredevils	$ 19 m
03	Chennai Super Kings	$ 18 m
04	Mumbai Indians	$ 17 m
05	Kings XI Punjab	$ 15 m
06	Royal Challengers Bangalore	$ 14 m
07	Deccan Chargers Hyderabad	$ 11 m
08	Rajasthan Royals	$ 10 m

Source: IPL brand value scoreboard 2009 by intangible business & MTI Consultant.

(c) **Chennai Super Kings, (Brand value $18.1 mn):** Chennai city is represented by the Chennai Super Kings in the IPL is owned by India Cements which acquired the franchise rights by paying USD 91m. In the year 2008 they were the finalist and lost their match against Rajasthan Royals. In the year 2009 they performed well and out of 14 matches they won 8 matches and were second leader in the point table. Their overall brand score is 53 per cent which is third highest brand score with the brand value of $18.1 mn. They had attracted many sponsorships/ brand associations such as Aircel, Cloud 9, Nivaran 90, Reebok, 7Up, Band-Aid, Peter England, Nivea, Lays, Orbit, Boomer, Star Vijay, Hello, Big Bazaar, Coromandel King. Their total revenue in the year 2008 is 55 crore and for the year 2009 approx. ₹176.5-186.5 crore. "The purchase of M.S. Dhoni, under whose captaincy India won the world T20 championship, was the key factor in creating a large awareness, a stronger perception and gave great mileage for creating a strong brand for Chennai Super Kings," says the study. In 2009, Chennai Super Kings bought international superstar Andrew Flintoff for USD1.55m which made him the highest paid IPL player. Strong squad of players and popular artists like Tamil film star Vijay and musician Shivamani have contributed to creating a stronger brand value and robust income from gate revenues and merchandising.

(d) **Mumbai Indians, (Brand value £16.9 mn):** City Mumbai is represented by Mumbai Indians in the IPL. Mukesh Ambani's Reliance Industries Limited (RIL) purchased the rights for the Mumbai franchise of Indian Premier League for a total of $111.9 million which is most expensive franchise in the IPL. For the year 2008 their total Brand score was 51 per cent, with the sponsorships/brand associations with MasterCard, Idea Cellular, Royal Stag, Kingfisher, Pepsi, Adidas, Zandu Balm, Red FM, Wrigley's and Luminous Technology. In the year 2008 total revenue for the franchisees was ₹50 crore and for the year 2009 revenue was approx between ₹156.5-166.5 crore. Sachin Tendulkar really drove the loyalty factor for the team and brought in brands such as MasterCard, Pepsi and Adidas, among others. This pushed the team higher up in the brand strength rating; although it is counterbalanced by the lack of an internationally relevant player profile. The team's biggest strength, according to the study, was its huge fan following among cricket lovers.

(e) **Kings XI Punjab, (Brand value $15.1 mn):** Kings XI Punjab is the team representing Mohali in the IPL. The owners of the franchise include Preity Zinta, Ness Wadia (Bombay Dyeing), Karan Paul (Apeejay Surendera Group) and Mohit Burman (Dabur). The group paid a total of $76 million to acquire the franchise, the sixth most expensive team. Smaller ground and limited audience capacity affected the gate receipts and resulted lower rating in terms of brand. For the year 2008 their Brand score was 54 per cent with the sponsorships/brand associations such as Emirates, Gulf Oil, Reebok, Springbok International, Nimbooz, Netlinkblue, Royal Challenge, Dabur Glucose-D and Orbit. For the year 2008 their revenue was ₹50-53 crore but in the year 2009 revenue was approx ₹126.5-129.5 crore. Zinta brought in advertisers; consistency won loyalty. "With consistent performance throughout the season, the team was able to attract consistent audience numbers and developed a loyal viewership," the study says. Popular cricketers such as Brett Lee and Yuvraj Singh also improved the brand image of the team.

"Kolkata Knight Riders, with a brand value of $22.3 million, is owned by Bollywood actor Shahrukh Khan's Red Chillies Entertainment for USD 75.09 mn. The KKR had a good start to the 2008 season but the team failed to capitalise on this and went on to finish 6th in the tournament with 13 points. Financially, the Knight Riders were the most successful franchise in the IPL because they are having at least 12 sponsorships/brand associations such as Nokia, Belmonte, Star Plus, Gitanjali Jewellers, Sprite, Boomer, Reebok, Bilt, Tag Heuer, PlanetM, Next. They had achieved a profit of ₹65 crore in the season 2008."

IPL is one of the latest innovations of cricket. It is one of unique sports entertainment which involves money, fun and commercialisation of emotion of public and creation of brand image. Now two seasons are over and third season is near to start, IPL is very popular at domestic as well as international level. IPL created a huge professional opportunities for the various professionals in the area of valuation of intangible assets (right to play and brand valuation for IPL and different franchises). Brand valuation helps the franchises to adopt a professional attitude in the management and introduce rigorous corporate structures, and chalk out strong commercial streams including merchandising and licensing.

(f) **Royal Challengers Bangalore (Brand value $14 mn):** Bangalore city is represented by Royal Challengers Bangalore (RCB) in the IPL owned by the liquor magnate Dr. Vijay Mallya, through his flagship firm UB Group, for USD 111.6m. Despite high investment and glamour, the BRC was lacking an eleven member squad that can fit to T20 version, which resulted in lower income from gate receipts and merchandising revenues which eventually led to lower brand rating. The 2008 IPL Season was not good for this team. The team won only four matches, losing 10 matches and managed to secure 7th position in the points table. Due to all such reasons their Brand score is 50 per cent, with the few sponsorships/brand associations as Wrigley's and mostly in-house brands such as Kingfisher. The team has not had too many sponsors but the owners say that was a conscious strategy. Total revenue for the year 2008 was ₹35 crore but for the years 2009 it was approximately ₹86.5 crore. From being a laggard in the first season to runner-up this year, Royal Challengers Bangalore was a spectacular success story in IPL 2. "RCB had a lot of glamour associated with it as it had cheerleaders from the Washington Redskins as its own cheerleaders, and the glamour quotient was furthered by the presence of (actor) Katrina Kaif as the brand ambassador," says study.

(g) **Hyderabad Deccan Chargers (Brand value $11 mn):** Deccan Chargers is the franchise team that is representing Hyderabad in IPL owned by the media house Deccan Chronicle and was acquired at a cost of USD 107m. Despite having a strong team, Deccan Chargers have failed to create a strong brand identity. After a below par performance in the IPL 2008 with only two wins out of 14 matches, and ending up at the bottom of the points table. Lower popularity has affected the brand value of the team resulting in lower income from gate receipts and merchandising revenues. With absence of a popular brand ambassador and lower awareness about Deccan Chronicle group, their brand score is 44 per cent

with the sponsorships/brand associations including Odyssey, Puma, Kingfisher, McDowell's, Big 92.7 FM, Boomer, Pepsi, Serendipity Tours. In the year 2008 total revenue was ₹55 crore and in the year 2009 it was approximately ₹126.5 crore. The team's valuation at $11 million (around ₹52 crore) for the year 2008 was, however, not too impressive. But in the year 2009, by beating Royal Challengers by six runs in the final, the Deccan Chargers team not only scored in terms of popularity, but also made its team owners, richer by the ₹4.8 crore that it won in prize money which will certainly enhance their brand value for the future.

(h) **Rajasthan Royals ($10.1 mn):** Rajasthan Royals, representing the state of Rajasthan in IPL, was the least expensive franchise bought at USD 67m by Emerging Media Group. For the year 2008 their Brand score was 47 per cent, with sponsorships/brand associations such as UltraTech Cement, Kingfisher, Royal Challenge, HDFC Standard Life, Puma, 7Up, TCS, Boost, Wrigley's and fashion designer Kunal Rawal. In the year 2008 the total revenue earned by the franchises was ₹50 crore, which increased in the year 2009 to approx ₹176.5-186.5 crore. Winning the tournament in 2008 helped Rajasthan Royals attract bigger sponsors in 2009 year. The absence of star players, lesser-known owners and no brand ambassador combined to prevent it from creating a differentiated brand identity, but all that changed after the win. In 2009 year, the team's glamour quotient went up when Bollywood actor Shilpa Shetty, with partner Raj Kundra, bought a 12 per cent stake for $16.8 million, pushing the team's total valuation to $140 million, against the $67 million the team owners had spent to buy it.

It is essential that the IPL and the franchises develop a fan base than extends beyond their local region and India itself. International sports fans have no affiliation to the home cities of the IPL teams; therefore the involvement of international star players will influence the level of support and interest. As far as government and revenue is concerned, IPL is worth while for the tax collection point of view. With the first edition of IPL, central government earned ₹91 crore by way of TDS. The revenue was received by the Central Board of Direct Taxes (CBDT) after it categorised the tournament under the "professional services" last year. The taxes had been accrued as Tax Deducted at Source (TDS) from the remuneration paid to players, umpires, coaches, commentators amongst others by the organisers of the sporting extravaganza.

Conclusion

IPL is one of the latest innovations of cricket. It is one of unique sports entertainment which involves money, fun and commercialisation of emotion of public and creation of brand image. Now two seasons are over and third season is near to start, IPL is very popular at domestic as well as international level. IPL created a huge professional opportunities for the various professionals in the area of valuation of intangible assets (right to play and brand valuation for IPL and different franchises). Since nature of IPL is unique professional entertainment sports, they can play a vital role in the professional management of records, new ideas for revenue generation during the sports event etc. Brand valuation helps the franchises to adopt a professional attitude in the management and introduce rigorous corporate structures, and chalk out strong commercial streams including merchandising and licensing. As they are attracting more revenue through gate receipts, sponsors, icon players, and association of leading personalities along with their actual performance of the players/team its positive for the enhancement of the brand value for the IPL and various franchise in the succeeding years. ■

Impact of IFRS on Exploration & Production Companies

With the Ministry of Corporate Affairs recently issuing the roadmap for the convergence of International Financial Reporting Standards ('IFRS') in India, it's time for us that we bend our brain nerves to grasp the material impact on the India Inc and advise clients so that they do not grapple with the International Standards on adoption. One such industry which requires lots of thinking and decisions to be taken is the Exploration and Production (E&P) Industry – the upstream companies. The objective of this write up is to bring out the likely impact of the convergence with the IFRS' for the E&P Industry – the upstream companies in India, for eg: - Cairn, ONGC, Reliance, etc. These companies currently have to follow the "Guidance Note on Accounting for Oil & Gas Activities" ('The Guidance Note') issued by the Institute of Chartered Accountants of India for accounting its E&P activities. Under the International Financial Reporting Standards, there is no specific guidance on accounting for such E&P Companies, apart from IFRS 6 which deals with only exploration activities. This article brings out certain industry specific areas for which no explicit guidance has been provided by the IFRS.

CA. Rahul Kumar Bajaj
(The author is a member of the Institute. He can be reached at eboard@icai.org)

It's the Oil & Gas industry which is one of the major drivers for any economy to grow. When crude oil was trading at $140 per barrel, the world economy was at a boom and was surging like never before. However, when crude oil slashed to $35 per barrel, the economies were grappling with the problem of recession. It goes without saying that for India, which is still dependent on 70 per cent of its crude oil requirements through imports, the application of the IFRS on the E&P Companies would not be an easy task. The phenomenon of accounting and the approach used in application of such accounting principles are extremely different and unique in the E&P industry.

Existing Scenario

The Indian E&P Industry – the upstream companies, currently have to follow the *"Guidance Note on Accounting for Oil & Gas Activities"* ('The Guidance Note') issued by the Institute of Chartered Accountants of India for accounting its E&P activities.

It's strange but true that under the International Financial Reporting Standards, there is no specific guidance on accounting for such E&P Companies, apart from IFRS 6 which deals with only exploration activities. The E&P Companies possess various other industry specific transactions like depletion, exploration costs to be written off, type of reserves, etc. for which no specific guidance is provided under the IFRS. It is pertinent to note that under the Indian Guidance Note, all these issues have been directly dealt with.

It's strange but true that under the International Financial Reporting Standards, there is no specific guidance on accounting for such E&P Companies, apart from IFRS 6 which deals with only exploration activities. The E&P Companies possess various other industry specific transactions like depletion, exploration costs to be written off, type of reserves, etc. for which no specific guidance is provided under the IFRS. It is pertinent to note that under the Indian Guidance Note as aforesaid, all these issues have been directly dealt with.

It is in light of this missing link under the IFRS that lots of decisions will have to be taken by the management keeping in mind the industry trends, costs involved and thereby considering the practical view.

Let's ponder over certain industry specific areas for which no explicit guidance is provided by the IFRS. Let's also ponder over various problems that can be faced on convergence with the IFRS so that we can think of various options.

Method of accounting

The Guidance Note puts fore two methods of accounting:

a) Successful Efforts Method - SEM

b) Full Cost Method - FCM

Under IFRS', Full Cost Method, which permits capitalisation and carry forward of all the costs including cost of unsuccessful wells, is prohibited. Though not explicitly mentioned, but an indirect reference is contained in para 18 of IFRS 6 which reads as follows:-

> *"Exploration and evaluation assets shall be assessed for impairment when facts and circumstances suggest that the carrying amount of an exploration and evaluation asset may exceed its recoverable amount. When facts and circumstances suggest that the carrying amount exceeds the recoverable amount, an entity shall measure, present and disclose any resulting impairment loss in accordance with IAS 36"*

Amongst the big Indian E&P Companies, Reliance Industries Limited (RIL) - Company with largest market capitalisation in India, follows Full Cost Method permitted by the Guidance Note *(taken from "Note Q" of "Schedule N" of the Annual Report 2008 – 09 of RIL).*

Exploration Phase – First Phase in E and P Companies

For companies engaged in exploration for and evaluation of mineral resources, guidance is specifically contained in IFRS – 6. Here, it is pertinent to note that IFRS – 6 contains guidance only on exploration and evaluation ('E&E') expenditure, i.e., commonly known as exploration phase under IGAAP.

Further, IAS 16 - Property, Plant & Equipment specifically excludes from its scope the accounting for exploration and evaluation assets.

As per IFRS – 6, exploration and evaluation expenditure is the expenditure incurred by an entity in search for minerals after the entity has obtained legal rights to explore, but before the determination of technical feasibility and commercial viability of extracting the mineral resources. The following are examples of expenditures that might be included in the initial measurement of exploration and evaluation assets (the list is not exhaustive):

a) *Acquisition of rights to explore;*

b) *Topographical, geological, geochemical and geophysical studies*

c) *Exploratory drilling;*

d) *Trenching;*

e) *Activities in relation to evaluating the technical feasibility and commercial viability of extracting a mineral resource*

Under the SEM permitted by the Guidance Note, all the aforesaid expenses are expensed off in the year of incurrence except exploratory wells in progress and the initial acquisition cost whereas the FCM permits capitalisation of the aforesaid expenditure.

Now, on *first time adoption* to IFRS, i.e., on the date of transition, the E&P Companies will have the following options with respect to accounting for the exploration phase:-

(a) Para D8A(a) of IFRS 1 – First Time Adoption of IFRS, provides an exemption to the oil & gas companies on first time adoption to IFRS. Accordingly, on first time adoption, the Company may elect to measure E&E assets at the date of transition to IFRSs at the amount determined under the entity's previous GAAP. This implies that the E&P Companies can carry forward the Capitalised Exploration numbers, existing in their balance sheet on the date of transition, to the IFRS Balance Sheet on the date of transition.

Impact: - *None. However, for Companies following Full Cost Method, although no major exercise is involved on first time adoption because of the exemption* *contained in IFRS 1 as above, such companies will not be able to follow FCM subsequently and will have to amend its policies accordingly.*

(b) Capitalize/expense off all or some of the expenditure of the nature given above and carry them as E&E Assets in the Statement of Financial Statement. *This has to be applied retrospectively since on convergence with IFRS if any exemption of IFRS 1 is not used, then all the IFRS' have to be applied retrospectively (para IN04 of IFRS 1).*

Since, the IFRS' do not explicitly use the term "Successful Efforts Method", this implies that even the Successful Efforts Method can be customised by industry to industry, eg: - costs such as office costs, etc. can be continued to be expensed off in the year of incurrence as done under SEM permitted by the Guidance Note and costs such as seismic studies which are expensed off under the SEM of the Guidance Note can be capitalized.

While IFRS 6 applies only to the E&E Assets, IAS 38 – Intangible Assets specifically keeps expenditure on the development and extraction of minerals, oil, natural gas and similar non-regenerative resources out of its scope. Further, IAS 16 – Property, Plant & Equipment also excludes mineral rights and mineral reserves such as oil, natural gas and similar non-regenerative resources. However IAS 16 – Property, Plant & Equipment applies to property, plant and equipment used to develop or maintain such assets. While, no specific guidance has been outlined by the International Accounting Standards Board ('The IASB'), normally, the E&P companies follow the provisions contained in *"IAS 16 – property, Plant & Equipment" and "IAS 38 – Intangible Assets"* for initial recognition and measurement thereto.

Impact: - There will be an increase/ decrease in the value of E&E Assets depending on the policy adopted.

For subsequent measurement, i.e., post first time adoption, E&P companies will have the following options for measurement of exploration and evaluation assets: - *(Para 12 of IFRS 6)*

i. Continue to follow same accounting policy as was being followed under previous GAAP. However, application of FCM is prohibited.

ii. Devise a policy as per the principles enunciated above

iii. Revaluation Model (i.e. fair value at date of revaluation less subsequent accumulated impairment loss) : Revaluations shall be made with sufficient regularity to ensure that the carrying amount does not differ materially from that which would be determined using fair value at the end of the reporting period. As per para 15 of IFRS 1, the revaluation will have to be done separately for Tangible E&E Assets and Intangible E&E Assets.

Once, the exploration phase is over and commercial viability of reserves in the field is established, transfer such costs to the Development Pool and thereafter deplete/revalue.

Irrespective of the option chosen by the Company, IFRS 6 mandates the Company to classify the E&E Assets as tangibles or intangibles according to the nature of the assets acquired and apply the classification consistently. *(Para 15 of IFRS 6).*

Whichever option the Company chooses, the Company will have to test the E&E Assets for *impairment* whenever the circumstances suggest that the carrying amount of an exploration and evaluation asset may exceed its recoverable amount. For instance, following can trigger the requirement for impairment testing of E&E Assets: -

a) The period for which the entity has the right to explore has expired during the reporting period.

b) Substantive expenditure on further exploration for evaluation of mineral resources in the specific area is neither planned nor budgeted

Post Exploration Phase, i.e., Development Phase

Under the development phase expenditure is incurred after technical and commercial viability of reserves in a field has been established. There is no specific guidance contained under the international standards for this phase.

While IFRS 6 applies only to the E&E Assets, IAS 38 – Intangible Assets specifically keeps expenditure on the development and extraction of minerals, oil, natural gas and similar non-regenerative resources out of its scope. Further, IAS 16 – Property, Plant & Equipment also excludes mineral rights and mineral reserves such as oil, natural gas and similar non-regenerative resources. However IAS 16 – Property, Plant & Equipment applies to property, plant and equipment used to develop or maintain such assets.

While, no specific guidance has been outlined by the International Accounting Standards Board ('The IASB'), normally, the E&P companies follow the provisions contained in *"IAS 16 – property,* Plant & Equipment" and *"IAS 38 – Intangible Assets"* for initial recognition and measurement thereto, as discussed below.

On *first time adoption* to IFRS, i.e., on the date of transition, the E&P Companies will have the following options with respect to accounting for the development phase: -

'Cost of Facilities Used for Production' is one of the major items that will be impacted by IFRS convergence. The cost of facilities will have to be broken down various components and depreciated separately as per its useful life *(Para 43 of IAS 16 - Property, Plant & Equipment).* In the oil & gas industry, the cost of facilities is humungous and this task of componentisation requires involvement of experts and fair valuers and also critical decisions on the useful lives, etc. to be taken by the management. Alternatively the Company may choose to go for a re-evaluation model and revalue the asset on regular basis as discussed above

(i) Para D8A(b) of IFRS 1 – First Time Adoption of IFRS, provides an exemption to the oil and gas companies on first time adoption to IFRS. Accordingly, on first time adoption, the Company may elect to measure exploration and evaluation assets at the date of transition to IFRSs at the amount determined under the entity's previous GAAP. This implies that the E&P Companies can carry forward the Capitalised Exploration numbers, existing in their balance sheet on the date of transition, to the IFRS Balance Sheet on the date of transition. The entity shall allocate this amount to the cost centre's underlying assets pro rata using reserve volumes or reserve values as of that date.

Impact: - None.

(ii) Develop a policy for development expenditure and apply it retrospectively as mentioned above.

(iii) Revalue / fair value the development oil & gas assets on the date of transition and take the differential gains / losses to the Opening Reserves.

For subsequent measurement, i.e., post first time adoption, E&P companies will have the following options for measurement of development oil & gas assets: -

i. Continue to follow same accounting policy as was being followed under previous GAAP.

ii. Devise a policy as per the principles enunciated in 5.4.2 above

iii. Revaluation Model *(i.e. fair value at date of revaluation less subsequent accumulated impairment loss)*

The principles enunciated in above relevant paragraphs shall also apply to the measurement of development oil & gas assets.

Cost of Facilities Used for Production

This is one of the major items that will be impacted by IFRS convergence. The cost of facilities will have to be broken down various components and depreciated separately as per its useful life *(Para 43 of IAS 16 - Property, Plant & Equipment).*

In the oil and gas industry, the cost of facilities is humungous and this task of componentisation requires involvement of experts and fair valuers and also critical decisions on the useful lives, etc. to be taken by the management. Alternatively, the Company may choose to go for a re-evaluation model and revalue the asset on regular basis as discussed above.

Depletion

The Guidance Note uses the following reserves for computing the depletion charge: -

a) Proved Reserves for depleting the acquisition cost

b) Proved developed Reserves for depleting the remaining costs.

No specific guidance is available on the type of reserves to be used for the calculation of depletion. Company may exercise discretion of whether to use: -

a) Proved reserves (1P Reserves), or

b) Proved and probable reserves (2P Reserves), or

c) Proved, probable and possible reserves (3P reserves)

But the policy needs to be applied consistently. The Company may however continue with its existing policy for depletion also.

However, in case the Company decides to use the 2P or 3P reserves then an adjustment should ideally be considered in relation to amortisation charge to reflect the future development costs that will be required to be incurred to access the future reserves.

Decommissioning Liability

In the oil and gas industry, the companies are generally under an obligation to restore the field once their operations are complete. For this, the Companies create a liability on the commencement of operations itself by giving corresponding debit to the asset and subsequently, such asset gets depleted.

Under IFRS, the provisions of IAS – 37 shall apply. Accordingly, on initial recognition, the Company will have to compute the present value of the site restoration liability using the discount rate (that reflects current market assessments of the time value of money and the risks specific to the liability) and create a liability for the same amount.

Assuming no change in the gross liability for decommissioning / site restoration, the present value of the liability will change at the end of every reporting period because of the efflux of time. The resultant differential in liability will be charged to the Income statement through "Unwinding of Discount – Finance Cost".

However, the gross liability for decommissioning, restoration might also undergo change subsequently. For this, IFRIC 1 – Changes in decommissioning, restoration and

In the oil & gas industry, the companies are generally under an obligation to restore the field once their operations are complete. For this, the Companies create a liability on the commencement of operations itself by giving corresponding debit to the asset and subsequently, such asset gets depleted.

similar liabilities provide specific guidance. Accordingly, when the gross estimate undergoes a change then the Present Value is computed for the differential, between revised gross estimate and old gross estimate, on the date of estimate's revision and the same is capitalised.

IAS 1 requires disclosure in the statement of comprehensive income of each component of other comprehensive income or expense. In complying with this requirement, the change in the revaluation surplus arising from a change in the liability shall be separately identified and disclosed as such.

Impact: - The requirement for discounting of decommissioning liability demands judgments in matters like selection of discount rate, etc. Further, this will reduce the Asset base since only discounted amount will be debited as against gross cost being debited under IGAAP. The reduction in Asset base will lead to a decrease in the depletion charge to the Income Statement.

Post Exploration Phase – Production Expenditure

Currently, the E&P Companies charge off its production expenditure to the Income Statement. This practice looks unlikely to change on adoption to IFRS and will have little impact on the financial statements.

Trends followed globally by E&P Companies on IFRS

Particulars	Company Name				
	Royal Dutch Shell	BP	Cairn Plc	BG	Petrofac
Acquisition cost	Capitalized				
Exploration costs incurred	Well costs are capitalized and carried	1. Incurred before obtaining license are expensed off.		Expensed off	Capitalized
Exploration costs incurred both before and after the acquisition of mineral rights such as such as acquisition of seismic data from third parties, test wells and geophysical surveys	Well costs are capitalized and carried forward until the well has been declared as successful. Besides, all other exploration costs are expensed as incurred.	2. Others capitalised.			
Development costs - including cost of facilities (i.e., those costs incurred to obtain access to proved reserves and to provide facilities for extracting, gathering and storing oil and gas)	Facilities: depreciated over useful life of the facilities, i.e., 15 - 20 years in this case. Acquisition Cost: depleted using "Proved Developed reserves" Others: depleted using "Proved & Developed reserves"	Facilities: depleted using "Proved & Developed reserves" Acquisition Cost: depleted using "Proved reserves" Others: depleted using "Proved & Developed reserves"	Facilities: depleted using "Proved & Probable reserves" Acquisition Cost : depleted using "Proved & Probable reserves" Others: depleted using "Proved & Probable reserves"	Facilities: depleted using "Proved reserves" Acquisition Cost : depleted using "Proved reserves" Others: depleted using "Proved developed reserves"	Facilities: depleted using "Proved & Probable reserves" Acquisition Cost: depleted using "Proved & Probable reserves" Others: depleted using "Proved & Probable reserves"
Reserves considered for depletion	1P Reserves	1P Reserves	2P Reserves	1P Reserves	2P Reserves
Balance sheet date from which data extracted	31 Dec 08	31 Dec 08	31 Dec 08	31 Dec 08	31 Dec 08
Whether future costs considered for depletion	☐	☐	☐	☐	☐

Tax Withholding u/s 195(1) and Remittances to Non-Residents: Recent Issues and Developments

Prior to the ruling of the Delhi HC in the matter of Van Oord ACZ India (P) Ltd vs. CIT [ITA No. 439 of 2008 dated 15 March 2010], the withholding of tax under Section 195 of the Income-tax Act, 1961 became a critical issue for discussion. The reason for the same was the ruling of the Hon'ble Karnataka High Court in the case of CIT vs. Samsung Electronics Company Ltd. [ITA No. 2808 of 2005 dated 24 September 2009]. Delhi HC dissenting from the Samsung Ruling held that the obligation to deduct the tax at source arises only when the payment is chargeable under the provisions of the Income Tax and not otherwise. The legal position summarized by the Delhi HC and remarks thereon in respect of withholding of tax on payments made to non- residents is given by the author in a tabular form in this article. For the information of the readers, the procedure of remittances is also being covered in this article.

CA. Garima Jain
(The author is member of the Institute. She can be reached at eboard@icai.org)

On 15th March 2010 the Hon'ble High Court of Delhi issued a ruling in favor of the assessees in appeal filed by Van Oord ACZ India (P) Ltd*. In this case the Tribunal had held that in terms of the provisions of Section 195 of the Income-tax Act, 1961 (the Act) the payer is obliged to deduct tax at source in respect of any sum paid to a non resident. The Hon'ble High Court set aside and reversed the order of the Tribunal after discussing the apex court ruling in the case of *Transmission Corporation of AP Ltd & another vs. CIT 239 ITR 387*, Karnataka High Court ruling in the case of Samsung Electronics (supra) and other judgments.

Relevant Provisions of the Act

195(1)	Scope and conditions for applicability
195(2)	Application by the "Payer" for lower or Nil withholding to the Income tax authorities
195(3)	Application by the "Payee" for lower or Nil withholding to the Income tax authorities
195(4)	Validity of certificate issued by the Income tax authorities
195(5)	Powers of the CBDT to issue Notifications
195(6)	Furnishing of information relating to payments to non residents in prescribed form and manner

*Digest of this judgement was published in the *Legal Decision* section [p.1924, *The Chartered Accountant*, Vol. 58, June 2010].

Withholding of Tax on payments made to non-residents is governed by the provisions of Section 195(1) of the Act which reads as under:

"Other sums

195. (1)Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries" shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:

....……...."

Position prior to Delhi HC ruling

Prior to the ruling of the Delhi HC in the matter of *Van Oord ACZ India (P) Ltd vs. CIT (supra)*, the withholding of tax under Section 195 of the Act became a critical issue for discussion. The reason for the same was the ruling of the Hon'ble Karnataka High Court in the case of *Samsung Electronics (supra)* wherein it was held that *'tax is required to be withheld on all payments made to non residents irrespective of their nature'*. However the Supreme Court on a Special Leave petition filed in the matter granted ad interim stay and stayed all recoveries pursuant the said order. The said SLP has been fixed for hearing before the Apex Court on 18th August 2010.

The Samsung ruling was largely being followed by the assessees falling within the jurisdiction of the Karnataka High Court. So far as other jurisdictions are concerned other assessees were taking shelter of the Special Bench ruling of the Mumbai ITAT in the case of *Mahindra and Mahindra vs. DCIT [313 ITR (AT) 263]* wherein it was held that *the question of deducting tax at source will arise only if the sum payable to the non-resident is chargeable to tax in India.* However, the said ruling being a Tribunal ruling was applicable only on its jurisdiction and for remaining jurisdictions the Samsung ruling given by High Court held great persuasive value.

Van Oord ACZ India (P) Ltd vs. CIT: The Welcome Ruling

Background

The assessee, an Indian company remitted mobilisation and demobilisation charges of ₹8.65 crore by way of reimbursement to its parent company (a company based in Netherlands). The assessee applied to the AO u/s 195 (2) for a nil withholding rate, however, the AO held that tax had to be deducted at the rate of 11 per cent. The assessee deducted tax on sums aggregating ₹6.98 crore. In the assessment order the AO took the view that as the assessee had failed to deduct tax at source u/s 195, the expenditure had to be disallowed u/s 40(a)(i). This was upheld by the CIT (A) and the Tribunal (effectively on the balance amount). The Tribunal followed the judgement of the Supreme Court in *Transmission Corporation of AP Ltd. (supra)* and held that the assessee was duty bound to deduct tax u/s 195(1) and could not escape liability without obtaining a certificate u/s 195(2). The Tribunal held that the assessee was not entitled *to "step into the shoes of the AO" and examine "whether the receipt was income in the hands of the recipient or not".*

Issues in Appeal before the Delhi HC

- Whether on the facts and in the circumstances of the case the Tribunal erred in holding that the appellant was liable to deduct tax at source under Section 195(1) of the Act in respect of the mobilisation and demobilisation costs reimbursed by the appellant to VOAMC (the parent company)?
- Whether on the facts and circumstances of the case, the Tribunal erred in law in holding that in terms of the provisions of Section 195 of the Act, the payer is obliged to deduct tax at source in respect of any sum paid to a non-resident and the payee was not required to determine whether the said sum is chargeable to tax or not under the provisions of the Act?

"Dissenting with the Samsung ruling *(supra)* the Delhi HC held that when in the assessment proceedings relating to recipient itself, it is opined by the income tax authorities that the tax is not payable at all on the amounts so received, provision of Section 195 would not be attracted."

Relied judgments

- *Transmission Corporation of AP Ltd. & Another vs. Commissioner of Income Tax [239 ITR 38)(SC)]*

The Delhi HC held that the Apex Court in this case, was not concerned with the situation where no tax at the hands of recipient is payable at all. It was further observed that certain observations in this judgment itself clearly depict the mind of the Court that liability to deduct at source arises only when the sum paid to the non-recipient is chargeable to tax. Once that is chargeable to tax, it is not for the assessee to find out how much amount of the receipts is chargeable to tax, but it is the obligation of the assessee to deduct the tax at source on the entire sum paid by the assessee to the recipient.

- *Commissioner of Income Tax vs. Estel Communications (P) Ltd. [217 CTR 102 (De.)]*

Finance Act, 2008 inserted a new sub-Section (6) to Section 195 effective from April 1, 2008, which requires the person responsible for making payment to a non-resident to furnish information relating to such payments in prescribed forms.

The Delhi HC observed that in this case the Court, while dismissing the appeal of the Revenue, held that the Tribunal had rightly come to the conclusion that since there was no income of the non-resident liable to tax in India the obligation to deduction of tax at source did not arise.

- *Mahindra & Mahindra Vs. Dy. Commissioner of Income Tax [313 ITR (AT) 26](Mum)(SB)]*

The Delhi HC concurred with the views of the Mumbai Tribunal that the underlying principle behind the deduction of tax at source is the presumption that there will be some liability of the payee towards tax on the sum paid to him. If there is no such liability then the entire exercise of firstly getting the amount of tax collected/ deducted at source and then refunding to the payee will be futile. If there is no tax liability of the payee then there cannot be any question of treating the person responsible for paying the sum without deducting tax at source as assessee in default. Thus, the essence of the provisions of deduction of tax at source is that there is a presumption of liability of the payee to tax on the income. Section 195 fixes the liability on person responsible for deducting tax at source only if the sum paid or credited to the account of the non-resident is chargeable to tax. The question of deducting tax at source will arise only if the sum payable to the non-resident is chargeable to tax in India.

Judgment not concurred with

- *Commissioner of Income Tax Vs. Samsung Electronic Company Ltd.* in ITA No. 2808 of 2005 decided on 24 September 2009(KAR)

The Karnataka High Court had held that that the moment there is a payment to a non-resident, there is an obligation on the payer to deduct tax at source u/s 195(1). The only way to escape the liability is for the payer to make an application to the AO u/s 195(2) for non-deduction or for deduction at a lower rate.

In respect of this ruling the Delhi HC observed that in this case the assessees wanted to show in their own assessment proceedings that amount paid by them was not assessable to tax at the hands of recipient and that no doubt, they would be precluded to do so.

Dissenting with the Samsung ruling *(supra)* the Delhi HC held that when in the assessment proceedings relating to recipient itself, it is opined by the income tax authorities that the tax is not payable at all on the amounts so received, provision of Section 195 would not be attracted and that based on the analysis of what *Transmission Corporation of AP Ltd. (Supra)* decides. Hence, Delhi HC held that it is not in agreement with some of the observations made in the aforesaid judgment of the Karnataka High Court.

Summary of the Delhi HC Ruling

The legal position summarized by the Delhi HC and remarks thereon in respect of withholding of tax on payments made to non-residents as under:

S. No.	Legal position	Remarks
a)	Section 195 of the Act deals with the deduction of tax at source by the payer i.e. assessee if the payments are to be made to a non-resident.	*Payers covered:* • Any person including an individual and HUF whether carrying on any business or not. • Non-residents making payments to other non-residents are also covered if payments are chargeable to tax in India • Agent also liable to deduct tax at source from payments to non-resident principal *Payees covered:* • Foreign Company • Non company payees who are 'Non-Residents', including NRI • Resident but not ordinarily resident (RNOR) not covered [see Section 2(30)]
b)	The payer/assessee is required to deduct Income tax on such payments made to non-resident at the specified rates in force	*Rates in force* • *Rates of income-tax specified in the Finance Act or the rates specified in the DTAA, whichever is applicable by virtue of Section 90 or Section 90A*

c)	Even the plain language of Section 195 shows that the tax at source is to be deducted on the "sum chargeable under the provisions of the Act". The obligation to deduct the tax at source arises only when the payment is chargeable under the provisions of the Income Tax.	Payments covered: • Any 'sum chargeable to tax' (other than salaries) as per the provisions of the Indian Income tax law • Gross sum vs. Income component: Tax to be withheld on the gross sum

	If the parties feel that either the deduction of tax at source by the payer is required to be at a rate lower than the prescribed rate or no deduction is required to be made they are required to file an application before the Assessing Officer for obtaining such certificate. In case no such application is filed before Assessing Officer for obtaining such certificate or such application is rejected by Assessing Officer and direction is issued by the Assessing Officer to deduct such tax at a particular rate the payer is duty bound to deduct tax as per the directions of Assessing Officer and in case no such application for obtaining the certificate was filed before the Assessing Officer then the payer is duty bound to deduct tax as per the prescribed rates in force at the relevant time.	*Karnataka HC in the Samsung ruling (supra) held that only way for not withholding taxes u/s 195(1) is AO's certificate (irrespective of the nature of payment) but this ruling has held that tax is to be deducted only when payment is chargeable to tax and therefore previously available Alternative mechanism holds good:*
		• Certificate of a Chartered Accountant certifying the tax withholding amount
		• Documents required
		• *Tax Residency Certificate issued by overseas tax authorities*
		• *Copy of agreement with the non-resident, if any*
		• *Copy of Invoice*
		• *Letter from non-resident receiver*
		  • *Tax resident of the home country and eligible to tax treaty benefits*
		  • *It is the beneficial owner of the income*
		  • *It does not have any PE in India*

d)	The order of the Assessing Officer under Section 195(2) of the Act is tentative in nature.	In AO's order the final view is not taken as to whether the recipients of the payments is liable to pay income tax in India or not. *Possibilities* • If AO determines that the payment is income chargeable at the hands of the recipient, the assessee is under obligation to deduct the tax at source. However, in case the assessee does not do so, he runs the risk of attracting the consequences provided under Section 40(a)(i) of the Act. • It is ultimately found in the assessment proceedings relating to the recipient that he was not liable to pay any tax on the sums received, the assessee cannot be treated in "default" in as much as Section 195(1) of the Act casts an obligation to deduct the tax at source on the sum 'chargeable under the provisions of this Act'

Answers to the Issues in appeal

Whether on the facts and in the circumstances of the case the Tribunal erred in holding that the appellant was liable to deduct tax at source under Section 195(1) of the Act in respect of the mobilisation and demobilisation costs reimbursed by the appellant to VOAMC (the parent company)?	*In favour of the appellant/assessee holding that the assessee was not liable to deduct tax at source under Section 195(1) of the Act in respect of the mobilisation and demobilisation costs reimbursed by the appellant to VOAMC (parent company) since VOAMC was not liable to pay tax in India.*
Whether on the facts and circumstances of the case, the Tribunal erred in law in holding that in terms of the provisions of Section 195 of the Act, the payer is obliged to deduct tax at source in respect of any sum paid to a non-resident and the payee was not required to determine whether the said sum is chargeable to tax or not under the provisions of the Act?	*The obligation to deduct the tax at source arises only when the payment is chargeable under the provisions of the Income Tax and not otherwise.*

Remittances to Non-Residents

Once the issue of tax withholding gets cleared the next issue of making remittances comes into picture. For the information of the readers, the procedure of remittances is also being covered in this article.

Earlier remittances to non-residents were allowed by banks if the person making the remittance furnishes an undertaking, accompanied by a certificate from a Chartered Accountant (CA) certifying the rate for withholding tax as per Section 195 of the Act. The banks then forward the certificates to the Reserve Bank of India (RBI), which in-turn forwards it to the Income tax department.

However, Finance Act, 2008 inserted a new sub-Section (6) to Section 195 effective from April 1, 2008, which requires the person responsible for making payment to a non-resident to furnish information relating to such payments in prescribed forms. The Central Board of Direct Taxes (CBDT) vide Notification No. 30/2009 dated March 25, 2009, prescribed a new Rule 37BB in the Income Tax Rules, 1962 (the rules) prescribing Form 15CA and Form 15CB to be filed in relation to remittances to non-residents under Section 195(6) of the Act. This new Rule has become effective from July 1, 2009 and shall apply to all remittances being made after July 1, 2009. The CBDT also issued Circular No. 4/2009 dated 29 June 2009 in this respect. The revised procedure for furnishing information regarding remittances being made to non-residents w.e.f. 1st July, 2009, as per CBDT Circular is as follows:-

“The Delhi HC ruling on *Van Ood ACZ India (supra)* will come as a relief to many assessees especially the ones with voluminous foreign transactions.”

(i) The person making the payment (remitter) will obtain a certificate from CA (other than employee) in Form 15CB.

(ii) The remitter will then access the website to electronically upload the remittance details to the Department in Form 15CA (undertaking). The information to be furnished in Form 15CA is to be filled using the information contained in Form 15CB (certificate).

(iii) The remitter will then take a print out of this filled up Form 15CA (which will bear an acknowledgement number generated by the system) and sign it. Form 15CA (undertaking) can be signed by the person authorised to sign the return of income of the remitter or a person so authorised by him in writing.

“In view of the ruling of the Delhi HC only payments chargeable to tax are liable for tax withholding impliedly a person can rely on chartered accountants’ certificate for nil withholding taxes in view of present legal position.”

(iv) The duly signed Form 15CA (undertaking) and Form 15CB (certificate), will be submitted in duplicate to the Reserve Bank of India/authorized dealer. The Reserve Bank of India/authorized dealer will in turn forward a copy the certificate and undertaking to the Assessing Officer concerned.

(v) A remitter who has obtained a certificate from the Assessing Officer regarding the rate at or amount on which the tax is to be deducted is not required to obtain a certificate from the Accountant in Form 15CB. However, he is required to furnish information in Form 15CA (undertaking) and submit it

> **One issue that needs to be considered is that the ruling holds that the AO's determination is also tentative and if ultimately the recipient is held to be taxable in India then the payer would be assessee in default.**

along with a copy of the certificate from the Assessing Officer as per the procedure mentioned from Sl. No.(i) to (iv) above.

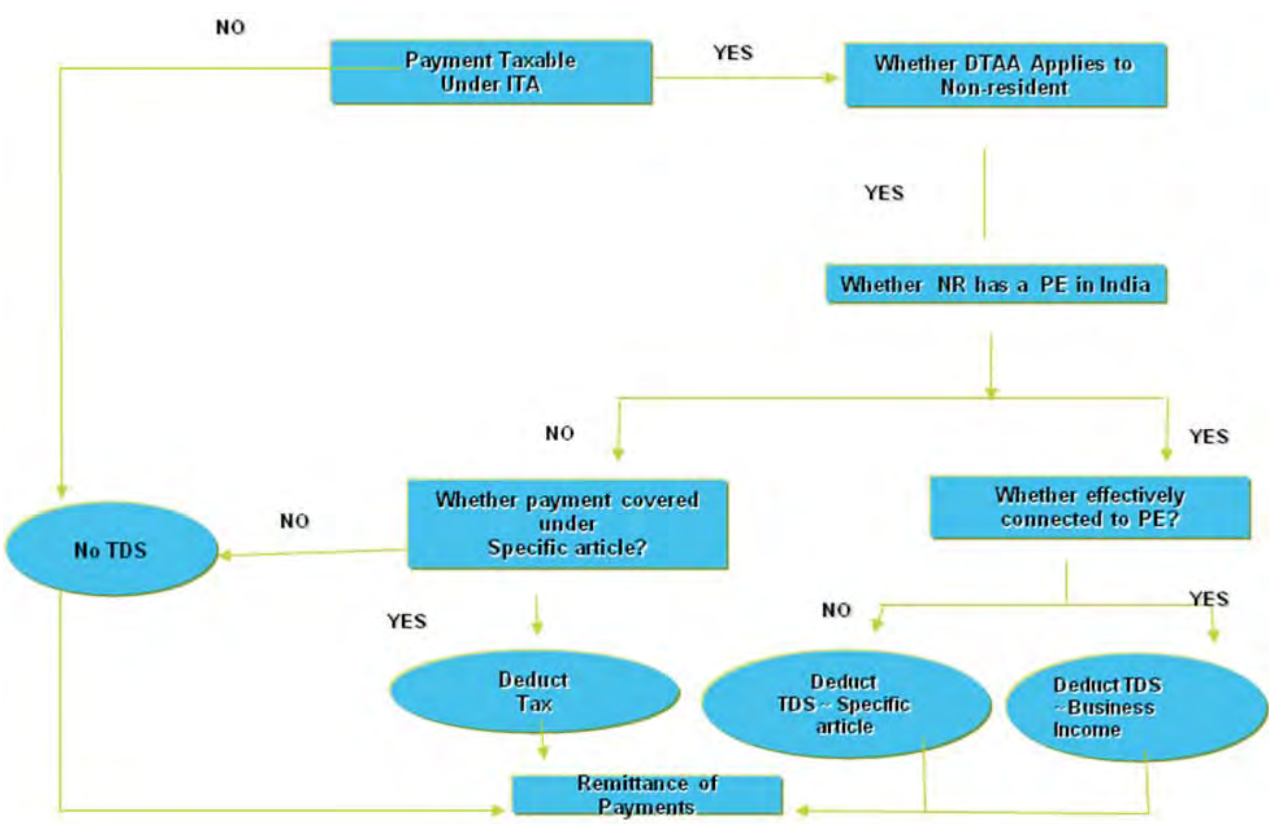
(vi) The Forms 15CA and 15CB are available for download on the following websites:
www.incometaxindia.gov.in
www.tin-nsdl.com

The above procedure of remittance applies to all remittances made out of India to non residents irrespective of the nature of remittance and therefore includes payments against imports, offshore supply payments, etc. Thus, a CA certificate is to be taken not only for taxable remittances but for every remittance to non-residents.

Final Remarks and Way Forward

The discussed Delhi HC ruling will come as a relief to many assessees especially the ones with voluminous foreign transactions. After the Samsung ruling, the assessees were in a difficult situation since following of this ruling would have resulted in tax withholding even on transactions of capital nature like imports of machinery, etc. However, now the assessees can take shelter of the Delhi High Court ruling (supra) and the same would result only in withholding of taxes as per the scheme of law. Further the Samsung ruling had held that the only way of nil withholding taxes is to obtain Assessing Officer's Certificate for the same irrespective of the nature of payments involved. However, the Delhi HC has not specifically commented on the same, but has held that AO's determination is also tentative in nature. Further, since the Delhi HC has held that only payments chargeable to tax are liable for tax withholding impliedly a person can rely on chartered accountants' certificate for nil withholding taxes in view of present legal position. However, one issue that needs to be considered is that the ruling holds that the AO's determination is also tentative and if ultimately the recipient is held to be taxable in India then the payer would be assessee in default.

The flow chart at Figure 1 summarises the position of withholding of taxes as per the income tax law.



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Direct Tax Code – Setting New Trends in Cross Border Taxation

The year 2009 heralded a major change in the Direct tax structure of the country with the Union Government unveiling the Direct Tax Code ('DTC') for responses from the stakeholders. The DTC introduced in 2009 envisaged a major policy shift in the provisions under the Income-tax Act, 1961 ('Act') in relation to the cross border taxation like change in parameters for test of residency, treaty override as well as introduction of General Anti-Avoidance Rules ('GAAR'), Branch Profit Tax. This article throws light on some of the key provisions of the DTC 2010 on cross border taxation. Read on.

(Contributed by the Committee of International Taxation of the ICAI. Comments can be sent to citax@icai.org)

Based on the feedback received from various stakeholders, the Union Government released the Revised Discussion Paper ('RDP') in June 2010. While the RDP addressed some of the concerns of the stakeholders, most notably diluting the far-reaching GAAR provisions, treaty override, etc, it also brought in the concept of Controlled Foreign Companies ('CFCs'), hitherto unknown to taxpayers in India. Consolidating the responses received on the DTC and the RDP, the Union Government tabled the revised Direct Tax Code ('DTC 2010') before the Indian Parliament on 30 August 2010.

In this article, we try to throw light on some of the key provisions of the DTC 2010 on cross border taxation.

1. Test of Residency

A person resident in India is taxed on his worldwide income. The current Income-tax Act provides that a company is resident in India if it is incorporated in India or its control and management is situated 'wholly' in India. However, the initial DTC proposed last year created quite a furore by proposing that a foreign company could become resident in India if its control and management is situated even wholly or partly in India during the relevant financial year. This would have resulted in a situation that a foreign company could be liable to tax in India on its worldwide income if its control and management, even partly, is situated in India at any point of time during the financial year.

Considering the widespread concerns raised on the lower threshold for residency under the DTC, the RDP proposed the 'Place of Effective Management' as a test to determine the residency of foreign companies. DTC 2010 retains the concept of Place of Effective Management as a test to determine the residency of a foreign company in India. The concept of Place of Effective Management ('POEM') is already propounded by the Double Taxation Avoidance Agreements ('DTAAs') as a tie-breaker rule to determine the residency of a company in cases where it may qualify as resident of both the countries under the respective domestic tax laws. Place of Effective Management ('POEM') is generally understood to mean the place where the key management is situated or where the key commercial decisions for the running of the company are taken.

DTC 2010 explains POEM as under:

a) Place where the Board of Directors ('BoD') or its Executive Directors ('ED') make their decisions;

b) In case where the BoD routinely approve the commercial and strategic decisions made by the EDs or officers of the company, the place where such EDs or officers of the company perform their functions.

Under the DTC 2010, a foreign company whose POEM is found to be in India would be liable to tax in India on its worldwide income.

2. Income Deemed to Accrue or Arise in India

Section 9 of the Act currently provides for provisions relating to income deemed to accrue or arise in India. DTC 2010, while retaining the provisions of section 9 of the Act, has expanded the scope of income deemed to accrue or arise in India to include the following incomes:

a) Any insurance premium, including reinsurance premium, in respect of an insurance covering any risk in India.

b) Transportation charges payable by a resident or non-resident if the same is in respect of carriage to, or from, a place in India. However, an exclusion is provided in respect of transportation charges payable by a resident for carriage by aircraft or ship from a place outside India to another place outside India.

c) The provisions as they are in force currently provide for taxation of interest payable by a non-resident in respect of money borrowed or debts incurred for the purpose of business carried on by a non-resident in India. DTC 2010 expands the scope by also including within the scope any interest payable for debt incurred or moneys borrowed for the purpose of earning any income from any source in India.

Gains from transfer of asset situated in India — taxability of offshore transactions: The Income-tax Act, 1961 provides for taxation of income arising from transfer of capital asset situated in India. As the readers may be aware, in the widely reported Vodafone matter which is subjudice, the Tax authorities are attempting to tax the sale of shares of a foreign company by foreign sellers on the contention that there is an indirect transfer of the asset/controlling interest in the Indian company, since the foreign company is indirectly holding shares of an Indian company.

The DTC has now a specific provision which states that income arising outside India from transfer of any share or interest in foreign company shall not be deemed to arise in India <u>unless the assets owned directly or indirectly by such company in India represents at least 50 per cent of the fair market value of all the assets owned by the company.</u>

In other words, if the foreign company whose shares are being sold owns directly or indirectly assets in India, whose fair value is more than 50 per cent the total fair value of the assets of the company, the said transfer would be taxable in India.

The purpose of this provision seems to be to tax offshore transfers in India. In addition, the DTC 2010 also provides a formula for computing income on transfer of shares or interest in Foreign Company (FCo). The same is as under:

$$\text{Income from transfer computed in accordance with provisions of DTC 2010 as if the transfer was affected in India} \times \frac{\text{Fair Market Value (FMV) of assets in India, owned, directly or indirectly, by FCo}}{\text{FMV of all the assets owned by FCo}}$$

FMV of the asset has been defined in DTC 2010 to mean the price prescribed by the authorities in consultation with the Government of India.

Definition and taxation of Royalty: The definition of Royalty under the DTC 2010 has been expanded from the definition given under the Act to include consideration for the use or the right to use transmission by satellite, cable, optic fibre or similar technology, ship or aircraft. Furthermore, the consideration received for transfer of all or any rights (including granting of license) in respect of 'live coverage of any event' has also been included within the ambit of Royalty.

The definition of Royalty also includes consideration for transfer of all or any rights in respect of cinematographic films or work on films, tapes or any other means of reproduction. Consideration for sale, distribution or exhibition of cinematograph films is currently excluded from the definition of Royalty under the Income-tax Act.

Definition and taxation of Fees for Technical Services ('FTS'): DTC 2010 while retaining the definition provided under the Act of rendering of managerial, consultancy, or technical services, proposes to expand the definition to include payment made directly or indirectly for development and transfer of design, drawing, plan or software or any other service of similar nature.

Furthermore, the tax rate for payment of Royalty and FTS to non-residents is proposed to be increased from the present 10 per cent to 20 per cent on gross basis.

3. Levy of Branch Profit Tax

DTC 2010 proposes to reduce the corporate income-tax for foreign companies from 40 per cent to 30 per cent, bringing it at par with the tax rate for domestic companies. DTC 2010 proposes to levy an additional tax called a Branch Profit Tax ('BPT') at the rate of 15 per cent on its branch profits.

BPT is proposed to be levied on income directly or indirectly attributable to the permanent establishment ('PE') of foreign company or on immovable property situated in India, as reduced by the corporate income-tax. The BPT would apply even if there is no remittance of profits by the branch to its head office. Furthermore, BPT would apply irrespective of DTAA provisions.

As a result of levy of BPT the effective tax rate for a foreign company becomes 40.5 per cent on the income attributable to its Indian PE.

4. PE Defined

The Income-tax Act, 1961, does not provide a precise definition of Permanent Establishment currently; the Act defines PE as a fixed place of business through which the business of the enterprise is wholly or partly carried on. DTC 2010 now clearly defines PE as under:

a) Place of management
b) Branch, office, factory, workshop, sales outlet, warehouse providing storage facilities
c) Farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on
d) Mine, an oil or gas well, a quarry or any other place of extraction of natural resources
e) Building site or construction, installation or assembly project or supervisory activities in connection therewith
f) Furnishing of services
g) Installation or structure or plant or equipment, used for exploration or for exploitation of natural resources

The definition of PE also includes the following cases of deemed PE:

a) Dependent agent who habitually (a) Exercises an authority to conclude

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contracts or (b) Maintains stock of goods and merchandise from which he regularly delivers or (c) Secures orders in India.

b) Person acting in India through whom the NR collects premium or insures risks in India.
c) Substantial equipment used in India.

The definition of PE laid down under the DTC 2010 is similar to the definition found in various DTAAs entered into by India. However, unlike the various DTAAs, it does not specify a time threshold for constituting service PE or construction PE.

6. Treaty Override

Presently, the Act provides an option to the taxpayer to choose to get tax under the provisions of the Act or DTAAs whichever is more beneficial. However, the DTC introduced last year stirred quite a hornet's nest by providing neither the provisions of DTAAs nor a DTC provision shall have a preferential status by reason of it being a tax treaty or domestic tax law and that the provision that is later in point of time shall prevail. This would effectively have resulted in a situation whereby the provisions of the DTAAs would have been overridden by the provisions of the DTC.

DTC 2010, however, reverts to the provisions of the existing Act to provide that, between the domestic tax law and the tax treaty, the one which is more beneficial to the taxpayer shall apply. However, an exception is provided for this rule not to apply in the following circumstances:

a) GAAR is invoked
b) CFC rules are applied
c) BPT is levied

DTC 2010 provisions, although containing limited instances of tax treaty override, should be welcome when compared to the proposal under DTC introduced in 2009 which led to serious concerns on the certainty and stability that a tax treaty offered to foreign investors.

7. Controlled Foreign Companies

In today's era of global trade, more companies are moving outbound and setting up subsidiaries in different countries to cater to diverse global markets. Income earned by subsidiaries would be liable to tax first in the subsidiaries' hands in the country of source and then taxed again in hands of holding/ parent company as dividend on subsequent repatriation as dividend. This would substantially push the tax cost up for the parent company. Accordingly, most companies seek not to remit the earnings are dividend to the parent/ holding company but to set-up an intermediary holding company in a low-tax jurisdiction and park the funds there. While this reduces the overall tax cost, non-repatriations of funds to the parent company jurisdiction, it results in a loss of revenue for the country where the parent is located. Accordingly, the concept of Controlled Foreign Companies ('CFCs') regulations is gaining prominence in certain developed countries. While the same has not been a part of the tax legislation up to now, CFC regulations are proposed to be enacted under DTC 2010.

CFC regulations are designed to prevent the deferral and avoidance of tax by residents, (including domestic companies) by establishing foreign entities/subsidiaries, in low tax jurisdictions and diverting income to them. Under the provisions of DTC 2010, such income is taxed in the hands of the resident shareholder as residuary source income. The key provisions of the CFC regulations contained in DTC 2010:

a) CFC regulations would be applicable on all foreign companies

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where 50 per cent or more control by way of equity or voting power is exercised by a resident taxpayer or the resident taxpayer exercises significant influence over the foreign company;

b) CFC regulations provide for taxing of all passive incomes in the hands of resident taxpayer at the point of accrual itself in the hands of the controlled foreign company. Passive income has been defined to include interest, royalty, rent, capital gains, dividends as well as income from active trading with related parties.
c) However, the regulations provide a relaxation in taxing of active income. Active income earned by a controlled foreign company would be liable to tax in the hands of the resident taxpayer only when it is repatriated by way of dividends.
d) CFC regulations propagate an 'entity approach'. Under this approach, the focus is on the CFC as an entity rather than on its income, although the nature of its income (whether active or passive income) is an important factor in the determination of whether or not the CFC rules apply. Once a foreign company qualifies as a CFC (and none of the exemptions apply), all of the income of the CFC is taxed in the hands of the resident-controlling shareholder on a proportionate basis. The future dividend distribution of the attributed income by the CFC is deductible.
e) Another condition that is also required to be fulfilled for applicability of CFC regulations is that the controlled foreign company should be resident in tax jurisdiction having an effective rate of tax less than 50 per cent of the rate of tax it would have paid under the provisions of DTC 2010 if it were a domestic company. Accordingly, if a controlled foreign company is paying tax at an effective rate which is more than 50% of the tax rate applicable under the DTC 2010, then the income of such company would be exempted from the CFC regulations.
f) The CFC regulations also provide for an exemption for foreign companies which are either listed or where the income earned by such foreign companies do not exceed equivalent of ₹25,00,000.
g) DTC 2010 also considers the shares held in CFCs as assets for the purpose of wealth tax and include its value in the total assets while computing the net wealth of the taxpayer for levy of wealth-tax.

8. Transfer Pricing

The Transfer Pricing ('TP') provisions in DTC 2010 are broadly similar to that contained in the Act. However, DTC 2010 provides for a wider definition of the term 'Associated Enterprises' (AEs) comparted to the one provided under the Act. Further, it also introduces Advance Pricing Arrangements (APAs) provisions.

The Income-tax Act, 1961 provides for specific circumstances when two enterprises would be deemed to be AEs, one being 26 per cent voting power in other enterprise. It may be recalled that DTC 2009 had proposed a 10 per cent voting power threshold for being regarded as AEs. DTC 2010 now reverts to the existing provisions of 26 per cent voting power as the threshold. However, the definition of AEs has been expanded to include the following situations:

a) Provision of services by one enterprise to another, either directly or indirectly, where the conditions are influenced by such other enterprise; or
b) Any specific or distinct location of either of the enterprises, as may be prescribed.

Advance Pricing Arrangements: Advance Pricing Arrangement ('APA') is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g., method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for determining the transfer price for those transactions, over a fixed period of time, which, in this case, is a maximum of five years.

The Income-tax Act, 1961, currently, does not provide a mechanism for APAs. DTC 2010 broadly provides for the following mechanisms:

a) The CBDT, with the approval of the GOI, may enter into an APA with any person, specifying the manner in which arm's length price (ALP) is to be determined in relation to an international transaction.
b) The manner of determination of ALP in an APA can be any method, including one of the prescribed methods in the TP provisions, with such other adjustments as may be necessary or expedient to do so.
c) The ALP determined under the

The theory of a TP-safe harbour is that the burden imposed in applying the ALP can be relieved by providing for circumstances under which a Tax Authority would automatically accept the transfer price. In effect, a safe harbour is a defined parameter. If the TP result falls within that parameter, the Tax Authority would not be allowed to make any adjustments. 'Safe harbour' has been defined in DTC 2010 to mean the circumstances in which the Tax Authority shall accept the transfer price declared by the taxpayer. DTC 2010 also empowers the CBDT to notify safe harbours.

APA shall be deemed to be the ALP in relation to the international transaction, in respect of which the APA has been entered into and shall be binding on both the taxpayer and the Tax Authority.

d) The APA has validity for the period specified in it, subject to a maximum period of five consecutive financial years, and, shall remain in force as long as there are no changes in DTC 2010 having a bearing on the APA.

e) DTC 2010 also empowers the CBDT to formulate a scheme for APAs in respect of an international transaction.

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9. General Anti-Avoidance Rules ('GAAR')

GAAR is a broad set of provisions that under which the Tax officers are proposed to be given power to strike down any arrangement that has been entered into by a taxpayer, with the main objective of obtaining a tax benefit. The Tax officers, in such cases, would have the power to adjust the taxpayer's income to offset the benefit derived by him as a result of such arrangement.

The GAAR provisions were first introduced in the DTC unveiled last year. However, it was felt that GAAR of DTC 2009 did not adequately strike a balance between legitimate tax minimization and abusive tax avoidance. More specifically, there was a need to reconsider the definition of 'impermissible avoidance arrangement' and shift the onus onto the Tax Authority for invoking GAAR. Based on the recommendations made by various stake-holders, the RDP diluted the GAAR provisions to a limited extent by proposing certain safeguards relating to the process for invoking GAAR. While DTC 2010 retains the essence of GAAR provisions proposed in DTC 2009, it has incorporated some of the enabling provisions to carry out the proposed safeguards which are as under:

a) The taxpayer should have entered into an arrangement;
b) Main purpose of the arrangement should be to obtain tax benefit and to fulfill any of the following criteria:
    - It is not for bona fide business purpose;
    - It creates rights and obligations which would not normally be created between persons dealing at arm's length;
    - It results, directly or indirectly, in the misuse or abuse of DTC 2010 provisions;
    - It lacks commercial substance, wholly or partly.

The term tax benefit has been defined under DTC 2010 to mean (i) a reduction, avoidance or deferral of tax or other amount payable under DTC 2010 or under DTC 2010 but for a DTAA, (ii) an increase in a refund of tax or other amount or (iii) an increase in a refund of tax or other amount as a result of a tax treaty in the relevant or any other financial year.

Further, under DTC 2010, an arrangement would lack commercial substance in the following cases:

- It results into a tax benefit for one person but does not have a bearing on the business risks or cash flows of the other party;
- The legal substance or effect of the arrangement, as a whole, differs from the legal form of its individual steps;
- It includes or involves round trip financing, an accommodating or tax indifferent party, any element having the effect of offsetting or cancelling each other or a transaction which is conducted through one or more persons and disguises the nature, location, source, ownership or control of funds.

Furthermore, DTC 2010 defines an arrangement to lack bona fide purpose when created rights or obligations that would not normally be created between persons dealing at arm's length or would result, directly or indirectly, in the misuse or abuse of DTC 2010 provisions.

Consequences of invoking GAAR provisions: If the Tax authorities are satisfied that the conditions for invoking the GAAR provisions are fulfilled, then

> **If the Tax authorities are satisfied that the conditions for invoking the GAAR provisions are fulfilled, then a officer not below the rank of the Commissioner of Income-tax has the power to declare any arrangement as void and direct the concerned Tax officer to make the assessment for such taxpayer as if such arrangement did not exist. Under the GAAR provisions, the Tax authorities would have the power to disregard, combine or re-characterize any step or part or, if required, the whole of the arrangement.**

a officer not below the rank of the Commissioner of Income-tax has the power to declare any arrangement as void and direct the concerned Tax officer to make the assessment for such taxpayer as if such arrangement did not exist. Under the GAAR provisions, the Tax authorities would have the following powers:

- Disregard, combine or re-characterize any step or part or, if required, the whole of the arrangement;
- Treat the arrangement as if it had not been entered into or carried out or treat it in such a manner that the Commissioner may deem appropriate for the prevention or diminution of the tax benefit;
- Deem connected persons as one and the same person;
- Disregard any accommodating party;
- Re-allocate income, receipt (both capital and revenue), expenditure, deduction, relief or rebate amongst parties to the arrangement;
- Re-characterise income, receipt (both capital and revenue), expenditure, deduction, relief or rebate;
- Re-characterise equity into debt and vice versa.

While DTC 2010 provides that provisions of DTC 2010 or DTAAs whichever is more beneficial would apply, provisions relating to GAAR are an exception to it and GAAR provisions, when invoked would override the treaty provisions.

While the above are the enabling provisions of invoking of GAAR, DTC 2010 provides that the GAAR provisions would be regulated by the guidelines which would be issued by the Central Board of Direct Taxes ('CBDT') in consultation with the Government of India. These guidelines would provide for the conditions and manner in which

> **The proposed provisions as envisaged in DTC 2010 could have a significant impact on the taxation of cross border transactions vis-à-vis the Indian context. The widening of residency / source ambit, taxability of offshore transfers and certain anti – avoidance provisions is bound to create flutters in the international community. The government would in the ultimate analysis need to do a tight rope walk between increasing foreign investments and maintaining its tax collections kitty, so that India continues to be a lucrative destination for foreign investments.**

the GAAR provisions would be applied. Accordingly, while the framework for introduction of GAAR provisions has been laid down, much clarity on the same would only be available once the guidelines are issued by the CBDT.

Conclusion

Introduction of the above proposed provisions as envisaged in DTC 2010 could have a significant impact on the taxation of cross border transactions vis-à-vis the Indian context. The widening of residency / source ambit, taxability of offshore transfers and certain anti – avoidance provisions is bound to create flutters in the international community. The government would in the ultimate analysis need to do a tight rope walk between increasing foreign investments and maintaining its tax collections kitty, so that India continues to be a lucrative destination for foreign investments. ■

Does Demarcated Space in a Warehouse Constitute a PE?

The term Permanent Establishment has been the subject matter of intense litigation. Increasing complexities in business environment, innovative operational styles and humungous growth in cross border transactions have led to significant evolution and interpretation of the term 'Permanent Establishment' or 'PE'. PE has fundamentally been understood to be a fixed place of business through which business of an enterprise is wholly or partly carried on. In this article the concept of PE has been critically analysed based on a recent judicial pronouncement by Authority for Advance Rulings in the case of '*M/s Seagate Singapore International Headquarters Pvt. Ltd*'. The ruling seems significant in the light of the interpretation of the term PE based on the exception of independent agents. Read on to know more.

CA. Divakar Vijayasarathy
(The author is a member of the Institute. He can be reached at eboard@icai.org)

The concept PE is extremely crucial since Article 7, on taxation of Business Profits, states that "the profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein". In other words, business income of a non-resident entity shall be taxable in India, if and only if, such non-resident has a PE in India.

According to Section 5(2) of the Income-tax Act, 1961, income of a non-resident is taxable in India if such income:

- Is received or is deemed to be received in India in such year by or on behalf of such person or
- Accrues or arises or is deemed to accrue or arise to him in India during such year

According to Section 9(1)(i), business income accruing or arising through a "business connection" in India is regarded as income accruing or arising in India. Explanation 2 to Section 9(1)(i) defines "business connection" to include a person in India who:

"An enterprise of a Contracting State *shall not be* deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph."

- has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or
- has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
- habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident:

Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or *any other agent having an independent status* is acting in the ordinary course of his business.

In this article the concept of PE has been critically analyzed based on a recent judicial pronouncement by Authority for Advance Rulings in the case of *"M/s Seagate Singapore International Headquarters Pvt Ltd".* The ruling seems significant in the light of the interpretation of the term PE based on the exception of independent agents. The brief facts of the case are as follows:

- The assessee is a non-resident company, engaged in the business of manufacture and sale of Hard Disk drives in India.
- The assessee has entered into agreements with domestic manufacturers for supply of hard disks in India
- In order to minimise the lead time in supplying, the assessee decided to have an independent vendor in India to manage the inventory movement.
- The brief scope of activity of the vendor is as follows:
  - The vendor would operate from bonded warehouses
  - He shall be responsible for safekeeping of the goods in custody
  - He shall deliver the goods to customers of the assessee based on specific communication from the assessee
  - The vendor shall bear the risk of loss of goods in custody
  - He shall register with local VAT authorities for the payment of applicable statutory taxes on behalf of the assessee
  - No employee of the assessee shall be deputed to the office of the vendor.
  - The warehouse of the vendor shall adhere to the security requirements prescribed by the assessee.
  - The vendor shall provide adequate opportunity for inspection and audit of the warehouse by the assessee.
- The vendor shall be compensated at "Arm's Length Basis" for the services rendered in India based on the risk undertaken, assets employed and functions performed.

According to Article 5 of the Indo-Singapore DTAA:

Para 1: For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on

Para 8: Notwithstanding the provisions of paragraphs 1 and 2, where a person – *other than an agent of an independent status* to whom paragraph 9 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if -

(a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

(b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

(c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise.

Para 9: *An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent* *of an independent status provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.*

The assessee claimed that, based on the exception provisions provided in para 8 and 9 of Article 5 and the fact that the delivery operations in India are being managed by an independent agent, there exists no PE in India and hence no income shall be taxable in India.

In this aspect, it is also pertinent to note the rules for interpretation enunciated in *para 2(b) of Explanatory notes to Model Conventions for Article 5:* "when examining whether or not a PE exists, it is expedient to begin by viewing the case against the background of the first four paragraphs. *If there is a fixed place of business in the sense of these rules, there is no longer any need to revert to para 5 and 6.* If, on the other hand, application of para 3 or 4 reveals that no PE exists, say because the time for which the building site or construction or assembly project lasted, fell short of the minimum required or because of one of the exceptions envisaged by para 4, a dependent agency relationship within the sense of para 5 can likewise not lead to a PE. It is only when the first and second para reveal the non existence of a PE on account of the absence of a fixed place of business that para 5 and 6 should be reverted to for an examination of the case under the agency aspect. "

The AAR in its wisdom has held that:

- The applicant has a fixed place of business which is the focal point of its business operations in India
- The fact that the fixed place of business is owned or possessed by the logistics service provider does not detract from the position that the applicant has a distinct, earmarked and identified place which caters to its business.
- Both the applicant and the warehouse provider act in cohesion to ensure the product delivery to the customer promptly.
- By merely outsourcing the operations leading to supply of products, it cannot be said that the applicant does not carry on any business in India from a fixed place.
- Where article 5.1 applies, the question of carrying on business through an independent or dependent agent does not arise at all.
- The business of the applicant at a fixed place is being carried on through the media of the warehouse provider who can also be characterised as service provider.
- Therefore, demarcated space in the *warehouse of an independent service provider constitutes a fixed place of business* within the meaning of Article 5.1 of DTAA. Hence income attributable to the portion of activities carried out by the PE shall be liable for taxation in India.

With due respects to the Honourable Bench the decision requires reconsideration on the following grounds:

- The fact that the operation is carried through an independent agent who is remunerated at "Arm's Length Price" clearly indicates that income for services rendered / activities performed in India are already subject to tax in India.
- The issue of dependent agent, dependent agent PE and attribution of profits has been elaborately addressed by the Supreme Court in the case of *Morgan Stanley & Co. Inc vs DIT Mumbai* (292 ITR 416). Accordingly, it has been held that "if the transaction between the assessee and the associated

"According to Section 90(2), the assessee has a choice to be governed by the treaty or the Income-tax Act, 1961, whichever is more beneficial to the assessee. As per Income-tax Act, 1961, income of a non-resident is taxable in India if such income accrues or arises in India in accordance with Section 9. Accordingly explanation to Section 9 on "business connection" has clearly stated that business connection "shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent *having an independent status is acting in the ordinary course of his business*"."

"This ruling throws open another series of debate on taxation of "independent agent dependent businesses" based on the concept of PE. India is regarded as one of the strongest and fastest growing economies of the world. The whole world wants to invest in India and capitalise on the enormous opportunities and market potential. However, the investing fraternity would crave for a stable taxation regime to have their plans fructified. Indian tax judgements are viewed very seriously in the international tax arena. In the recent past, Indian decisions have found references in foreign judgements signifying the level of respect Indian judiciary commands globally."

enterprise (which also constitutes a PE) is made at arm's length basis taking into consideration functions performed, assets employed and risks assumed , no further income shall be attributable to the PE for taxation in India. Also, in the case of *SET Satellite (Singapore) PTE Ltd vs DDIT Mumbai* (307 ITR 205), where the assessee had a dependent selling agent in India for selling ad slots, the High Court held that if service charges are paid to the dependent agent at arm's length by the non-resident principal and the same is taxed in India, it extinguishes the tax liability of the non-resident company in India. One aspect common to both the above rulings is that both have relied on circular 23/1969 dated 23-07-1969 which has since been withdrawn vide circular no 7/2009 dated 22-10-2009. Even though the circular has been withdrawn, the principles enunciated might still be considered valid, however, they may not have a binding impact on the revenue. These principles have been held valid by the Supreme Court of India.

- Interpretation of the present ruling suggests that, the exception provided in para 9 of Article 5, which is similar to the exclusion of independent agent in the term business connection, might be practically irrelevant for all non service based businesses since almost all the agents of goods would require a fixed place for storage and operation. The ruling would thus bring within its ambit almost any transaction carried out through an agent who has a place of operation in India for storage and delivery which does not seem to be intention of the legislature.
- According to Section 90(2), the assessee has a choice to be governed by the treaty or the Income-tax Act, 1961, whichever is more beneficial to the assessee. As per Income-tax Act, 1961, income of a non-resident is taxable in India if such income accrues or arises in India in accordance with Section 9. Accordingly, explanation to Section 9 on "business connection" has clearly stated that business connection "shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent *having an independent status is acting in the ordinary course of his business"*. Therefore, no business connection shall arise in the course of the transaction and hence no income shall be liable to taxable by virtue of Section 5(2) read with Section 9(1)(i). Hence, in a situation as the present case, it is more beneficial for the assessee to adopt the domestic law (Income-tax Act, 1961) provisions vis – a – vis the treaty provisions.
- This ruling throws open another series of debate on taxation of "independent agent dependent businesses" based on the concept of PE. India is regarded as one of the strongest and fastest growing economies of the world. The whole world wants to invest in India and capitalise on the enormous opportunities and market potential. However, the investing fraternity would crave for a stable taxation regime to have their plans fructified. Indian tax judgements are viewed very seriously in the international tax arena. In the recent past, Indian decisions have found references in foreign judgements signifying the level of respect Indian judiciary commands globally.

With due respect, the Honorary Bench or a higher Judicial Authority may consider revisiting this decision to address the issues as highlighted above. ■

Mobile Banking in India

The information technology has highly influenced the banking sector in terms of its development and efficiency. However, there is much much more that information technology can do for the development, growth and convenience of banking sector and various stakeholders. Information technology has the potential to make offices paperless, the stock exchanges scrip less and the banking sector cashless. Petty payments in India occupy 70% of the transactions of the banking sector. Hence, the Reserve Bank of India intends to facilitate petty payments through mobiles. Several researches have been done to study the feasibility of mobile banking. The RBI first issued guidelines to banks facilitating mobile banking transactions in October 2008. Read on to know more.

Dr. G. Ramesh Babu
(The author is Head of Department, Department of Commerce, SSRJ College, Khamman. He can be reached at gunda_rameshbabu@yahoo.co.in)

Liberalisation, privatisation and globalisation policies have changed the lives of crores of people. These policies have shown their effects not only in India but across the world. Globalisation created world competition. The high degree of competition in the market made the costumers a beneficiary and more comfortable. The price war in the market leads to lowest prices to the customer. The customer is getting a range of benefits from the existing competition. The mobile-phone sector too has been highly influenced by the high competition scenario. Mobile phone has now become an essential commodity in the lives of people. As per the recent reports in the media, the number of mobile phone customers has touched 50 crore mark in India. India is the biggest market after China in the world. India and China are the locomotives of the Asian continent. The multinational companies (MNCs) are entering these biggest markets with a vast potential and rich experience. The entry of MNCs may bring high technical empiricism. The information technology is creating a new revolution in lifestyles of today's human being. As such, the fruits of the information technology need be utilised for the welfare of the society. Any research should ultimately be useful for the common man.

The information technology has highly influenced the banking sector in terms of its development and efficiency. However, there is much much more that information technology can do for the development, growth and convenience of banking sector and various stakeholders. Information technology has the potential to make offices paperless, the stock exchanges scrip less and the banking sector cashless. Petty payments in India occupy 70 per cent of the transactions of the banking sector. Hence, the Reserve Bank of India intends to facilitate petty payments through mobiles. With mobile phones having made inroads in the rural sector as well, the mobile payments may helpful in achieving the objective of financial inclusion.

Several researches have been done to study the feasibility of mobile banking. The RBI first issued guidelines to banks facilitating mobile banking transactions in October 2008. The Deputy Governor of the RBI Shri K. C. Chakravarty announced in a telecom conference in 2009 that the mobile banking is only possible with bank accounts. The department for international development commissioned a research project in 2006 for the specific objective to study about the possibility of mobile banking. The study found that there will be two models of mobile banking, additive and transformational models — the former targets existing bank customers offering the mobile channel as an additional one and the latter internationally reaches out to unbaked groups and thus has a potential transforming effect on the socio economic development of a country.

The mobile banking is available in Philippines, South Africa and Kenya. These countries have been practising mobile banking since 2001, 2004 and 2007 respectively. They use both bank based and unbaked base models of mobile banking. In Philippines, they allowed two mobile network providers – Smart and Globe. Smart provides both mobile-based and card-based services in association with bank D' Ore. G-cash is an e-money product used to make remittances, transfers and payments with a network of 3500 agents. The Central Bank limits the risk of G-cash by requiring among other things, daily and monthly transaction cap, as well as low cap on the amount customers may leave in their virtual account. Despite a large customer base in a short span of time, low-income people primarily use mobile money to send and receive domestic remittances. One third of the users deploys it to purchase airtime and make small purchases.

Swedish Government also conducted a research programme in 2009 under the scheme of 'Information, Communication and Technology'. In Kenya, 'M-Pesa', a mobile phone based service for sending and storing money offered by Safaricom, is not classified as banking activity. The Kenyan Banking Act provided the company the freedom to choose its agents and the central bank has agreed to allow transactions under the assumption that remittance is not banking. Person-to-person transfers dominate M-Pesa use, however, deposit taking by Safaricom is not allowed since it does not have bank license and paying bills is not possible.

India is the world's fastest growing cellular market with a wireless subscriber base of 47 crores of which 70 per cent comes from the urban areas and 30 per cent from rural areas. The mobile population coverage in Kenya and South Africa is 70 per cent and 96 per cent respectively. However, the percentage of adults with a bank account is much higher in India, i.e. 59, as opposed to 10 in Kenya and 45 in South Africa. The wide gap between the mobile population coverage and adults owning bank accounts provides the rationale for the big push these countries have given to mobile banking. The RBI issued following guidelines to introduce mobile payment in India.

Mobile Banking Transactions in India

1. **Operative Guidelines for Banks:** A reference is invited to the guidelines appended to the Circular No. RBI/2008-09/209, DPSS.CO.No.619 /02.23.02/ 2008-09 dated October 08, 2008, on the captioned subject.
2. Based on the requests received from the banks facilitating mobile banking transactions, the guidelines are modified as under:
   I. **Transaction Limit:** In the amendment of provisions of Para 8.1 of the above guidelines, banks are now permitted to offer this service to their customers subject to a daily cap of ₹50,000/- per customer for both funds transfer and transactions involving purchase of goods/services. Presently, such transactions are subject to separate caps of ₹5000/- and ₹10000/- respectively.
   II. **Technology and Security Standard:** Transactions up to ₹1000/- can be facilitated by banks without end-to-end encryption. The risk aspects involved in such transactions may be addressed by the banks through adequate security measures.
3. **Remittance of Funds for Disbursement in Cash:** In order to facilitate the use of mobile phones for remittance of cash, banks are permitted to provide fund transfer services, which facilitate transfer of funds from the accounts of their customers for delivery in cash to the recipients. The disbursal of funds to recipients of such services can be facilitated at ATMs or through any agent(s) appointed by the bank as business correspondents. Such fund transfer service shall be provided by banks subject to the following conditions:
   i. The maximum value of such transfers shall be ₹5000/- per transaction.
   ii. Banks may place suitable cap on the velocity of such transactions, subject to a maximum value of ₹25,000/- per month, per customer.
   iii. The disbursal of funds at the agent/ATM shall be permitted only after identification of the recipient. In this connection, attention of banks is drawn to the provisions of the Notification dated November 12, 2009, issued by Government of India, under the Prevention of Money Laundering Act, 2002, as amended from time to time.
   iv. Banks may carry out proper due diligence of the persons before appointing them as authorized agents for such services.
   v. Banks shall be responsible as principals for all the acts of omission or commission of their agents.
4. The directive is issued under Section 18 of the Payment and Settlement Systems Act, 2007, (Act 51 of 2007). ■

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Consolidated FDI Policy: Direct and Indirect Foreign Investment in Indian Companies

Foreign Investment [Foreign Direct Investment (FDI) and Foreign Portfolio Investment (FPI)] is an investment in any Indian enterprise, by a Non-Resident, irrespective of whether this involves new equity or re-investment of earnings. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by RBI. With issuance of Consolidated Policy Circular No. 1 of 2010 by DIPP, all earlier Press Notes/Press Releases/ Clarifications, etc., issued on FDI which were in force and effect as on March 31, 2010 stand rescinded. This article explains the guidelines on the Direct and Indirect Foreign Investment in an Indian company under the aforesaid Consolidated FDI Policy Circular.

CA. M. C. Maheshwari
(The author is member of the Institute. He can be reached at eboard@icai.in)

Background

Foreign Investment is an investment in any Indian enterprise, by a Non-Resident, irrespective of whether this involves new equity or re-investment of earnings. Foreign investment is of two types – (i) Foreign Direct Investment (FDI) and (ii) Foreign Portfolio Investment (FPI). While FPI inflow in the country is through the stock markets and affects the economy in a volatile way, the inflow of FDI significantly contributes to industrialization and socio-economic development of the country. FDI also covers the indirect foreign investment under the prevalent policy framework.

FDI involves inflow of funds by Non-Resident in Indian enterprise and issue or transfer of security to such Non-Resident outside India. It is a 'Capital account transaction' and Government of India (Government) and Reserve Bank of India (RBI) regulate this under the Foreign Exchange Management Act (FEMA), 1999 and its various regulations. Keeping in view the current requirements, the Government from time to time comes up with new regulations and amendments/ changes in the existing ones through order/allied rules, Press Notes, etc. The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce & Industry, Government of India makes policy pronouncements on FDI through Press Notes/ Press Releases which are notified by RBI as amendment to notification No. FEMA 20/2000-RB dated May 3, 2000. The procedural instructions are issued by RBI vide A. P. Dir. (series) Circulars. The regulatory framework over a period of time, thus consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

DIPP has issued a Consolidated Policy Circular No. 1 of 2010 vide D/o No. IPP F. No. 5(14)/2009 – FC dated 31.03.2010 which has become effective from 1st April, 2010. With issuance of this Consolidated Policy Circular, all earlier Press Notes/Press Releases/Clarifications, etc., issued on FDI by DIPP which were in force and effect as on March 31, 2010 stand rescinded and this Consolidated Policy Circular consolidates and subsumes all such earlier Press Notes/Releases/ Clarifications, etc. This indeed is a much needed single policy frame work document on FDI as there were several Press Notes/ Releases, etc., issued from time to time by DIPP and it was with difficulty, one would reach to the required policy guideline on the issue of FDI. The Consolidated FDI Policy Circular, therefore, is a welcome and timely step by the Government in streamlining all the related matters at one place, though the legal edifice is built on the Notifications issued by RBI from time to time under FEMA which will have to be complied with.

This article explains the guidelines on the Direct and Indirect Foreign

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Investment in an Indian company under the aforesaid Consolidated FDI Policy Circular.

Foreign Investment in Indian Companies

Chapter 4 of the Consolidated Policy Circular deals with guidelines for direct and indirect foreign investment in any Indian company. Investment in Indian companies can be made both by Non-Resident as well as Indian entities. Any non-resident investment in an Indian company is direct foreign investment. Investment by resident Indian entities in an Indian company could again comprise of both resident and non-resident investment and such an Indian company would have indirect foreign investment if the Indian investing entity or company has Foreign Investment in it. The indirect investment can also be a cascading investment i.e. through multi-layered structure.

Foreign Investment in Indian company includes all types of foreign investments i.e. FDI; investment by FIIs; NRIs; ADRs; GDRs; Foreign Currency Convertible Bonds (FCCB); fully, compulsorily and mandatorily convertible preference shares and fully, compulsorily and mandatorily convertible debentures.

Investments can be made by Non-Residents in the shares/fully, compulsorily and mandatorily convertible debentures/ fully, compulsorily and mandatorily convertible preference shares of an Indian company, through two routes; the Automatic Route and the Government Route. Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the RBI or Government for the investment. However the investment should be in accordance with FDI Policy guidelines and other RBI notifications, etc., under FEMA. Under the Government Route, prior approval of the Government through Foreign Investment Promotion Board (FIPB) is required. Proposals for Foreign Investment under Government route as laid down in the FDI Policy are considered by FIPB in Department of economic Affairs (DEA), Ministry of Finance.

The guidelines on the route, caps and entry conditions for FDI in all the sectors are provided in Chapter 5 of the Consolidated Circular. To illustrate for some of the sectors, following table clarifies how FDI in various sectors is allowed:

S. No	Sector/Activity	FDI Cap/ Equity	Entry Route	Conditions to be fulfilled
1.	Agriculture – like Floriculture, Horticulture, development of seeds, Animal Husbandry, etc.	100%	Automatic	Conditions under Environment (Protection) Act, Foreign Trade (Development and Regulation) Act, 1992 and any other law, rules, etc.
2.	Tea Plantation	100%	Government	Divestment of 26 per cent equity in favour of Indian partner/ public in 5 years and approval of State Govt. for future land use change.
3	Mining – metal and non-metal ores, etc.	100%	Automatic	Conditions under Mines and Minerals (Development and Regulations) Act, 1957
4	Coal and Lignite	100%	Automatic	Conditions under Coal Mines (Nationalization) Act, 1973
5	Defence Industry	26%	Government	Various conditions and subject to obtaining licence.
6	Power – Generation, Transmission, Distribution and Trading	100%	Automatic	Conditions under Electricity Act, 2003
7	Civil Aviation Sector – Green field projects	100%	Automatic	Conditions as laid down by Ministry of Civil Aviation
7A	Civil Aviation Sector – Existing projects	74% Beyond 74%	Automatic Government	Conditions as laid down by Ministry of Civil Aviation
8	Commodity Exchange	49%	Government	26 per cent through FDI and 23 per cent by SEBI Regd. FIIs Other specified conditions

Note: This is only an illustrative list. For entire list, Chapter 5 of the Consolidated Circular should be referred.

How Total Foreign Investment is Calculated

(i) ***Direct Foreign Investment:*** All investment made directly by a Non-Resident entity into an Indian company would be counted towards foreign investment.

(ii) Indirect Foreign Investment:

(a) Foreign investment through the investing Indian company would not be considered for calculation of the indirect foreign investment in case of Indian companies which are 'owned and controlled' by resident Indian citizens.

(b) For cases where condition (a) above is not satisfied or if the investing company is owned or controlled by 'Non Resident entities', the entire investment by the investing Indian company into the subject Indian company would be considered as indirect foreign investment.

One exception has been provided to the above rule for calculating the indirect foreign investment. If the Indian investing company is categorised as operating-cum-investing/investing company and has some foreign investment in it and such Indian investing company also has its 100 per cent owned subsidiary then the foreign investment in such subsidiary will be so computed as limited to the foreign investment in the operating-cum-investing/ investing company. This exception is made since the downstream investment in a 100 per cent owned subsidiary of the holding company is akin to investment made by the holding company and the downstream investment should be a mirror image of the holding company. This exception, however, is strictly for those cases where the entire capital of the downstream subsidiary is owned by the holding investing company.

Illustration

To illustrate, let us take three companies 'X', 'Y' and 'Z'. Company 'X' is a foreign company and Companies 'Y' and 'Z' are Indian companies.

Example 1	Example 2	Example 3	Example 4
Company 'X' (Foreign Company).	**Company 'X'** (Foreign Company)	**Company 'X'** (Foreign Company)	**Company 'X'** (Foreign Company)
Less than 50 % in 'Y'. ↓	75 % in 'Y' ↓	75 % in 'Y' ↓	75 % in 'Y' ↓
Company 'Y' (Indian Company) ('X' is holding less than 50% in 'Y')	**Company 'Y'** (Indian Company) ('X' is holding 75% in 'Y')	**Company 'Y'** (Indian Company) ('X' is holding 75% in 'Y')	**Company 'Y'** (Indian Company) ('X' is holding 75% in 'Y')
and 'Y' is investing in 'Z' (1-100%) ↓	and 'Y' is investing in 'Z' (26%) ↓	and 'Y' is investing in 'Z' (80%) ↓	and 'Y' is investing in 'Z' (100%) ↓
Company 'Z' (1-100% held by 'Y'), then there is no foreign investment in 'Z'	**Company 'Z'** (26% held by 'Y'), then entire 26% investment is treated as foreign investment.	**Company 'Z'** (80% held by 'Y'), then entire 80% investment is treated as foreign investment.	**Company 'Z'** (100% held by 'Y'), then only 75% investment is treated as foreign investment.
In this case, since foreign holding in Company 'Y' is less than 50%, therefore it is treated as owned and controlled by resident Indian. Thus 'Z' is not having any foreign investment.	In this case, since foreign holding in Company 'Y' is more than 50%, therefore it is treated as owned and controlled by non-resident and not by Indian resident. Further 'Z' is not 100% subsidiary of 'Y', thus entire investment in 'Z' will be counted as foreign investment.	In this case, since foreign holding in Company 'Y' is more than 50%, therefore it is treated as owned and controlled by non- resident and not by Indian resident. Further 'Z' is not 100% subsidiary of 'Y', thus entire investment in 'Z' will be counted as foreign investment	In this case, since foreign holding in Company 'Y' is more than 50%, therefore it is treated as owned and controlled by non- resident and not by Indian resident. However, 'Z' is a 100% subsidiary of 'Y', thus investment in 'Z' will be counted as foreign investment in the ratio of foreign holding of 'Y' vis-à-vis total investment i.e.75:25

(iii) ***Total foreign investment:*** The total foreign investment would be the sum total of direct and indirect foreign investment.

(iv) ***Investment in further down stream companies:*** Above methodology of calculation would apply at every stage of investment in Indian companies and thus to each and every Indian company.

Downstream Investment by Indian Companies

Downstream investment: It has been defined to mean indirect foreign investment by one Indian company into another Indian company by way of subscription to or acquisition of the equity capital of the later (i.e. another Indian company) as per the methodology explained in para 3.0 (ii) above.

Para 4.6 of Chapter 4 of the Consolidated Policy Circular lays down the policy for downstream investment by the Indian companies and stipulates conditions and compliance obligations in this regard. The 'guiding principle' is that the downstream investment by Indian companies 'owned' or 'controlled' by non-resident entities would require to follow the same norms as for a direct foreign investment with regard to entry route, sectoral caps and the conditionalities, etc., as prescribed in the FDI policy. This is based on the premise that only as much can be done by way of indirect foreign investment through downstream investment as can be done through direct foreign investment and what can be done directly can be done indirectly under same norms.

Types of companies: The Consolidated FDI Policy Circular covers the policy for following types of Indian companies which are 'owned and controlled' by Non-Resident entities and can have or can make the downstream investments i.e. investment in any other Indian companies:

(i) **Operating Company:** An Indian company which is undertaking operations in various economic activities and sectors.

(ii) **Operating-cum-investing Company:** An Indian company having both activities namely operations and investment in another Indian company.

(iii) **Investing Company:** An Indian company holding only investments in another Indian company, directly or indirectly, other than for trading of such holdings/securities.

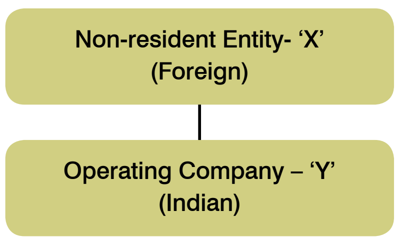
(iv) **Non-operating and non-investing Company:** An Indian Company which does not have any operations and also does not have any investments in any other Indian company.

> **The Consolidated FDI Policy Circular No. 1 of 2010 issued by DIPP is a welcome and timely step by the Government in streamlining all the related matters at one place though the legal edifice is built on the Notifications issued by RBI from time to time under FEMA which will have to be complied with**

The Policy for each of the above companies is explained below:

Operating Company:

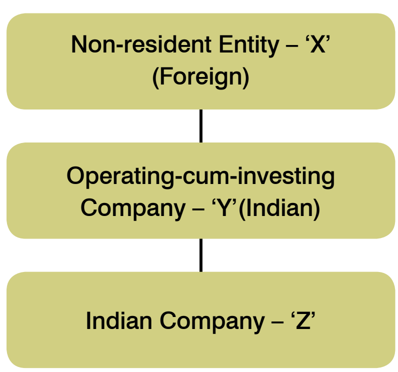
Foreign investment by X in Operating



Company Y would have to comply with the relevant sectoral conditions on entry route (i.e. automatic or government), conditionalities and caps with regard to the sector in which Company Y is operating.

Operating –cum-investing Company:

Foreign investment by X in Operating-



cum-investing Company Y would have to comply with the relevant sectoral

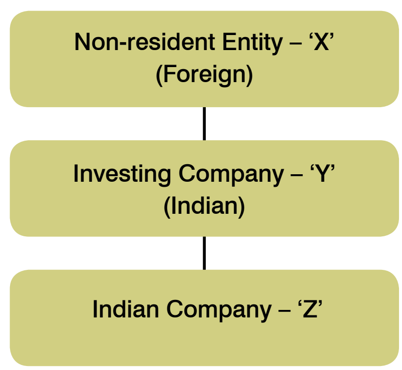
> **Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the RBI or Government for the investment. However the investment should be in accordance with FDI Policy guidelines and other RBI notifications etc. under FEMA.**

conditions on entry route (i.e. automatic or government), conditionalities and caps with regard to the sectors in which Company Y is operating.

Further, Indian Company Z, into which downstream investments are made by Company Y, would have to comply with the relevant sectoral conditions on entry route (i.e. automatic or government), conditionalities and caps in regard of the sector in which the Indian Company Z is operating.

Investing Company:

Foreign investment by X in Investing



Company Y will require prior approval of the Government/FIPB regardless of the amount or extent of foreign investment.

Further, Indian Company Z, into which downstream investments are made by Company Y, would have to comply with the relevant sectoral conditions on entry route (i.e. automatic or government) conditionalities and caps in regard of the sector in which

> **Under the Government Route, prior approval of the Government through Foreign Investment Promotion Board (FIPB) is required. Proposals for Foreign Investment under Government route as laid down in the FDI Policy are considered by FIPB in Department of Economic Affairs (DEA), Ministry of Finance.**

the Indian Company Z is operating. Therefore, if automatic route is permitted for sector in which Company Z is operating, then no approval is required although investment by X in Company Y would require approval.

Non-operating and Non-investing Company:

For infusion of foreign investment by X

Non-resident Entity – 'X' (Foreign)

↓

Non-operating and Non-investing Company – 'Y' (Indian)

into Company Y which does not have any operations and also does not have any downstream investments, Government/FIPB approval would be required, regardless of the amount or extent of foreign investment.

Further, as and when Company Y commences business(es) or makes downstream investment it will have to comply with the relevant sectoral conditions on entry route (i.e. automatic or government), conditionalities and caps.

Additional Conditions for downstream investments

For Operating-cum-investing companies, investing companies and non-operating and non-investing companies, downstream investments can be made subject to the following conditions:

(i) Such company is to notify SIA, DIPP and FIPB of its downstream investment within 30 days of such investment even if capital instruments have not been allotted along with the modality of investment in new/existing ventures (with/without expansion programme);

(ii) Downstream investment by way of induction of foreign equity in an existing Indian Company to be duly supported by a resolution of the Board of Directors as also a shareholders Agreement if any;

> **Downstream investment has been defined to mean indirect foreign investment by one Indian company into another Indian company by way of subscription to or acquisition of the equity capital of the later i.e. another Indian company**

(iii) Issue/transfer/pricing/valuation of shares shall be in accordance with applicable SEBI/RBI guidelines;

(iv) For the purposes of downstream investment, the operating cum investing companies and the investing companies would have to bring in requisite funds from abroad and not leverage funds from domestic market for such investments. This would, however, not preclude downstream operating companies to raise debt in the domestic market.■

> **The Consolidated FDI Policy Circular covers the policy for four types of Indian companies (Operating Company, Operating-cum-investing Company, Investing Company and Non-Operating and Non-Investing Company) which are 'owned and controlled' by Non-Resident entities and can have or can make the downstream investments i.e. investment in any other Indian companies**

Working Capital Management

The success or failure of any firm is mainly influenced by its performance in working capital management. Most of the corporate failures have been attributed to an inability of the corporate financial managers to plan and control properly their firms' current assets and current liabilities. On the contrary, good working capital management practices in the case of uncertain economic conditions provide an opportunity to gain efficiency and contribute to the bottom line. In the traditional days, fixed capital generally comprised the major portion of the capital structure of any firm but, of recent, there have been dramatic changes and working capital seems to comprise major portion of the capital structure. This article attempts to highlight the importance of the working capital management on the financial performance of firms.

CA. A. Abdul Nasser
(The author is a member of the Institute and faculty of accountancy in University Technology MARA, Malaysia. He can be reached at eboard@icai.in)

Capital is an important economic resource for any developing nation in this world. Many researchers advocate that proper utilisation of capital promotes the rate of growth, cuts down costs of production and brings overall efficiency of any productive system. There is an immediate and direct relationship between the long-term capital and the working capital of any firm since the long-term capital invested in the non-core current assets generates productive capacity while the working capital makes the utilisation of the capacity possible. Few researchers describe the working capital as the lifeline of any business, but the findings of many studies reveal that the available working capital in firms is either inadequate or improperly managed.

The Financial and Accounting Standards Board, U.S.A, issued a Statement of Financial Accounting Concepts No.6 entitled "Elements of Financial Statements", which says "Working capital is the excess of current assets over current liabilities". Current assets are defined as "probable future economic benefits

Small firms are more vulnerable to corporate failure than large firms. A study in the US has reported that the most important internal problems identified by small US firms relate to inadequate capital, cash flow management and inventory control. Similarly, a survey in UK indicated that majority of corporate failures in small firms are mainly due to bad debts or poor credit management.

obtained or controlled by a particular entity as a result of past transactions or events". Current liabilities are defined as "probable future sacrifices of economic benefits arising from present obligations of a particular entity to transfer assets or provide services to other entities in the future as a result of past transactions or events". According to the above statement, the word "current", in the accounting terms, does not mean imminent. Normally, it refers to the next accounting cycle or next business year for most of the firms. In other words, current assets are those that can reasonably expect to be realised in cash, either sold, expected to be sold or consumed in the accounting cycle.

With an intention to replace the traditional definition of working capital management, Chris (2002) defines working capital management as "an approach that encompasses all the processes surrounding accounts payable, accounts receivable and inventory, and one begins to understand the potential knocks-on impacts of a change in working capital practice or policy". Three main strategic functions of working capital management are unlocking the cash, improving the cash ratios, secure access to capital market and bolster the firm's credit rating. In recent times, however, working capital management has become more complex because of competition, expansion into international markets, higher rates of interest, and larger capabilities for information processing. While significant progress has been made on how to manage individual working capital accounts, there has been less progress in terms of tying working capital together as a whole.

Importance of Working Capital Management

Inevitable Investment: Investment in working capital is inevitable for any business, whether it is small or big. Many small street vendors in developing nations manage their business without any long-term capital, but with working capital. Even large organisation sometimes can avoid their dependence on the long term capital by renting or leasing non-core current assets. Despite the importance of working capital, investment in non-core current asset has been receiving more emphasis in both management area and research. On the contrary, more serious attention from researchers and management on effective working capital management will yield more significant results. Generally, capital budgeting projects consume much of the time of a firm's management group to the detriment of the quality of the working capital decisions. In capital budgeting projects, firstly, all the dollars involved in each individual decision are usually considerably greater than those in an accounts receivable transaction and, secondly, the capital budgeting decisions often almost scream out for attention. But, a continuous monitoring and controlling the working capital invested in the business by finance manager leads to effective management of business assets.

Multinational Firms: A survey conducted by REL, Consultancy group, a management-consulting firm, revealed that working capital represents around 65 per cent of the book assets of the world's biggest firms. These large multinational firms operating in different nations around the world under varying economic environment have invested higher proportion in working capital than non-core current assets. This tendency of higher proportion of investment in working capital highlights the importance of the working capital management in the large multinational firms. Managing working capital should simply be a "natural reflex" at all parts of the organisation and in most cases, it is a business- survival basic.

New Economy Firms: In the case of new economy firms, such as Dell Computer Corporation, current assets are more important than non-core current assets. Dell's current assets constitute nearly 70 per cent of the firm's assets base which is more than the industry norms. Dell's cash and short-term investment are three times the industry average and this allowed the company to respond positively to changes in the business environment. With the increase in the shift of investment in the new economy firms from industry-based firms, corporate sectors around the world are currently focusing their attention towards the promotion and

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development of new economy firms. Unlike the industry-based firms, these new economy firms mostly rely on knowledge based human capital and are required to invest more in working capital than industry-based firms.

Impact on Performance of Firms: Different reasons are given to explain the corporate failures or performance and the external environment does not guarantee a loss or profit to any firm. A study on Tanzanian manufacturing firms conclusively asserts that qualities of working capital investment decisions are responsible for a negative or positive return on investment. The impact of working capital decisions between loss-firms and profit-firms were studied and it had been empirically established with evidence that working capital investment decisions in Profit-firms are different from those of Loss-firms. Loss-firms exhibited lower/extremely high levels of current assets resulting in negative ROIs while Profit-firms exhibited higher/adequate levels that enabled them to achieve positive ROIs. It has been established that loss-firms emerge because of poor working capital investment decisions. Firms are responsible for exploiting the opportunities, and avoiding the threats through market-studies, and eventually making a sound working capital investment decision.

Symptoms of Corporate Failures

Corporate failures are common in competitive business environments, where market discipline ensures the survival of the fittest. The issue of interest is not the incidence of corporate failures, but the ability to predict impending failures through some common identifiable attributes. In an attempt to develop some common identifiable attributes to predict corporate failures among the Malaysian firms, sample firms listed on the Malaysian Stock Exchange were analysed for 19 years ending 1998. The study revealed that current ratio, quick ratio, return on equity, operating cash flow to current liabilities and operating cash flow to total liabilities showed a gradual deterioration for five years before failure. The most significant deterioration in these ratios occurred one year before failure and in the year of failure. The findings revealed that working capital performance indicators might also be used as a tool to predict the corporate failures in advance to enable the management to initiate preventive measures. Working capital

The efficiency in working capital management is expressed in how well firms collect their receivables, turnover their inventories, and pay their trade creditors on time. Ultimately, efficient working capital management has the tendency to increase the cash flow, enable the management to repay their debt in time, and, thereby, add value to shareholders' wealth by minimising the cost of capital. The current tendency of increased proportion of investment in working capital and their impact on the firms' performance emphasises the need for the corporate financial management to focus more towards working capital management.

in any firm is taken to be the lifeline of its business and lack of proper management may lead a business to "technical solvency" and ultimately to liquidation.

Problems of Small Firms

Small firms are more vulnerable to corporate failure than large firms. A study in the US has reported that the most important internal problems identified by small US firms relate to inadequate capital, cash flow management and inventory control. Similarly, a survey in the UK indicated that majority of corporate failures in small firms are mainly due to bad debts or poor credit management. In addition, the tendency of the big multinational firms to delay their payment to small and medium firms in the UK is burdened with an additional investment of £10 billion in their working capital. Primary reasons for the difference between large and small firms with respect to working capital are that large firms can devote more resources and expertise to manage current assets and the large firms have an advantage of economies of scale and large firms become more capital intensive. In essence, small firms have few alternatives than large firms with strong capital base in raising funds.

Investors' Expectation and the Cash Flow

Few decades ago, turnover was used to measure the performance of the firms and later profit gained importance replaced the turnover. But now, it is also recognised that maximising cash flow is another related way of increasing the shareholder value. Cash flow management is vital to any business and particularly to bankers, financial institutions and investors. While judging the merit of each loan application, the bankers primarily consider the working capital and cash flow management skill that certainly impact the cost of capital. On the similar line, economist Alfred Marshal described quiet well how working capital and cash flow contribute to the shareholders wealth. Efficient working capital management means more cash flow to repay bankers as well as more value to reward investors. In other words, efficient working capital management is the unsung hero of finance that enables the firm with more cash flow to repay bankers and more value to reward investors. Cash flow can also be described as the lifeline of all growing business and is the primary indicator of business health.

Current Assets Financing Policies

The manner in which the current assets are financed defines the firm's financing policy on working capital. The main difference between the moderate, conservative and aggressive approach of financing approach lie in the level of short term credit used to finance the current assets. Generally, aggressive financing approach results in capital being minimised in current assets versus non-core current assets with the expectation of higher profit but greater risk. An attempt to adopt aggressive approach by delaying payments to creditors is an inefficient and ultimately damaging practice to both its practitioner and the economy as a whole. Different studies in several nations reveal that multinational firms generally adopt aggressive approach to finance their working capital and maximise their financial performance and shareholder wealth. On the other hand, an analysis of financial performance of government companies in India reveals that they generally adopt conservative policy to finance their working capital and most of them are incurring losses.

Conclusion

The efficiency in working capital management is expressed in how well firms collect their receivables, turnover their inventories and pay their trade creditors on time. Ultimately, efficient working capital management has the tendency to increase the cash flow, enable the management to repay their debt in time and, thereby, add value to shareholders' wealth by minimising the cost of capital. The current tendency of increased proportion of investment in working capital and their impact on the firms' performance emphasises the need for the corporate financial management to focus more towards working capital management. In addition, the current method of financial reporting based on the historical profit statement needs to be reviewed and the professional accounting bodies around the world should initiate necessary changes to disclose the current assets investment and financing policies of the firms in their financial statements.■

Finance Ministry to Form New Tax Norms for Foreign Firms

The Finance Ministry has said safe harbour rules --- a set of norms that would enable the income tax (I-T) authorities to accept without scrutiny the tax returns by the Indian units of foreign companies -- would be soon put in place. “Safe harbour rules are at an advanced stage of consideration. I can’t share how the guidelines are going to be...it will be a very favourable programme... we are working on it and it will be in place as early as possible,” Central Board of Direct Taxes Chairman S S N Moorthy said at an Assocham seminar. He said the norms would be taxpayer friendly. The Central Board of Direct Taxes (CBDT) has set up a committee to formulate rules for the safe harbour provisions on transfer pricing returns. Transfer pricing refers to the price at which one arm of a company, usually a multinational corporation, transfer goods or services to another division of the same organisation in order to calculate each arm’s profit and loss separately. The committee comprises senior tax officials and representatives of trade and industry as well as Institute of Chartered Accountants of India (ICAI). Its objective is to set conditions under the safe harbour rules to facilitate acceptance of a transfer pricing return without scrutiny. The committee is expected to set an acceptable margin which would act as a benchmark for the industry. Moorthy also said the Direct Taxes Code bill (DTC) proposes General Anti Avoidance Rules (GAAR) to prevent abuse of double taxation avoidance agreement by some. He assured that GAAR would be implemented in a very modest, responsible and tax friendly manner.

(Source: http://www.financialexpress.com/)

Payments Made Abroad Not Within Ambit of Withholding Tax, Rules SC

The Supreme Court has rejected the income-tax departments contention that companies based in India were liable to deduct tax when they make any payment overseas, offering relief to domestic firms and multinational companies based here that would have had to cough up huge amounts as tax on payments made to overseas suppliers. The apex court rejected the sweeping interpretation of law on withholding tax, or tax deducted from overseas payments. The judgement clears the air on the contentious issue and removes uncertainties faced by companies that have overseas dealing. Taxation experts and companies welcomed the ruling. The ruling settles the issue of withholding tax on payments made to non-residents. For GE, Samsung Electronics, Hewlett-Packard, Sonata Software and other firms, which had approached the Supreme Court against a Karnataka High Court decision, the issue is far from over. They will have to approach the high court to decide whether they will have to pay tax on payments made for shrink-wrapped software. Had the high court order been upheld, Sonata would have had to pay more than `200 crore to the income-tax department immediately. Sonata had made a financial disclosure for a contingent liability of ₹252 crore.

(Source: http://www.business-standard.com)

DTC Cuts PSUs, Tax Department War Short

The new direct taxes code has provisions to restrain public sector undertakings and the tax department from taking their disputes beyond a certain level, a move aimed at curbing wasteful litigation. Under the new provisions, the two parties can appeal before the commissioner, income-tax appeal (CITA), the first appellate body on tax matters. But they are not allowed to appeal before the income-tax appellate tribunal (ITAT), the second appellate forum. The only recourse against a CITA order will be an authority for advance ruling and dispute resolution that is proposed to be set up once DTC becomes law. The authority’s orders cannot be challenged. Though no precise data is available to determine the number of cases filed against the PSUs, tax professionals say at least 10% of all cases filed by tax authorities are against state-run firms. More than 25% of the revenue locked up in various stages of litigation could be in cases filed against PSUs, they say.

(Source: http://beta.profit.ndtv.com/news)

No Penalty if Delay in Filing Returns is Genuine: ITAT

In an order that will help companies and individuals who face penalty proceedings on account of the delay in filing returns, a Delhi bench of the Income-Tax Appellate Tribunal (ITAT) has ruled that penalty cannot be levied if there is a genuine reason for the delay. The ITAT order issued in the first week of August came in the case of Open Technologies India who filed the appeal against the ₹1 lakh penalty imposed on it by the I-T department because of an alleged delay in filing a report from a Transfer Pricing Accountant. The ITAT, while waiving the penalty observed that penalty proceedings are quasi criminal proceedings and should not be levied unless there is reason to believe that the tax-payer had acted deliberately in defiance of law or acted in conscious disregard of its obligation. This was not the case here, ITAT ruled.

(Source: http://economictimes.indiatimes.com/)

DTC May Pull Insurance Companies Out of Comfort

The insurance sector is going through a challenging phase with regulatory changes significantly impacting the business model of life insurance firms, in particular. On the direct taxes front, from April 1, 2012 when Direct Taxes Code (DTC) will be implemented the sector may also have to deal with a considerably altered taxation model, which may result in additional compliance and potentially leave room for uncertainty as far as the taxation of insurance companies and policyholders are concerned. The life insurance sector has always experienced an advantageous position when compared to other taxpayers. To date, they were subject to a concessional tax rate of 12.5% (plus surcharge and education cess) on the surplus disclosed by the actuarial valuation as per the Insurance Act, 1938, less the opening surplus disclosed by that valuation. The DTC proposes to do away with this taxation scheme and tax the profits in shareholders account at the normal corporate tax rate of 30% leaving policyholders funds to be taxed in the hands of shareholders or subject to a distribution tax of 5%. It provides that proceeds on maturity of life insurance policies (in case other than the death of the policyholder) will be taxable in the policyholders hands, except where the premium paid does not exceed 5% of the sum assured.

(Source: http://www.cainindia.org/)

Disputes Cast Shadow on Service Tax Collections

Government may lose over ₹500 crore in service tax this year as its decision to impose tax on eight new services and amend some existing ones has been challenged in three cases copyright, immovable property and health check-up services provided by insurance companies. This is about half of the total revenue it had expected from taxing new services. A finance ministry official said it would lose another ₹800 crore due to deferment in tax on transportation of goods by rail. Builders may also challenge the imposition of service tax on flats under construction. The revenue department of the finance ministry is expecting about ₹200 crore and ₹150 crore from levy of tax on copyright and health services, respectively. The revenue will be collected for a period of nine months as the service tax came into effect from June. Out of ₹1,000 crore it projected from amendments to existing services, ₹200 crore was expected from renting of immovable property. In the Finance Bill 2010, amendments were made in the definition of renting of immovable property to provide explicitly that the activity of renting itself is a taxable service. The change was given retrospective effect from June 1, 2007. This was likely to get the government another ₹1,000 crore. But the levy of service tax on renting has been challenged on various grounds before the courts.

(Source: http://www.thehindubusinessline.com/)

IT Department is Looking into Other Cross-Border M&A

After winning the legal battle with Vodafone in a tax evasion case, the Income Tax Department is looking into other cross-border mergers and acquisitions. Central Board of Direct Taxes Chairman S S N Moorthy has said the department was closely examining similar deals which had happened in the recent past and led to possible tax evasion. “We are in the process of investigating other cases. They are in various stages of processing,” Moorthy told reporters on the sidelines of a seminar organised by industry body Assocham. He, however, refused to specify the cases. In the past, similar transactions have been seen in case of companies like Vedanta, Sesa Goa, AT&T, General Electric and Fosters. British firm Cairn Energy has already agreed to pay tax in India as well as the UK on selling its stake in Cairn India to Vedanta Resources for $6.65 billion to $8.48 billion. Depending upon the size of the stake sale, the tax liability could range between $868 million and $1.1 billion. The Bombay High Court has recently ruled that the Income Tax Department had the jurisdiction to tax Vodafones acquisition of Hong Kongs Hutchison Telecommunications stake in Hutch Essar for over $11 billion in 2007. The tax on the transaction could be around ₹12,000 crore, including interest.

(Source: http://www.financialexpress.com/)

Supreme Court Rules Manufacturer Eligible for Exemption from Sales Tax

A Constitution bench of the Supreme Court has ruled that a local manufacturer is eligible to get exemption from the sales tax under Section 5 (3) of the Central Sales Tax Act (CST Act) 1956, if the penultimate sale effected in favour of the exporter was inextricably connected with the export of the goods outside the territory of India. The Constitution bench comprising Chief Justice S H Kapadia and Justices B Sudershan Reddy, K S Radhakrishnan, Surinder Singh Nijjar and Swantater Kumar, dismissed the appeals of state of Karnataka. Justice Radhakrishnan, in his concurrent judgement pronounced noted “The connection between the penultimate sale and the export of goods should not be casual, accidental or fortuitous, but real, intimate and interlinked, which depends upon the nature of the agreement the exporter has with the foreign buyer and the local manufacturer, the integrated nature of the transaction and the nexus between the penultimate sale and in the export sale. In the facts and circumstances of this case, we are satisfied that the assessee has succeeded in satisfying those tests and hence, eligible for exemption under sub-section (3) of section 5 of the CST Act.” In the present case Azad Coach Builders Pvt Ltd, the assessee was requested to build bus bodies, by the exporters Tata Engineering Locomotives Company Ltd, in accordance with the specifications provided by foreign buyers, Lanka Ashok Leyland Ltd, Colombo. The specimen copy on the purchase order dated July 11, 1988 supplied by the exporters revealed that the assessee was asked to fabricate bus bodies on the chassis supplied by the exporter in accordance with the specifications given by the foreign buyers. In one of the letters received from the foreign buyers it was stipulated that the steel and aluminium panel of the bus body be build by the assessee, since the customers in Sri Lanka preferred them. The assessee accordingly manufactured the bus bodies in accordance with the specifications provided by the foreign buyers and mounted the same on the chassis made available by the exporters making it as a completed bus ready for export. The tax department refused to allow exemption on the grounds that the transaction was interstate sales as the bus bodies and the buses are two different commodities and the bus bodies as such were not exported, but complete buses were exported.

(Source: http://www.cainindia.org/)

IASB Proposes to Amend One Aspect of Accounting for Deferred Tax

The International Accounting Standards Board (IASB) has published an exposure draft *Deferred Tax: Recovery of Underlying Assets,* for public comment. The proposal would amend one aspect of IAS 12 *Income Taxes.* Under IAS 12, the measurement of deferred tax liabilities and deferred tax assets depends on whether an entity expects to recover an asset by using the asset or by selling the asset. In some cases, it is difficult and subjective to assess whether recovery will be through use or through sale. To provide a practical approach in such cases, the proposed amendment would introduce a presumption that an asset is recovered entirely through sale unless the entity has clear evidence that recovery will occur in another manner. The presumption would apply when investment properties, property, plant and equipment or intangible assets are remeasured at fair value or revalued at fair value. The exposure draft, *Deferred Tax: Recovery of Underlying Assets* is open for comment until 9 November 2010 and can be accessed via the 'Comment on a Proposal' section of www.ifrs.org.

*(**Source:** http://www.ifrs.org/News/)*

IASB and ASBJ Meet to Discuss Convergence With and Intended Adoption of IFRSs in Japan

The International Accounting Standards Board (IASB) and the Accounting Standards Board of Japan (ASBJ) have once again met to further progress their convergence activities, and to review preparations for the intended adoption of International Financial Reporting Standards (IFRSs) in Japan. Led by Sir David Tweedie, Chairman of the IASB and Ikuo Nishikawa, Chairman of the ASBJ, the meeting took place in London this month. The IASB and the ASBJ have accelerated their work towards the convergence of IFRSs currently in effect and Japanese Generally Accepted Accounting Principles (GAAP) by June 2011, as described in their Memorandum of Understanding, known as the Tokyo Agreement. Japanese listed companies, meeting certain criteria, are permitted to prepare consolidated financial statements in accordance with IFRSs from fiscal years ended March 31, 2010. The ASBJ, supported by the IASB, is working with Japanese constituents to support interpretative and practical issues relating to the voluntary adoption of IFRSs in Japan. Representatives of both boards stated that the ASBJ's continuing participation in the IASB's standard-setting process contributes to the development of a single set of high quality global accounting standards. They also believe that the IASB's and the ASBJ's ongoing work towards convergence of Japanese GAAP and IFRSs is an important step on the path towards Japanese adoption of IFRSs. Commenting on the meeting, Sir David Tweedie, chairman of the IASB said: This was a highly successful meeting. We remain on track to complete the convergence of Japanese GAAP and IFRSs by June 2011 as described in the Tokyo Agreement. Ikuo Nishikawa, chairman of the ASBJ said: We are pleased that we had extensive discussions and exchanged our views on prioritised projects currently being addressed by the IASB. We will continue to cooperate with the IASB in developing high-quality, global accounting standards. The next meeting of the boards is scheduled for April 2011 in Tokyo, Japan.

*(**Source:**http://www.ifrs.org/News/)*

IFRS Interpretations Committee Publishes Proposed Guidance on Surface Mining

The IFRS Interpretations Committee, the interpretative body of the IASB, has today published for public comment proposed guidance on the accounting for stripping costs in the production phase of a surface mine. The Committee was asked to consider how to account for stripping costs (the process of removing waste from a surface mine in order to gain access to mineral ore deposits) given the divergence in practice that exists. The Committee has proposed that costs associated with a 'stripping campaign' should be accounted for as an additional component of an existing asset, and that this component should be written down over the reserves that directly benefit from the campaign. *Stripping Costs in the Production Phase of a Surface Mine* is open for comment until November 30, 2010 and can be accessed via the 'Comment on a Proposal' section of www.ifrs.org.

*(**Source:**http://www.ifrs.org/News/)*

IASB Proposes Amendments to IFRS 1

The International Accounting Standards Board (IASB) has published for public comment proposed amendments to IFRS 1 First-time Adoption of International Financial Reporting Standards. The proposal would amend IFRS 1 by replacing references to a fixed transition date of '1 January 2004' with 'the date of transition to IFRSs'. As a result, entities adopting IFRSs for the first time would not have to restate derecognition transactions that occurred before the date of transition to IFRSs. In addition, first-time adopters would also not have to recalculate 'day 1' differences on initial recognition of financial instruments, where the transaction occurred before the date of transition to IFRSs. The exposure draft, *Removal of Fixed Dates for First-time Adopters,* is open for comment until 27 October 2010 and can be accessed via the 'Comment on a Proposal' section of www.ifrs.org.

*(**Source:**http://www.ifrs.org/News/)*

IAESB Releases 2010 Handbook of International Education Pronouncements

The International Accounting Education Standards Board (IAESB) of the International Federation of Accountants (IFAC) has released the 2010 edition of its *Handbook of International Education Pronouncements.* The 2010 Education Handbook contains the IAESB's suite of eight International Education Standards (IESs), including the *Framework for International Education Standards for Professional Accountants* (the Framework), as well as three International Education Practice Statements. "The handbook brings together in one document a comprehensive compilation of standards and implementation guidance in the area of professional accounting education," states Mark Allison, IAESB chair. "The document will assist those who are responsible for the design, delivery, and assessment of accounting education programs for professional accountants." The handbook has been updated to include the new Framework document, a revised glossary that includes new terms from the Framework, and minor editorial corrections. The new Framework, which uses a more concise and simplified structure so that first-time readers can readily understand the content, sets out the underlying educational concepts, which the IAESB uses in its publications. These concepts will promote greater consistency in IAESB publications and help make the standard-setting process more efficient and effective. The new Framework replaces the previously existing *Framework for International Education Pronouncements and the Introduction to the International Education Standards* documents, which were published in October 2003.

***(Source:** http://press.ifac.org/news/)*

IFAC Consultation Paper Highlights Changing Roles and Employer Expectations of Professional Accountants in Business

The Professional Accountants in Business (PAIB) Committee of the International Federation of Accountants (IFAC) has released for comment a Consultation Paper, *Competent and Versatile: How Professional Accountants in Business Drive Sustainable Organizational Success,* that highlights how employer expectations of professional accountants in business are expected to change in light of global trends and evolving organizational needs. The paper analyses these expectations in relation to eight drivers of sustainable organizational success—what companies need to do to achieve and sustain success in the changing global economic landscape. The drivers were defined based on an analysis of three long-term trends influencing organizations: globalisation, complexity, and technology. These drivers provide the framework for key activities that professional accountants will be expected to perform. These activities are highlighted under the four roles (creators, enablers, preservers and reporters) of sustainable value. The discussion questions that precede the Consultation Paper ask for feedback on, for example, the usefulness of developing an international competency framework that would cover the roles and domain of professional accountants in business, among other key topics. The Consultation Paper can be accessed or comments can be submitted at www.ifac.org/PAIB/ExposureDrafts.php. Comments on the Consultation Paper are requested by November 30, 2010.

***(Source:** http://press.ifac.org/news/)*

Trustees Seek Views on Criteria for Annual Improvements Process

The IFRS Foundation, the oversight body of the International Accounting Standards Board (IASB), recently published for public comment proposed enhancements to the criteria for the IASB's annual improvements process. The annual improvements process provides a mechanism for non-urgent, but necessary amendments to International Financial Reporting Standards (IFRSs) to be grouped together and issued in one package. Such amendments may clarify guidance and wording, or make relatively minor amendments to the standards that address unintended consequences, conflicts or oversights. The proposals, following a review by the Trustees' Due Process Oversight Committee, recommend modifications to the IASB's Due Process Handbook by enhancing the criteria for determining whether a matter relating to the clarification or correction of IFRSs should be addressed using the annual improvements process. The IFRS Foundation welcomes responses on whether the proposed criteria provide a sufficient and appropriate basis for assessing whether matters relating to the clarification or correction of IFRSs should be addressed using the annual improvements process. The consultation document, *The annual improvements process: Proposals to amend the Due Process Handbook for the IASB* is open for comment until November 30, 2010 and can be accessed via the 'Comment on a Proposal' section of www.ifrs.org.

***(Source:** http://www.ifrs.org/News/)*

Public Sector Accounting Reform Lacks Comparability across Europe

According to a study, European governments are switching to accrual accounting, but not adopting international standards. The move towards accrual accounting in governments across Europe is well underway, but there is little drive towards comparability, the study says. Of 19 European jurisdictions reviewed, over half had already switched to accrual accounting with many others preparing to make the switch. However, few are currently adopting International Public Sector Accounting Standards (IPSAS) preferring instead to stick with local business rules and using the standards for orientation and guidance. It was also suggested that the debate among European public entities over whether to move from cash to accrual accounting was over. However, a single accrual method is not yet being adopted and IPSAS remains more of an aspiration. The global financial crisis had a lesson about focusing attention of leadership on the advantages of accrual accounting generally.

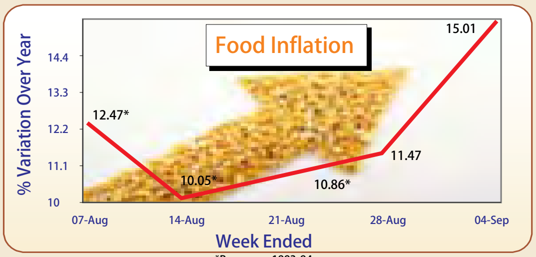
***(Source:** http://www.accountancyage.com/accountancyage/news/)*

ICAEW, ICAS Defend Smaller Firm Audits

Smaller accounting firms can handle complex audits, two prominent institutes, ICAS and the ICAEW, have insisted, despite a report highly critical of the quality of their audit work. A scathing report recently, which found smaller accounting firms are often ill equipped to take on their complex audits, is not indicative of practice across the profession, according to two senior accounting figures. The institutes say the report does not reflect smaller-firm audits across the board. POB, which sits within the UK's reporting regulator the Financial Reporting Council, found eight out of eleven audits it inspected were not up to scratch, with more than half in need of "significant improvement". ICAEW is of the opinion that the small sample size did not reflect widespread practice in the profession. Only 11 audits were looked at. ICAS echoes the sentiments of the ICAEW when it says, "It is a very small sample and I think firms need to look to see if these are isolated incidences". There are two key issues: geographical and expertise issue. The other perspective to this is the audit committees which have to be happy the auditor has [enough] expertise and knowledge. There should be "additional licensing requirements or competency requirements" for smaller firms taking on complex audits.

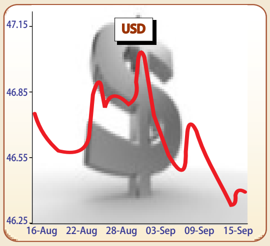
***(Source:** http://www.accountancyage.com/accountancyage/news/)*

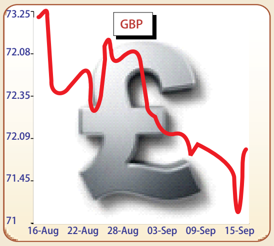
Economic Indicators

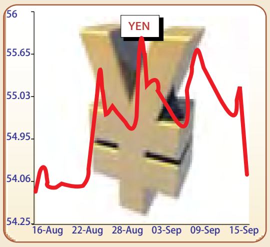


*Base year: 1993-94

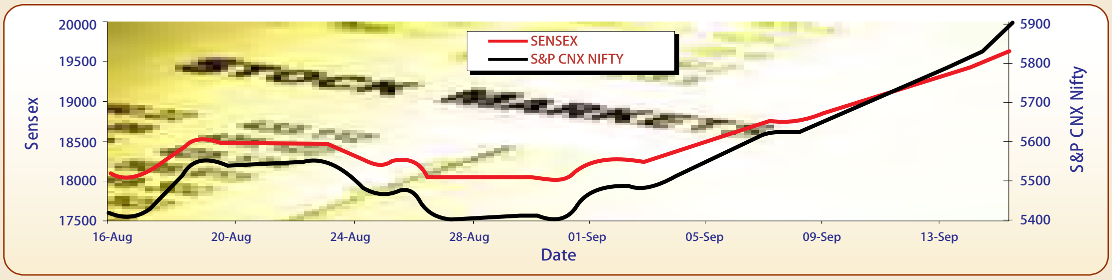
Indian Rupee vs. Major Foreign Currencies (August 16, 2010 to September 15, 2010)







Stock Markets



Selected Indicators

Item	Unit/Base	2009	2010					
		Sep.04	Jun. 30	Aug.06	Aug. 13	Aug. 20	Aug. 27	Sep. 03
Cash Reserve Ratio(1)	Per cent	5.00	6.00	6.00	6.00	6.00	6.00	6.00
Bank Rate	Per cent per annum	6.00	6.00	6.00	6.00	6.00	6.00	6.00
Base Rate(2)	Per cent per annum	11.00-12.00	7.50.8.00	7.50-8.00	7.50-8.00	7.50-8.00	7.50-8.00	7.50-8.00
Deposit Rate(3)	Per cent per annum	6.75.7.75	6.75.7.75	6.75.7.75	6.75.7.75	6.75.7.75	6.75.7.75	6.75.7.75
Call Money Rate (Low/High)	Per cent per annum	1.75/3.30	2.90/5.81	2.90/6.10	1.10/6.00	2.90/5.85	2.00/5.80	3.20/5.30

Notes: (1) Cash Reserve Ratio relates to Scheduled Commercial Banks (excluding Regional Rural Banks).
(2) Base Rate relates to five major banks since July 1, 2010. Earlier figures relate to Benchmark Prime Lending Rate (BPLR).
(3) Deposit Rate relates to major banks for term deposits of more than one year maturity.

Readers are Invited to contribute write-ups or any relevant and interesting piece of information for this feature at eboard@icai.org.

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during August-September 2010 for the reference of Faculty/Students & Members of the Institute.

1. ACCOUNTING

The Foreign Account: Tax Compliance Act by Kevin E. Packman & Mauricio D. Rivero. Journal of *Accountancy,* Aug. 2010, pp.44-48.

GAAP in GAAP – ED of Indian-AS 41 first-time adoption of Indian Accounting Standards by Dolphy D'souza. *BCAJ,* Aug. 2010, pp.82-84.

International Accounting Standards & India's Preparedness by Akash S. B. *The Management Accountant,* Aug. 2010, pp. 662-667.

Process Costing & Management Accounting in Today's Business Environment by Jennifer Dosch, *Strategic Finance,* Aug. 2010, pp. 37-43.

Role of Cost & Management Accountants in Air Express Transportation (Express Delivery) Services by Mike Bharwani. *The Management Accountant,* Aug. 2010, pp.625-627.

Survival of the Analytically Fit: The DNA of an Effective Forensic Accountant by Charles Davis etc. Journal of *Accountancy,* Aug. 2010, pp. 54-56.

Sustainability Reporting & XBRL – Part 1 by Brad Monterio. *Strategic Finance,* Aug. 2010, pp. 56-57+61.

Transparency Unveiled: Financial Crisis Prevention Through Accounting Reform by David Mosso. *Accounting Horizons,* Vol.24/1, 2010, pp. 95-107.

Voluntary Disclosure in Annual Reports: The Association Between Magnitude & Direction of Change in Corporate Financial Performance & Graph Use by William N. Dilla & Diane J. Janvrin*. Accounting Horizons,* Vol. 24/2, 2010, pp. 257-278.

2. AUDITING

Comments on the Proposed SEC's 2010-2015 Draft Strategic Plan by Robert Bloomfield etc. *Accounting Horizons,* Vol.24/1, 2010, pp.109-115.

The Future of Audit: The Big Debate by Juliana Sancto. *Accountancy,* July 2010, pp. 96-99.

PCAOB Inspections of Smaller CPA Firms: The Perspective of Inspected Firms by Brian Daugherty & Wayne Tervo. *Accounting Horizons,* Vol.24/2, 2010, pp.189-219.

Revenue Audit – Need for a More Positive Role by S. Rajaratnam. *Consolidated Commercial Digest,* 15.08.2010, pp. 615-623.

Replacing SAS 70 (Audit & Attest Services) by Judith M. Sherinsky. *Journal of Accountancy,* Aug. 2010, pp. 32-36.

Risk Model to Opine on Internal Control by Abraham D. Akresh. *Accounting Horizons,* Vol.24/1, 2010, pp. 65-78.

Serving Two Masters: The Association Between Audit Committee Internal Audit Oversight & Internal Audit Activities by Lawrence J. Abbott etc. *Accounting Horizons*, Vol.24/1, 2010, pp. 1-24.

Travelling Auditor Returns Home by Sone Kock. *Accountancy SA*, August 2010.

3. ECONOMICS

Developing Knowledge Centres for Rural Development in India: Existing State of Digital Divide in Knowledge Society by M. P. Upadhyay & R. P. Bajpai. *University News,* August 16-22, 2010, pp. 5-16.

4. INVESTMENT

Efficacy of Mandatory Merger in India by Souvik Chatterji. *Consolidated Commercial Digest*, 01.09.2010, pp. 11-16.

In Depth of Mergers & Mindsets by Ong Yew Huat. *CPA Singapore,* Sep. 2010, pp. 14-19.

5. MANAGEMENT

Corporate Governance – Best Practices by R. Balakrishnan. *Chartered Secretary,* Aug. 2010, pp. 1085-1089.

Corporate Governance in Marketing by G. Ramesh Pandi. *Chartered Secretary,* Aug. 2010, pp.1081-1084.

Good Governance & Sustainability Fundamental for Improved Business Reporting by Vincent Tophoff. *Accountancy Ireland,* Aug.2010, pp. 12-13.

Leading in All Industries (Special Report) by Sven Lunsche. *Accountancy SA*, Aug. 2010, pp. 26-27.

Leading with Integrity and Creating a Platform for Real Growth (Special Report) by Angela Mhlanga. *Accountancy SA,* Aug. 2010, pp. 29.

Risk Management: Managing Service Failure Risk by Vishnu Kanhere. *BCAJ,* Aug. 2010, pp. 75-76.

Valuing Businesses & Shares: A Practitioner's Perspective by Des Peelo. *Accountancy Ireland,* Aug. 2010, pp. 29-32.

6. TAXATION & FINANCE

Citizen's Charter of the Income-Tax Department by T. N. Pandey. Consolidated *Commercial Digest,* 01.09.2010, pp. 7-10.

Discharging Taxes in Bankruptcy by Donald L. Ariail etc. *Journal of Accountancy,* Aug. 2010, pp. 58-62.

Equal Treatment of Paper & Electronic Invoices in the European Union - Finally! by Wouter Brackx & Ine Lejeune. *International VAT Monitor,* July/Aug. 2010, pp. 260-265.

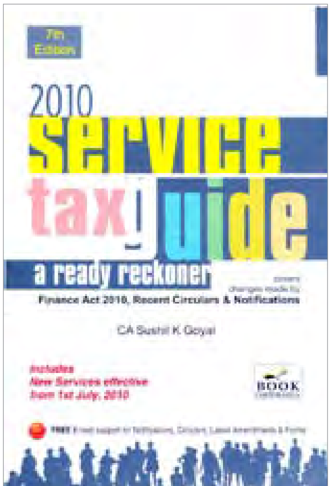
Estate Planning Can Go Wrong! by Robert Dole. *Accountancy SA*, Aug. 2010, pp. 16.

Foreign Tax Credit in India by Yogesh G. Shah & Arpit J. Jain. *ACAJ,* pp. 95-99.

Tax Implications of Interest (special feature: Tax Issues) by Muneer Hassan. *Accountancy SA,* Aug. 2010, pp. 12-15.

Full Texts of the above articles are available with the Central Council Library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-23370154 or by e-mail at library@icai.org

A Useful Book and Very Good Source of Reference on Service Tax*



Title :
2010 Service Tax Guide: A Ready Recknoner (covers changes made by Finance Act 2010, Recent Circulars & Notifications)

Author :
CA. Sushil K. Goyal

Pages :
914

Price :
₹795

Publisher :
Book Corporation

Service Tax as a subject has thrown up challenges for assessees and consultants ever since its introduction in the year 1994. This has been one subject that has evolved over the years as a result of frequent changes necessitated by the growth of the service sector in the country and the need for the Government to increase revenue. The importance of the subject today can hardly be undermined considering the fact that the impact of this levy is felt not only by pure service providers in the service sector but even by manufacturers who also happen to provide certain services within their domain.

The difficulties faced in understanding the subject are quite natural if we were to consider the fact that the levy is on service which at times is hard to identify in certain circumstances. The problem is also compounded by the fact that there is no single definition of the term "service" which could be applied across the various categories of services sought to be taxed and one is left with no choice but to go through the various definitions of individual services that exist today, as well as various clarifications from the CBEC with regard to the scope and coverage of such definitions.

Therefore a book on service tax would have to be written in a manner which would simplify the subject and present it in a form which could be understood by the reader. While there any many books on service tax available today, few would appeal to a reader who is new to the subject and seeks to familiarise himself/herself with the same. This book being reviewed here is one book which really presents service tax in a manner which would appeal to the reader. The book contains various questions covering each and every aspect of service tax and answers for the same. The presentation makes a subject which is quite complex, easy to understand. The book, true to its title, allows one to cover the entire subject within a reasonable span of time.

This book would be a good source of reference for a reader who is not well versed with the subject as well as to individuals who would wish to have a ready reckoner at hand to refer the basic provisions of service tax including various notifications and circulars. The book would be of use particularly to audit teams reviewing legal compliance under service tax. It would also be a handy ready reckoner for finance executives in the industry. Consultants seeking to practise and specialise in service tax would also find this book useful though professionals who provide litigation related services and consultancy involving drafting of detailed legal opinions would have to supplement this book with additional resources to fully appreciate the finer nuances of the subject and legal interpretation involved there under.

Summing up, a ready reckoner in the truest sense of the term offering good value for the money spent. ■

Reviewed By CA. Srikantha Rao T, Bangalore

The Institute of Chartered Accountants of India duly acknowledges the following members for making generous contributions to the Chartered Accountants Benevolent Fund (CABF):

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CA. K. C. Mehta

Plagiarism: A Matter of Growing Concern

[Our journal, The Chartered Accountant, is a means to enhance our members' knowledge and update them on contemporary developments in the area of accountancy and other allied professions and topics of professional interest. We cater this service to all our members, e.g. more than 1,60,000 in number. Our Journal is read by more than 2 lakh readers across India and abroad.]

We receive articles from our authors either on their own or in response to our invitation when we bring out special issues. In the recent past, we have come across the practice of *plagiarism* in some of the submissions by our authors. Contents of some articles have been found to be lifted from resources including books, websites, etc., and presented to us as authors' original work, which is nothing but plagiarism, an infringement of others' intellectual property rights and, therefore, a punishable offence. It is an intellectual crime.

Authors who submit plagiarised work for publication will be strictly proceeded against as per policy and rules of Institute of Chartered Accountants of India and the law of the land. We will also represent such cases to authorities of the organisations where these authors work.

We appeal, therefore, to all our prospective authors not to send a plagiarised work to us for publication and not try to take credit for a work which is not theirs. Any reference of other sources/ authors/content should be duly given within quotes with the name of the source in the body of the submitted articles' text itself. By following this practice, we will essentially show respect towards the creative community which all of us value immensely.

- Editor

61st Annual Report and Audited Accounts of the Institute for the year 2009-2010

September 22, 2010

The 61st Annual Report of the Council and the Annual Accounts for the year 2009-2010 are being published in the Gazette of India and will shortly be hosted on the website of the Institute — http\\www.icai.org. The same is being e-mailed to the members whose e-mail ids are on the record of the Institute.

In this connection, members who have not furnished their e-mail ids are requested to provide their e-mail ids to enable the said report being sent to them also. Further, hard copy of the above Report would be forwarded to those desirous of the same. Accordingly, members desirous of a hard copy of the above Report may write, giving their membership number and complete postal address, to Shri Mahender Kumar, Deputy Secretary. [e-mail: councilaffairs@icai.in]

Filing of Annual Return and Balance Sheet MINISTRY OF CORPORATE AFFAIRS, GOVERNMENT OF INDIA

DEAR CORPORATES,

TO AVOID LAST MINUTE RUSH AND SYSTEM CONGESTION IN MCA21 DUE TO HEAVY FILING IN LAST 10 DAYS OF THE MONTHS OF OCTOBER AND NOVEMBER, 2010, IT IS REQUESTED THAT FILING OF ANNUAL RETURN AND BALANCE SHEET MAY BE DONE IN THE FOLLOWING ORDER:

	Preferable dates for filing		
Company Names starting with	**September 2010**	**October 2010**	**November 2010**
Alphabets A to D	All days during the month	1st Oct to 5th Oct 2010	1st Nov to 5th Nov 2010
Alphabets E to K	-do-	6th Oct to 10th Oct 2010	6th Nov to 10th Nov 2010
Alphabets L to Q	-do-	11th Oct to 15th Oct 2010	11th Nov to 15th Nov 2010
Alphabets R & S	-do-	16th Oct to 20th Oct 2010	16th Nov to 20th Nov 2010
Alphabets T to Z	-do-	21st Oct to 25th Oct 2010	21st Nov to 25th Nov 2010
Remaining/Left out companies	-do-	26th Oct to 31st Oct 2010	26th Nov to 30th Nov 2010

YOU ARE REQUESTED TO PLAN YOUR ANNUAL GENERAL MEETING AND FILING ACCORDINGLY.

Corporate Forum – 2011 ICAI Awards 2010 – Corporate CA Achiever's Acclaim

The Committee for Members in Industry of the ICAI annually conducts a mega event Corporate Forum. In the forum contributions made by the chartered accountants who are working in corporate are recognised by way of awards in different categories. CEO's, Directors, CFO's and other managers who have achieved profe-ssionally are considered for different awards. It is a great opportunity for the members of the Institute to get their contributions recognised by their alma mater. The awards seek to:

- Acknowledge chartered accountants in industry who have demonstrated excellence in the way in which they conduct their profession.
- Acknowledge chartered accountants who are exemplary role models in the industry.
- Acknowledge chartered accountants who have created value to their company's stakeholders on a sustainable basis.

The process of selection shall include inviting nominations, shortlisting and final selection. An eminent jury will finalise the recipients of awards.

Chartered accountants who would be interested to participate for the awards may send an interest mail to cmii@icai.org with their names, membership number, designation, company, complete correspondence address with mobile number and e-mail address by 15th October, 2010.

New Publication from the Auditing and Assurance Standards Board 2010 EDITION OF THE HANDBOOK OF AUDITING PRONOUNCEMENTS

- Contains text of the Engagement and Quality Control Standards, Statements and Guidance Notes on auditing, issued by the Council of the Institute as on July 1, 2010.
- Comes in **three volumes** now:

  - **Volume I: Compendium of Standards** *(approximately 1300 pages)* *Standard on Quality Control, Standards on Auditing, Standards on Review Engagements, Standard on Assurance Engagements and Standards on Related Services*
  - **Volume II: Compendium of Statements on Auditing** *(approximately 280 pages)*
  - **Volume III: Compendium of Guidance Notes** *(approximately 600 pages)*

MAJOR ADDITIONS *VIS-A-VIS* 2009 EDITION

- **First ever Glossary of Terms used in Auditing Standards**
- **Text of all the new/revised Standards on Auditing issued under Clarity Project, including those effective from April 1, 2011.**
  - **Includes text of corresponding old Standards for ease of reference.**
- **Includes 13 new/revised Standards on Auditing (SAs):**
  - **Revised SA 200, "Overall Objectives of the Independent Auditor, and the Conduct of an Audit in Accordance with Standards on Auditing"**
  - **Revised SA 220, "Quality Control for an Audit of Financial Statements"**
  - **Revised SA 501, "Audit Evidence – Specific Considerations for Selected Items"**
  - **Revised SA 505, "External Confirmations"**
  - **Revised SA 520, "Analytical Procedures"**
  - **Revised SA 620, "Using the Work of an Auditor's Expert"**
  - **Revised SA 700, "Forming an Opinion and Reporting on Financial Statements"**
  - **SA 705, "Modifications to the Opinion in the Independent Auditor's Report"**
  - **SA 706, "Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report"**
  - **Revised SA 710, "Comparative Information – Corresponding Figures and Comparative Financial Statements"**
  - **SA 800, "Special Considerations – Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks"**
  - **SA 805, "Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement"**
  - **SA 810, "Engagements to Report on Summary Financial Statements"**
- **Text of new/revised Standard on Review Engagements (SREs):**
  - **Revised SRE 2400, "Engagements to Review Financial Statements"**
  - **SRE 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity"**

Price

All the three volumes of the Handbook come in a single box pack alongwith a CD containing text of the entire Handbook. The complete Box pack of the Handbook is priced at **₹900/-**.

Ordering Information

The Handbook can be purchased directly from the Sales Counters at the ICAI's Regional Offices or at the Head Office. To order by post, please send a demand draft for the price of the publication (plus postage charges as per the desired mode of delivery) in favour of "**The Secretary, The Institute of Chartered Accountants of India, New Delhi**", payable at New Delhi to the *Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-94/4, Sector-58, Noida – 201 301, Uttar Pradesh*.

Postage charges:

Courier (within Delhi): ₹30/-	**Courier (other than Delhi): ₹126/-**
Registered Post (all over India): **₹200/-**	Unregistered Post (all over India): ₹183/-

Online Articles Placement Portal for selection of Articled Assistants by CA Firms

The Board of Studies of the Institute has introduced an optional Campus Placement Scheme for selection of Articled Assistants by CA Firms. The Pilot Campus Placement Programme held at Delhi in August 2010 has been a great success with an overwhelming response from both CA Firms and Students. Considering the positive feedback and requests received from both CA Firms and Students, it has been decided to start an Online Articles Placement Portal to facilitate placement of Articles in CA Firms on pan India basis. Both eligible CA firms and candidates who are willing to avail of this facility shall have to register themselves online through the articles placement portal at http://bosapp.icai.org. The Portal would be operational from 5th October, 2010 at 11:00 A.M. onwards. The services on the Portal would be available for two months from the time of registration by the firm. Similarly the bio data of a student will also be available on the portal for a maximum period of 2 months from student's registration.

The Articles Placement Portal has been put into place to provide a platform to the firms of Chartered Accountants having vacancies for Articled Assistants to shortlist eligible students for selection of articled assistants, and call them for Interview at their offices, as per date and time convenient to them. The candidates who have either (a) Passed Group-I or both Groups of the IPCC examination, or (b) Passed either of the Groups or both groups of PE-II examination; and are eligible for undergoing articled training for selection as articled assistants in the CA firms can register themselves on the portal, such that they can be considered for selection by the CA Firms. The candidates shortlisted by CA Firms would be automatically informed by e-mail through the Portal, to appear for interview at their respective Offices, at the designated date and time.

Please refer the detailed guidelines available at the institute's website www.icai.org under "Announcements" and on the Portal.

In case of any clarification, please contact the Board of Studies, ICAI Bhawan, A-94/4, Sector-58, Noida-201 301, Tel. No. 0120-3045930/931; e-mail: bosapp@icai.org.

Director,
Board of Studies

Revised Structure of Question Papers for November, 2010 Examination

It has been decided to revise the structure of question papers for the PCE, IPCE and Final (old and new course) examinations as under, from November, 2010 examination onwards:

1. One question will be compulsory.
2. Among other questions, one choice will be provided uniformly in all the papers.
3. In addition, in one of the questions, one internal choice may be provided as far as possible

Classifieds

4817 Bangalore based CA Firm having good expertise and willing to associate, partner, merge, joint venture with other district or state and also willing to do the assignment in the area of internal audit, indirect taxation, KYC, ATM audit, IFRS implementation and other compliance work. Contact: Naveen - 9590814853. Office: 080-40926828 /40974630.

4818 FCA, DISA 25 years exp full time COP settled Delhi invites proposals for professional tie-up on mutual terms. Proposal to open branch in Delhi on partnership/contractual/ assignments also acceptable. jaimataki2009@rediffmail.com

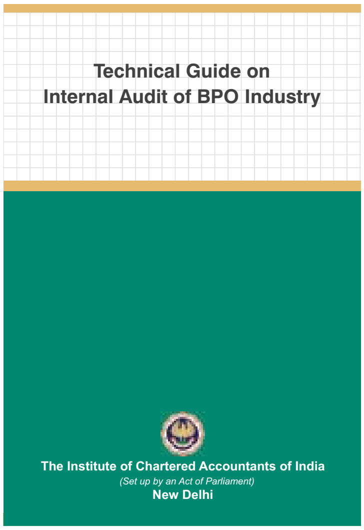
4819 Our firm is 30-year-old, at Hyderabad, with multiple practice incl. Central Statutory Audit of Banks and PSU'S: looking for Practicing CA's / firms with 2/3 CA's and 5/10yrs standing, in Hyderabad to merge with us for mutual benefit. CA's assuming responsibility, possessed with planning, execution and reporting skills are invited to contact: 09949149549, email: kyesrk@yahoo.com

4820 Ludhiana based FCA seeks professional work on assignment/contractual/retainership basis. Contact: 9872022700. E-mail: shivu26999@yahoo.co.in

4821 A Delhi based FCA, in practice since 1974, having experience in communication skills and having handled assignments with specialization in income tax, PSU audits, internal audits, audits, accounting polices, internal audit polices, consultancies, wish to merge to any established firm with good infrastructure in order to, with the blessings of God, to expand the merged firm globally. Contact: godizkind@gmail.com, 9811500116, 9999360072.

NEW PUBLICATION FROM THE INTERNAL AUDIT STANDARDS BOARD

Technical Guide on Internal Audit of BPO Industry
(Pages: 92 + 24 initial pages+ 2 cover pages)
Price: 200/- *(including CD)*



During the last decade, India has seen a steady growth of BPO sector, which is constantly witnessing changes driven by its key participants – service providers, clients, employees, external stakeholders and the government. This unique sector faces complexity of processes which give rise to a spectrum of strategic and operational risks. Internal auditors can play an important role in governance, risk and compliance aspects, which are essential to ensure that the BPO Industry remains on the growth path. Keeping this in view, the Internal Audit Standards Board of ICAI has issued ***"Technical Guide on Internal Audit of BPO Industry"***, which is aimed to equip the internal auditors with deeper understanding of this unique and complex industry.

Significant Features of the Technical Guide are:

- Covers evolution, history, special features, business processes, challenges faced by the entities in BPO Industry.
- Explains legal framework applicable to BPO Industry in detail.
- Provides guidance on the statutory laws applicable to the Industry.
- Covers the methodology for the internal audit for the BPO Industry as well as the internal audit requirement in an information technology environment. Also describes the procedures to overview the compliance of laws and regulations.
- Explains the detailed procedures to be undertaken by the internal auditor in respect of invoicing, payroll, operating costs, fixed assets, related party transactions, data security and risks faced by the Industry.
- Includes flow chart regarding various processes undertaken in the BPO Industry.
- Includes glossary of the terms and abbreviations used in the BPO Industry.
- The Guide comes with a CD of the entire Guide to ensure ease of reference and reusability.

Ordering Information:

The publication can be obtained from the sales counter at the Regional Offices or at the Head Office of the Institute. Copies can also be obtained by post. To order by post, send a demand draft for the amount of price of the publication (add the charges indicated below for the desired mode of delivery) in favour of the **"The Secretary, The Institute of Chartered Accountants of India, New Delhi",** payable at New Delhi, to the Postal Sales Department, the Institute of Chartered Accountants of India, A-94/4, Sector-58, Noida - 201301 - (U.P.).

Postal Charges:

By Courier:	**Within Delhi : ₹20/-**
	Rest of India: ₹25/-
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Request to Contribute in the Journal

Members and other experts are requested to contribute for various sections and features of The Chartered Accountant journal. The write-ups covering the topical issues and latest updates will be preferred.

Every article should be of about 3000 words and shall also have an executive summary of about 100 words and complete references/bibliography of the sources referred. Please note that a declaration about originality of the article, author's good quality passport size photograph, ICAI e-mail ID and complete contact details (postal address and contact numbers) should also accompany the article. As a token of appreciation, an honorarium of ₹5000/- is payable for every article selected by the Editorial Board and published. Besides, for members of the Institute, a CPE credit of four hours is also granted.

The articles can be sent to us by e-mail at eboard@icai.org/ journal@icai.org or by post to The Editor, The Chartered Accountant, Journal Section, ICAI Bhawan, A-94/4, Sector -58, Noida - 201301.

CPE 12 Hours

Regional Standard Setters (RSS) Conference 2010

Organised By: International Affairs Committee of ICAI

Date & Time	Venue
30th November & 1st December 2010 8:30 AM to 5:30 PM	India Habitat Centre, New Delhi

Theme

The Regional Standard Setters Conference will be focusing on International Financial Reporting Standards (IFRS), its future direction and its implication for the SAARC Region and is aimed at promoting single set of high quality IFRS, that provide transparent and comparable information in general purpose financial statements. The two day conference will dwell upon some of the important issues such as first time adoption of IFRS,implementing IFRS in a bank, implementing IFRS on Financial Instruments, status of convergence with IFRS in SAARC countries and alike.

The conference would provide an opportunity to the participants to have a first hand interaction with among others, the who's who of accountancy world, as the occasion will see the presence of Sir David Tweedie, Chairman, International Accounting Standards Board, Prof. Warren McGregor, IASB Board Member and Mr. Prabhakar Kalavacherla, IASB Board Member. The Chairman, Accounting Standards Board (ASB) of respective SAARC countries would also share the convergence experience with IFRS in their respective country.

	Important topics to be discussed	Speakers
(i)	Key Note Address	Sir David Tweedie, Chairman, International Accounting Standards Board (IASB)
(ii)	Implementing IFRS on Financial Instruments (IAS 39/IFRS 9): Challenges for Indian Banks	Mr. P. R. Ravi Mohan, Chief General Manager, RBI
(iii)	'Implementing IFRS in a Non-Financial Diversified Institution and possible workarounds in overcoming the challenges'	Mr. Uday Phadke, President – Finance, Legal and Financial Services Sector and Member of the Group Management Board, Mahindra & Mahindra Limited
(iv)	IFRS Implementation: Challenges for SMPs	CA. Amarjit Chopra, President ICAI
(v)	IASB response to helping overcome challenges faced by emerging/ developing economies in implementing IFRS	Mr. Prabhakar Kalavacherla, IASB Board Member
(vi)	Issues in first time adoption of IFRS	Representative of ICA Pakistan
(vii)	IFRS for SMEs – a possible way forward for converging with IFRS in emerging/developing economies	Mr. Sanath Fernando, Member of Group constituted by IFRS Foundation for Implementation of IFRS for SMEs
(viii)	Panel Discussion on 'Convergence to IFRS – Challenges and Way Forward'	**Panelists** Sir David Tweedie, (Chairman, IASB) Mr. Prabhakar Kalavacherla (Board Member, IASB) Prof. Warren McGregor, (Board Member, IASB) Mr. Reyaz Mihulur, (Chairman, SAFA Accounting & Auditing Standards Committee) Mr. C. Ramakrishnan, CFO, Tata Motors Ltd. Mr. P. S. Banerjee, Executive Vice-President, Corporate Accounts & Chief Risk Officer, Larsen & Toubro Ltd

Fees: Early Bird Registration Fee (Non Residential Programme)*

₹2500 for ICAI Member ₹4500 for ICAI Member with Spouse	₹4000 for Non-Member ₹7500 for Non Member with Spouse	US$ 125 for Foreign Delegate US$ 200 for Foreign Delegate with Spouse

Note: All payments/remittances should be made in favour of 'Secretary, The Institute of Chartered Accountants of India'.

Contact Person for further details	CA. Mudit Vashishtha Sr. Executive Officer, International Affairs Cell The Institute of Chartered Accountants of India ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi – 110002 ☎: +91-11-30110487 Fax: +91-11-30110591 ✉:**safa@icai.in**

** The fees is likely to be enhanced after 31st October 2010*

Seminar on Capacity Building Measures For CA Firms

Organised By: Committee for Capacity Building of CA Firms and Small & Medium Practitioners
Hosted By: Bangalore Branch of SIRC of ICAI

Date & Time		Venue
Date:15th October, 2010 Time: 9:30 a.m. to 5:30 p.m.		Hotel Bangalore International, Race Course Road, Bangalore

Theme

With advent of globalisation and challenges posed by the liberalisation process taking place worldwide, a need is felt for strengthening competencies of CA firms and small practitioners. ICAI's initiative is to enlarge visibility of CA profession and to rejuvenate practice portfolio of Small and Medium Practitioners. ICAI has formed CCBCAF&SMP Committee for popularising effective union of CA firms by facilitating consolidation through Networking, Mergers and setting up Management Consultancy Services etc. Committee's focus is on enriching SMPs through Capacity Building measures for bringing up world class competency and brand image. This seminar will concentrate on issues & impediments related to capacity building as well as highlight emergent issues of profession.

Topics to be Discussed		Speakers
Inaugural Session: **09:30 am to 10:30 pm**	Address by CA. G. Ramaswamy, Vice President, ICAI	
First Session: **10:45 am to 12:00 pm**	Capacity Building Measures – Networking, Merger & De-merger and Corporate Form of Practice	CA. Sanjeev Maheshwari Chairman – Committee for Capacity Building of CA Firms and Small & Medium Practitioners CA. K. Raghu, Central Council Member Member – Committee for Capacity Building of CA Firms and Small & Medium Practitioners
Second Session: **12:00 pm to 1:15 pm**	Limited Liability Partnership – Benefits to the Profession	CA. Sanjay Kumar Agarwal Central Council Member Member – Committee for Capacity Building of CA Firms and Small & Medium Practitioners
Networking Session: **2:30 p.m. to 5:30 p.m**	Networking Session for Merger and Acquisition of CA firms – one-to-one meetings	

Registration Fees: ₹250/-

For registration and further details, please contact;
Bangalore Branch of SIRC of ICAI, 'ICAI Bhawan', #16/O, Millers Tank Bed Area, Bangalore – 52,
☎ : 3056 3500/541/542/543, ✉ : bangalore@icai.org

INTERNATIONAL COMPETITION LAW CONFERENCE

Date & Time	Venue
19th October 2010	The Lalit Hotel, New Delhi
Competition Law Bar Association is hosting a Conference covering all aspects of the Indian and Foreign Competition Laws. This coincides with the 1st Anniversary of the Competition Appellate Tribunal (COMPAT). Hon'ble judges of Supreme Court, High Courts, Chairman & members of Competition Commission of India, Dignitaries from Government of India, Lawyers, Chartered Accountants, Company Secretaries and other professionals, policy makers, academicians, students from various universities and eminent persons in the field of Competition Law from different parts of the world are likely to participate. Primarily in four technical sessions, which are being organised, the various aspects of the newly enforced Competition Law would be discussed.	**Knowledge Partners** - Institute of Chartered Accountants of India - Institute of Company Secretaries of India - Indian Law Institute - Amity Law School **For more details:** ✉: secretariat@competitionlaw2010.com Website: www.competitionlaw2010.com

Plenary Address will be given by **Hon'ble Mr. Salman Khurshid**, Minister of Corporate Affairs, Government of India, Hon'ble **Mr. M. Veerappa Moily**, Minister of Law and Justice, Government of India, **Hon'ble Mr. Justice S. H. Kapadia**, Chief Justice of India, **Hon'ble Dr. Justice Arijit Pasayat**, Chairman, Competition Appellate Tribunal, **Hon'ble Mr. Goolam E. Vahanvati**, Attorney General of India, **Hon'ble Mr. R Bandyopadhyay**, Secretary, Ministry of Corporate Affairs, **Hon'ble Mr Gopal Subramanium**, Solicitor General of India & Chairman, Bar Council of India, **CA. Amarjit Chopra**, President, Institute of Chartered Accountants of India, **Mr. Vinayak S. Khanvalkar**, President, Institute of Chartered Secretaries of India, **Mr. O. P. Dua**, Sr. Advocate, President CLBA, **Mr. Atul Dua**, Advocate, Secretary CLBA.

Keynote Address will be given by **Hon'ble Mr. Ashok Desai**, Former Attorney General of India.

As many as 25 eminent speakers will include **Mr. Dhanendra Kumar**, Chairman Competition Commission of India and **Mr. Pravin Tripathi** and **Mr. Rahul Sarin**, Members COMPAT, India.

CPE 12 Hours

International Conference of CA Students

The 2010 International Conference of CA Students is being organised by the Board of Studies jointly with the NIRC of the ICAI with the theme **INDIAN ACCOUNTANCY PROFESSION: MARCHING TOWARDS GLOBAL CENTRE STAGE**. This would be the largest annual gathering of CA students from all over the Globe. The main goal is to provide a forum for exchange of ideas on a number of topics of professional interest. The conference will present the tools a student needs to stay ahead, stay efficient and be prepared for the challenges posed by the changing economic environment. It is also a chance to meet with students from all over the country and abroad and share knowledge and experiences.

The event will be comprised of presentations, keynote lectures, panel discussions. Students are invited to register* for the Conference at the earliest. Interested students are also invited to submit Paper of about 5-7 pages and/or a proposal to organise a Technical Session. All accepted papers will be published in the respective conference proceedings/Paper Book. Topics of interest include, but are not limited to, the following :

Technical Session 1: Global Convergence	1. Convergence to IFRS: Impact on Key Sectors 2. Accounting for Carbon Emission Credits 3. Convergence to IFRS: Need for Changes in Regulatory Requirements 4. Social Responsibility of Chartered Accountants in Converging World
Technical Session 2: Ushering an Era of Taxation Reforms	1. Direct Tax Code Bill, 2010 – Change in Conceptual Approach 2. Issues in Transfer Pricing 3. Profit Linked Tax Incentives Vs Investment Linked Tax Incentives 4. Goods and Services Tax in India – Way Forward
Technical Session 3: IT as a Tool to Simplify Audit Process in Chartered Accountancy	1. Role of CA as IT Manager 2. Contours of eXtensible Business Reporting Language (XBRL) 3. Forensic Accounting using IT 4. IT Governance 5. Information Systems Audit – Salient Features
Technical Session 4: Legal Reforms – Steering India Ahead	1. Limited Liability Partnership: A Pragmatic Approach to Business 2. The Competition Law, 2002 – Its Developmental Factors 3. Compounding of Contraventions under FEMA,1999 4. Employees Deposit Linked Scheme – A Boon for the Employees
Technical Session 5: Present Global Financial Order	1. Financial Crisis - Recession and Recoveries 2. Development of New Financial Order – G 20 Declaration 3. Towards Greener Accounting World 4. Role of CFO-Integrating Strategy and Finance 5. Globalisation of Capital Markets – Emerging Trends
Conference Dates	28th – 29th December, 2010
Venue	Auditorium of Shri Ram College of Commerce, North Campus, University of Delhi, Delhi (India)
Cultural Evening	28th December, 2010 by CA Parivaar followed by dinner, University of Delhi, Delhi (India)

Accommodation:

Two Nights accommodation would be available for outstation students attending both days of the Conference ranging from ₹500/- to ₹2000/- per night including/excluding taxes.

Participation Fee:

For Students from India:	**₹500/- per student**
For Overseas participants:	**US$ 30 participants without accommodation**
	US$ 100 with accommodation for two nights

For Registration, sending Papers and for further queries, please contact:

NIRC of the ICAI ICAI Bhawan, Annexe, 5th Floor Indraprastha Marg, New Delhi-110 002, INDIA ☎:011-30100503/507/500 ✉ : nirc_seminar@icai.in; nirc@icai.in	Conference Section Board of Studies of the ICAI ICAI Bhawan, A-29, Sector 62, NOIDA-201 301 (U.P.) INDIA ☎: 0120-3045930/931 ✉: bosconference@icai.org

**The Registration Form can be downloaded from the Website: www.icai.org or www.nirc-icai.org*

CPE 15 Hours

Residential Refresher Course

Organised by: Committee for Members in Industry
Hosted by: Jaipur Branch of CIRC of ICAI

Date & Time	Venue
12th-14th November, 2010	Shri Balaji Sewa Sadan, Shri Salasar Balaji, Near Anjani Mata Mandir, Salasar (Raj.)

Theme
CA Profession beyond the horizon : Present & Future

Technical Sessions:
- Direct Tax Code
- IFRS
- GST/Indirect Tax

Special Darshan: • Salasar Balaji Mandir (Churu) • Dadi Rani Sati Mandir (Jhunjhunu) • Khathu Shyam Ji Mandir (Sikar) • Reengus Bheru Temple (Sikar) • Traditional Bhajan Sandhya

The programme will be inaugurated at 1 p.m. on 12th November 2010 and shall be over by 1 p.m. on 14th November 2010. Pick up facility from Jaipur would be available on 12.11.2010 at 7:30 a.m. from ICAI Jaipur Branch. Drop facility will be provided on 14.11.2010 at 7:30 p.m.

Registration Fee

Sl. No.	Particulars	With Accommodation	Without Accommodation
1	FCA	₹2500	₹2000
2	ACA	₹2200	₹1700
3	Accompanying Person	₹1500	₹1000
4	Child (3-12 Years) (above 12 years)	₹1000 ₹1500	₹500 ₹1000

The draft/cheques should be made in favour of 'Jaipur Branch of CIRC of ICAI' payable in Jaipur.
For registration contact Jaipur Branch of Central India Regional Council, Office [+91] (141) 3044 200, 3044 214,
✉ : jaipur@icai.org, 'ICAI Bhawan', D-1, Institutional Area, Jhalana Doongiri, Jaipur - 302 004

Chairman,
Committee for Members in Industry

CPE 12 Hours

Two Day Programme on International Financial Reporting Standards

Organised by: Committee for Members in Industry
Hosted by: Eastern Indian Regional Council (EIRC) of ICAI

Date & Time	Venue
29th and 30th October, 2010	Park Hotel, Kolkata

Theme
Issues and Strategies in Financial Reporting

Guest of Honour : Mr Bhaskar Chatterjee, IAS, Secretary, Department of Public Enterprises, Ministry of Heavy Industry & Public Enterprises

Topics for discussion

29th August 2010	
1. A brief not on IFRSs - Framework & Presentation of Financial Statements	IAS
2. Revenue Recognition, Accounting Policies and Events after Reporting Period	IAS 18, 8 & 10
3. Property Plant & Equipment + Intangible Assets	IAS 16,38
4. Business Combination	IFRS 3
30th August 2010	
5. Financial Instruments: Brief Introduction	IAS 32 & IFRS 7
6. Financial Instruments: Presentation & Disclosures	IAS 32 & IFRS 7
7. Provisions, Contingent Liabilities & Contingent Assets & Reading of Balance Sheet	IAS 37
8. IFRS 1: First Time Adoption of IFRS	IFRS 1

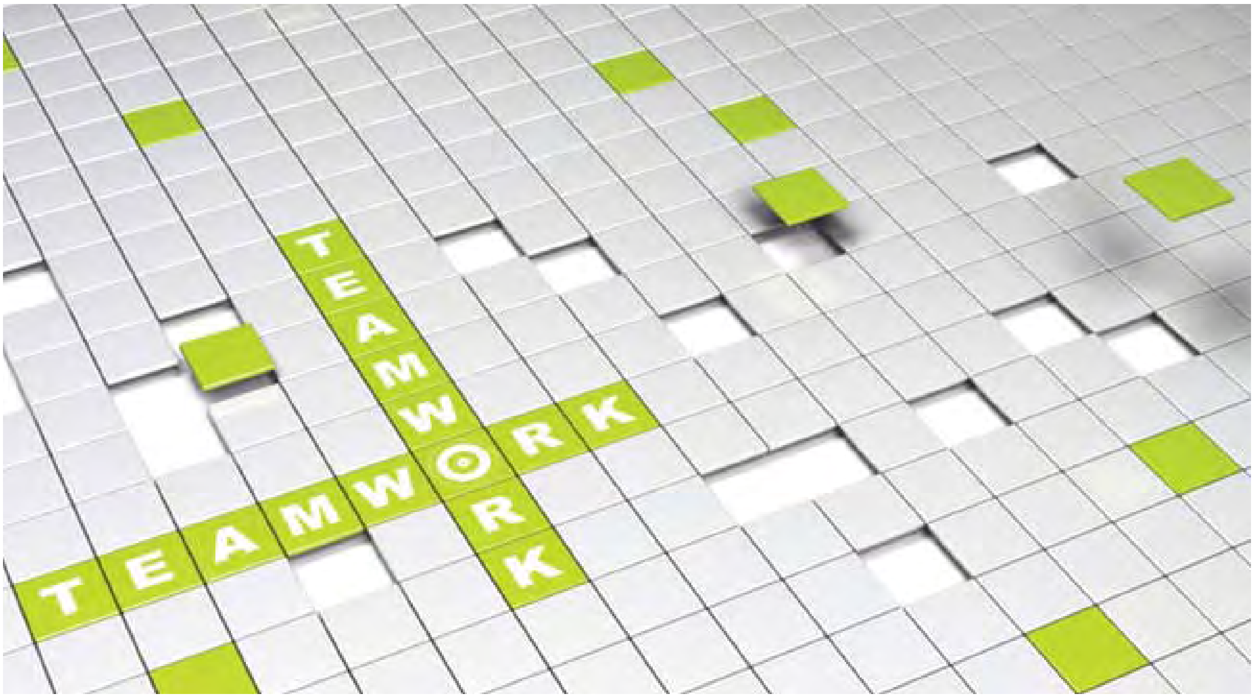
Fees: ₹1800 (The draft/cheques should be made in favour of "The Institute of Chartered Accountants of India, EIRC" payable in Kolkata.

For Registration & further details, please contact

EIRC of ICAI, ICAI Bhawan, 7, Anandilal Poddar Sarani (Russell Street), Kolkata – 700 071. ☎: 033- 30211132/ 33/04,
✉ : eircevents@icai.in

Chairman,
Committee for Members in Industry

Effective Communication



Most of our active time is spent in communication, either in transmission or in reception of it. All this is done to achieve end result and that is the purpose of communication. If communication is effective, the chances of achieving the end result are bright. Effective communication, mostly, is likely to be well received and a well-received communication is more likely to be registered with our recipients. Once a message is registered, it is more likely to trigger the action, which is the purpose of communication.

CA. Hemant P. Shah

(The author is a member of the Institute. He can be reached at ca.hps@icai.org.)

We human beings live in a world where we have to deal with a number of persons for various purposes, e.g. to seek help, to get services, to get a thing, etc. For this, we need to tell other person/persons what we need, and what is created is perhaps the most primitive communication. Since all living creatures need to communicate, so, one of the commonest things in our day-to-day life is communication. Communication is generated due to a purpose. If, due to communication, the end result meets the purpose of communication, we may conclude that it is an effective communication.

Depending upon the situation, time, available resources and purposes, communication may take place by any of the methods such as verbal, body language (symbolic gestures), etc., as well as some combination of these. There are auditory means, e.g. speech, song and tone of voice, and nonverbal means, e.g. body language, sign language, touch, eye contact and writing. Communication is a process of transferring purpose from one person to another. It is a process by which attempts are made to create a shared understanding. Depending upon the purpose, communication process requires a vast repertoire of skills such as listening, observing, speaking, questioning, analyzing, and evaluating as well as the knowledge of the subject and the language of communication.

It is through communication that collaboration and cooperation

We all want to communicate effectively whether orally, in writing, or through body language. For this, we employ a number of means, such as words, phrases, fonts, colours, pictures, emotions, icons, symbols, costumes, tone, pitch, scale, graphs, curves, quotations, poems, songs, couplets, etc.

is achieved. Communication may further be categorised to open and close types. An advertisement or an appeal by a leader may be categorised as open communication where, irrespective of the end result, communication is generated and it is terminated without waiting for the end result. Sometimes, the same thing is repeated to make it effective. But, in close communication, e.g. an order by a superior to a junior to do a specific job, communication process is not closed till the end result is achieved. We all want to communicate effectively whether orally, in writing, or through body language. For this, we employ a number of means, such as words, phrases, fonts, colours, pictures, emotions, icons, symbols, costumes, tone, pitch, scale, graphs, curves, quotations, poems, songs, couplets, etc. Depending upon the situation and method of communication, a combination of some or all of these is employed. All of us want that our communication should be well received by our recipient. It is believed that if the reception of the communication is achieved, the chances of achieving the end result are more.

There are many common barriers to a successful communication. Two such barriers are message overload (receiving too many messages at the same time), and message complexity. Three major parts that convey meaning in human face-to-face communication are body language, voice tonality and words. In a research to determine how people make meaning when a speaker says one thing but means another, it was found out that 55 per cent of impact is determined by body language—postures, gestures, and eye contact, 38 per cent by the tone of voice, and 7 per cent by the content or the words spoken. Exact percentage of influence may differ due to variables such as the perceptions or biases of the listener and the speaker.

Anything that prevents understanding of the message is a barrier to communication. Many physical and psychological barriers exist: Culture, background and bias; Noise; Personality; Perception; Message; Environment of communication; Psychological condition.

A system of signals, e.g. voice sounds, intonations, or, gestures, can communicate thoughts. A language employs communicating with signals, voice, sounds, gestures, or, written symbols. Animals use sounds and gestures to communicate with each another and, thus, animal communication can be considered a different language. Human languages can be described as a system of symbols and rules by which the symbols are manipulated. Most human languages use patterns of sounds and/or gestures for symbols, which enable communication with others around them. There are thousands of human languages and dialects, and these seem to share certain properties, even though many shared properties have exceptions.

Non-verbal Communication

Nonverbal communication is the process of communicating through sending and receiving wordless messages. Such messages can be communicated through gestures, body language or postures, facial expression and eye contact, object communication such as clothing, hair style, symbols, etc., as well as through an aggregate of the above, such as behavioral communication. Nonverbal communication plays a key role in our day-to-day life in all our engagements.

Speech may also contain nonverbal elements known as paralanguage including voice quality, emotion and speaking style, as well as prosodic features, such as rhythm, intonations and stress. Likewise, written texts have nonverbal elements such as handwriting style, icons, spatial arrangement of words, or, use of emoticons, i.e. a portmanteau of the words emotion (or emote) and icon, which is a symbol or combination of symbols used to convey emotional content in written form. Other communication channels such as telegraphy fit into this category, whereby signals travel from person to person by an alternative means. These signals can in themselves be representative of words, objects or merely be state projections. Trials have shown that humans can communicate directly in this way without body language, voice tonality or words.

Many of the problems that occur are the direct result of people failing to communicate effectively. Faulty communication causes most problems and it leads to confusion and causes a good plan to fail. Communication is the exchange and flow of information and ideas from one person to another, and involves a sender transmitting an idea to a receiver. Effective communication occurs only if a receiver understands exact information or idea that a sender intends to transmit. It is the chain of understanding that integrates the group from top to bottom, bottom to top and side to side.

While Listening

Listening is hearing with a purpose – to gain information, obtain directions, understand others, solve problems, share interest, see how another person feels, show support, etc. It requires that a listener attends to the words and feelings of the sender for understanding. It takes the same or more amount of energy than speaking. It requires a receiver to hear various messages, understand their meaning and, then, verify the meaning by offering feedback.

Spend more time listening than talking. Do not finish the sentences of others and do not answer questions with questions. Be aware of biases. Never daydream or be preoccupied with own thoughts. Let the speakers talk. Take brief notes which help to concentrate on what is being said. Plan responses after the speakers finish speaking. Provide feedback, but do not interrupt incessantly. Analyze by looking at all the relevant factors and asking open-ended questions. Keep conversations on what others say, not on what interests them. Ask for clarity, in case of doubts or ambiguity

While Speaking

When speaking or trying to explain something, ask the listeners if they are following you. Ensure the receiver has a chance to comment or ask questions. Try to put yourself in the other person's shoes - consider the feelings of the receiver. Be clear about what you say as well as what is the purpose of communication. Look at the receiver, when there is direct talk. Make sure your words match your tone and body language (Nonverbal Behaviors). Vary your tone and pace. Repeat if necessary. Emphasize the brass-tacks. Do not be vague, but also, do not complicate what you are saying with too much detail. Do not ignore signs of confusion.

After this theoretical information about communication, the following educative and hilarious incidents show the results of effective as well as ineffective communication to prove *what we say is as important as how we say,* which is one of the most important aspects of effective communication, particularly about the power of words:

1. A king visited a great saint to know about his future. The saint after studying the king's horoscope said: *All your kiths and kins will die before you die. Thus, you will die with no one beside you.* The king got enraged and ordered for imprisonment of the saint. Teacher of the saint got this information and he decided to save his disciple. He came to the same place. King visited this saint too and sought his prediction about future. The Teacher said: *You are bestowed with the God's blessings. You will live longer than your kiths and kins, and serve your subject for a longer period of time.* The king was happy. He asked the teacher to ask for anything as reward. The teacher asked the king to release the imprisoned saint. The king granted the release.
2. A blind boy sat on the steps of a building with a hat by his feet. He held up a sign which said: I am blind, please help. There were a few coins lying in the hat. A learned and kind gentleman was passing by. He stopped, took out a few coins from his pocket and dropped them into the boy's hat. He then took the sign, turned it around and wrote something. He put the sign back so that everyone who walked by would see the newly-written words. Soon, the hat began to fill up. Many more people were giving money to the boy. That afternoon, the man who had changed the sign came to see how things were. The boy recognized the footsteps and asked: *Were you the one who did something to my placard this morning? What actually did you do?* The man said: *I only wrote the truth. I wrote what you had written, but in a different way. I wrote: 'Today is a beautiful day but I cannot see it.'* Of course, both conveyed that the boy was blind. But the second sign was more effective.

Sword has word in it. The proper use of words has great effect in legal, administrative and commercial matters. However, confusion may arise when a sender says something to convey something but the receiver understands something else. It happens particularly when the language of communication is not known to one of the parties:

> An overweight Punjabi couple was passing through a small town of West Bengal in the morning hours. Two Bengali gentlemen crossed each other by the side of the couple. One asked: Dada, kemon chol chhey? (Brother, how is life?). The other replied: Mota moti chol chhey. (More or less fine.) This response must have enraged the Punjabi couple that these men were passing personal remarks on their physical appearance.

It is advisable to get the meaning clarified and not to respond, if we do not understand the language of our sender. Let us observe again:

A Gujarati gentleman was walking after bath with a towel wrapped

> **"Communication is the exchange and flow of information and ideas from one person to another, and involves a sender transmitting an idea to a receiver. Effective communication occurs only if a receiver understands exact information or idea that a sender intends to transmit. It is the chain of understanding that integrates the group from top to bottom, bottom to top and side to side."**

Active listening requires that a listener attends to the words and feelings of the sender for understanding. It takes the same amount or more energy than speaking. It requires a receiver to hear various messages, understand their meaning and, then, verify the meaning by offering feedback.

around. One Telugu gentleman asked him: *Bathroom teri maa?* (Where is the bathroom?) The Gujarati gentleman repeated the same to the Telugu gentleman. Realizing the mistake, the Telugu gentleman repeated his question in English this time and asked why the other person had repeated his words. The Gujarati gentleman explained: *Since I was not sure what you meant, I repeated the same apprehending that to be an abuse. At least, I had the satisfaction of returning the abuse.*

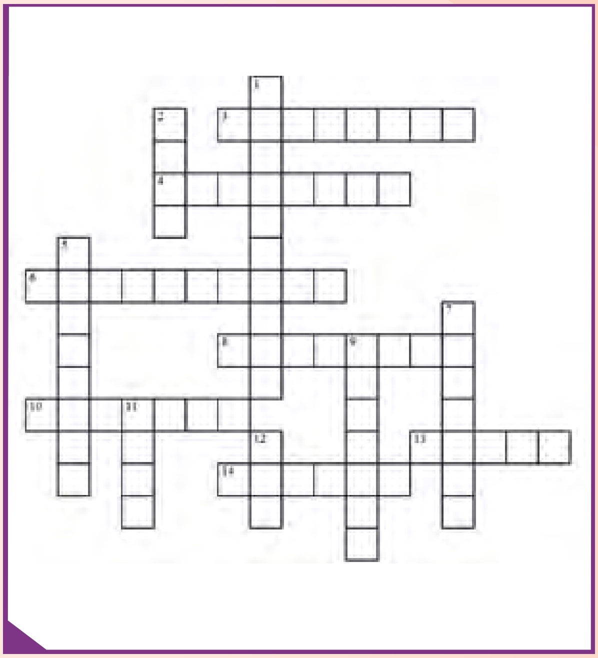
Tips for Effective Communication

- Know the purpose of communication
- Direct the communication to the person/persons for whom it is meant
- Use proper media of communication and avoid unknown words, jargons and foreign words
- Use proper method of communication such as e-mail, phone, sms, fax, speed post, registered post and courier
- Keep it brief but complete so that nothing is left out
- Wherever possible, make your communication simple and self explanatory
- Use judiciously the ornaments such as fonts, underlines, punches, icons, pictures, phrases, idioms, etc.
- In commercial and legal drafts, avoid use of word etc. which is non-specific and can assume any meaning
- For urgent matters, use direct communication, preferably face-to-face, if possible. Keep track of result
- For important matters, use face to face communication, if possible, supporting with a written communication so that its importance is registered.

The proper use of words has great effect in legal, administrative and commercial matters. However, confusion may arise when a sender says something to convey something, but the receiver understands something else. It happens particularly when the language of communication is not known to one of the parties…

According to Nobel Laureate Nelson Mandela, *'If you talk to a person in the language he/she knows, it goes to his/her head. But if you talk to a person in the language he/she understands, it goes to his/her heart.'* The word communicate appears to be derived from the words come, unite and act. So, it tries to create a common and shared understanding. Effective communication may do it better. ■

CROSS WORD 052



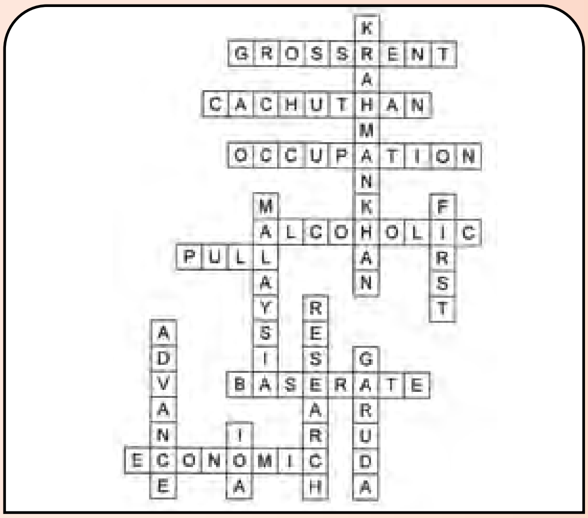
ACROSS

3. A Member in Practice can become _______ partner in the family business with the specific permission of the Council of the ICAI under regulation 190A.
4. One of the six styles of leadership identified by the Spreier, Fontaine & Mlloy. (8)
6. It has been clarified by the CBEC that service tax liability does not arise on Underwriting fee or Underwriting commission received by the primary dealers during the course of the dealing in ________ securities. (10)
8. Member in Practice may become a ________ of any company. (8)
10. The apex body for Indian software industry.
13. An MoU has been entered into between the Core Group on IFRS (constituted by the Ministry of Corporate Affairs, Government of India) and IFRS Council of _____. (5)
14. Name the feature that replaced the toolbars in Excel 03. (6)

DOWN

1. RIM is a Canadian telecommunication and wireless device company best known as the developer of the _____ _____smart phone. (5,5)
2. Due date for considering the applications, under the approval route, for buyback of________ has been extended from June 30, 2010 to June 30, 2011.(4)
5. Financial capital maintenance can be measured in either nominal ________ units or units of constant purchasing power.(8)
7. Recently ICAI signed a Memorandum of Understanding with the CPA ______. (7)
9. The Reserve Bank of India has recently decided to permit trading of currency _______ on spot US-INR rate in the currency derivatives segment. (7)
11. Costs that have been incurred in a project, but have not produced value towards the project's objectives are known as ______ costs. (4)
12. A capital raising tool, whereby a listed company can issue equity shares, fully and partly convertible debentures, or securities other than warrants, which are convertible into equity shares, to a Qualified Institutional Buyer.(3)

Note:
Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured learning activities under the activity 'Providing solutions to questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.



SOLUTION Crossword 051

1 An accountant had just read the story of Cinderella to his four-year-old daughter for the first time. The little girl was fascinated by the story, especially the part where the pumpkin turns into a golden coach. Suddenly she piped up, "Daddy, when the pumpkin turned into a golden coach, would that be classed as income or a long-term capital gain?"