THE ARTICLED

U'r Altitude is determined by Ur Attitude

January 2010

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YOU WILL SEE...

Another Day, another Month, another Year,
another Smile, another Tear, another Winter,
A Summer too, But there will never be Another You!
May Lovely, Happy Times
Decorate this Time of the Season.
May Warm, Special Memories brighten your New Year,
may the Wonder of Christmas be with you Forever.

INCOME FROM HOUSE PROPERTY

Numerous Amendments, Notifications, Circulars, Notices, Judgments, etc are made in every Act. These changes are made due to changing economic environment, complexity in the market, development of Information Technology; etc. These transitions have further complicated the tax matters involving high costs. The Direct tax Code (DTC) is also of the similar nature where all direct taxes have been brought in a single code and compliance procedures are unified. One may have the curiosity to know why is it that the DTC is introduced separately and why not through the Finance Act.

Code is set of rules on any subject. Here, it determines the rules for direct taxes. The DTC is just a bill which is still waiting for president's consent to become the law of land which might come in force from 01st April, 2011. It is conveyed in simple language about the scope and amplitude of the provisions of law with the purpose of elimination of ambiguity. The discussion in this article will be confined only to change in Income from House Property, one of the heads of income which is taxed which will be analyzed.

Gross Annual Value

As per Section 22 of the tax provisions the Income chargeable under House Property for let out property was determined by the annual value fixed by the authorities or the fair market value or the actual rent received. But now, the concept of contractual rent and presumptive rent has come into picture. Where, contractual rent is rent receivable by an assessee as per the terms of rental agreement and presumptive rent is 6% of the ratable value fixed by the local authority for the same property or if in case, the ratable value is not fixed, the same will be taken as 6% of the cost of construction or acquisition of the property. The amount chargeable to tax will be the higher of contractual or presumptive rent. If the property is not let out for the *whole year*, the GAV for the same can be taken as nil. Thus, it can be analyzed that even if the property is let out for a part of the year, the minimum amount of income chargeable to tax will the presumptive rent calculated at the rate of 6%.

Other Sources Income

The incomes specified as income from Other Sources, will now be taxed as house property only if the letting of both is inseparable like machinery, plant, furniture as any other facility.

Deductions

The deduction towards the Gross Annual value is now reduced from 30% (as per Tax Law) to 20% (as per the DTC). Thus, due to this the taxable income of the assessee will increase.

The deductions towards interest on loan taken for purchase, construction, repair, renewal, reconstruction of the property will be without any limit for Let out property. Well, in case of deemed let out property, we can say that the same deduction can be claimed as that of let out property i.e. without any limit.

Previously deduction of interest on loan was allowed to the extent of Rs.1,50,000/- for self occupied property, but now the deduction for self occupied property will be nil.

As per tax provisions *vacancy allowance* was given to an assessee where the actual rent received was taken as the gross value only if in case the rent received or receivable was less than what should have been received due to such vacancy. The same is not given in DTC which will subsequently put additional burden on the tax payer.

"An optimist stays up until midnight to see the New Year in.
A pessimist stays up to make sure the old year leaves."

Where commercial property is held, the renting of same will now be taxable as house property notwithstanding the usage of the property, thus, restricting the benefits of deductions which were allowed in business or other income.

Thus, as per the DTC, an assessee will end up paying more tax in comparison to current tax law. Though DTC is replacing the Direct Tax Laws and making things simpler, it is also reducing the tax benefits to the common man and hope it leaves no space for litigations (?).

\- SNEHA

THE MOST THINGS TO KNOW

The most useless thing to do................ Worry
The greatest loss .... Loss of self-respect.
The most satisfying work .... .Helping others.
The ugliest personality trait................. Selfishness.
The greatest problem to overcome.......... Fear.
The most Effective sleeping pill........... Peace of mind.
The most crippling failure disease........ Excuses.
The most powerful force in life............ Love.
The world's most incredible computer..... The Brain.
The worst thing to be without.............. Hope.
The deadliest weapon.......................... The tongue.
The two most power-filled words.......... "I Can".
The greatest asset................................ Faith.
The most prized possession................. Integrity.
The most beautiful attire....................... A Smile.
The most powerful channel of communication...... Prayer.
The most contagious spirit.................. Enthusiasm.

Write to The Editor

"Continuous learning process" is the vital essence of our Profession. To keep ourselves in pace with the emerging concepts, is what we have endeavored through our E-Newsletter, "The Articled". We also intend to build this into a common knowledge sharing platform for all and welcome any contributions to strengthen this common pool. Your views will help us fortify the forthcoming Issues. You can mail us at newsletter@dnsconsulting.net or write to: The Editor, #10, South Park Road, Nehru Nagar, Seshadripuram, Bangalore – 560020.

A new year is unfolding - like a blossom with petals curled
Tightly concealing the beauty within.

OFFICIAL LIQUIDATORS

As per Companies Act 1956, the Official Liquidators are the officers, who are appointed by the Central Government under section 448, for the purpose of conducting liquidation proceedings of those companies which are ordered to be wound up by the High Court.

Functionally the Official Liquidator is under the supervision and control of the High Court but administratively is under the control of the Central Government through the Regional Directors who supervise their responsibilities.

A. Appointment:

An official liquidator may be

A member from the panel of the professional firms of Chartered Accountants, Advocates, Company Secretaries, Cost and Work accountants or firms having a combination of these professionals, which the Central Government may constitute for the Tribunal.

A body corporate approved by central government.

A whole-time or part-time officer appointed by the central government.

B. Role:

The role of official liquidator has been well discussed in various provisions under section 448 to 463 of the Companies Act 1956.

The Primary function of the Official liquidator is to administrate the assets of companies under liquidation, sale of the assets and realization of all debts of companies in liquidation for the purpose of distributing the same among the various creditors and other shareholders of the companies and to finally dissolve such companies after the affairs are completely concluded.

When a company is put to winding up by an order of the High Court, the Official Liquidator attached to the said High Court takes possession of the company's assets, books of accounts, etc. and liquidates the company as per the further orders of the High Court.

The procedure of liquidation is prescribed under the Companies (Court) Rules, 1959. These rules are approved by the Honorable Supreme Court of India and notified by the Central Government.

C. Powers:

i) In compulsory winding up of a company:

(a) As per section 457(1) of The Companies Act 1956, the liquidator has the following powers with the sanction of court:

to institute and defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;

to carry on the business of the company so far as may be necessary for the beneficial winding up of company;

to sell the immovable and movable property and actionable claims of the company by public auction or private contract;

to raise on the security of assets of the company any money requisite;

to do all such acts necessary for winding up the affairs of the company and distributing its assets.

to disclaim onerous property

(b) As per section 457(2) of The Companies act 1956, the liquidator has the following powers without obtaining the sanction of court:

to do all acts and to execute all deeds, receipts and documents in the name and on behalf of company and to use common seal of the company for that purpose;

to inspect the records and returns of company;

to prove, rank and claim in the insolvency of any company;

to draw, accept, make and endorse any negotiable instruments in the name and on behalf of the company;

to appoint an agent to do any business which the liquidator is unable to do himself.

ii) In winding up subject to the supervision of court.

As per section 546 of The Companies Act 1956, the liquidator has the following powers with the sanction of court:

to pay any classes of creditors in full;

to make any compromise or arrangement with the creditors to have any claim ascertained;

to compromise any call, debt or liability.

iii) In voluntary winding up of company

Official liquidator may exercise the following powers with the sanction of special resolution in the case of members' voluntary winding up; with the sanction of court or committee of inspection in the case of creditors' voluntary winding up; with the sanction of creditors if there is no such committee:

to institute and defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;

to carry on the business of the company;

to sell the immovable and movable property and actionable claims of the company by public auction or private contract;

to raise on the security of assets of the company any money requisite.

iv. The following powers can be exercised by him without any sanction:

to do all acts and to execute all deeds, receipts and documents in the name and on behalf of company and to use common seal of the company for that purpose;

to inspect the records and returns of company;

to prove, rank and claim in the insolvency of any company;

to draw, accept, make and endorse any negotiable instruments in the name and on behalf of the company;

to appoint an agent to do any business which the liquidator is unable to do himself;

to exercise the power of court of settling the list of contributories;

to exercise the power of court of making calls;

to pay debts of company and adjust the rights of contributories among themselves.

D. Duties

i) Preliminary Report:

It is mandatory for liquidator to submit a preliminary report to the court within the time span of 6months from the winding up order.

New Year's Resolution: To tolerate fools more gladly, provided this does not encourage them to take up more of my time.

And this report includes, the capital employed by the company, estimated amounts of assets and liabilities of the company and cause for the failure.

ii) **Further Report:**

It is optional report by the liquidator and there is no time limit for furnishing the further report.

It includes particulars relating to promotion and formation of the company frauds if any committed in the company and other related matters.

iii) **Custody of company's property:**

It is the duty of liquidator to take all properties of the company into his custody.

iv) **Maintenance of books:**

The liquidator has to maintain proper books of accounts and relevant documents and also has to maintain minute's books of meeting of creditors and share holders.

v) **Confidentiality:**

The official liquidator must not disclose information about a case to any person who does not have a legitimate reason to have the details of the case

- RAMESH

WELCOME TWENTY - TEN

H ours of happy times with friends and family
A bundant time for relaxation
P rosperity
P lenty of love when you need it the most
Y outhful excitement at lifes simple pleasures

N ights of restful slumber (you know - dont' worry be happy)
E verything you need
W ishing you love and light

Y ears and years of good health
E njoyment and mirth
A angels to watch over you
R embrances of a happy years!

Many people look forward to the New Year for
a new start on old habits.

SA - 299 - RESPONSIBILITY OF JOINT AUDITORS

First of all who are Joint Auditors? When more than one Auditor is appointed to conduct the audit jointly and report on the financial statements of large entities, they are referred to as Joint auditor.

Now, after understanding who Joint auditors are, the next question is how they perform their work? How is work divided among themselves? Is there any statute or law which governs the division of work? The division of work is done by mutual discussion; there is no statute or law for division of work. The division of work would usually be in terms of audit of identifiable units or specified areas.

Due to the nature of the business if such division of work is not possible then division of work may be with reference to items of assets/liabilities or income/expenditure or with reference to periods of time i.e., if two auditors are appointed as Joint auditor one can audit the assets and the other can audit the liabilities or one can audit the income and other can audit expenditure or one can audit for the period covering first six months and the other can audit the period covering last six months.

Certain areas of work, owing to their importance or owing to the nature of the work involved, would often not be divided and would be covered by all the Joint Auditors. The division of work among the Joint Auditors as well as the areas of work to be covered by all of them should be adequately documented and preferably communicated to the entity.

Now, let us analyze the relationship between Joint Auditors. Where, in the course of his work, a joint auditor comes across matters which are relevant to the areas of responsibility of other joint auditors and which deserve their attention, or which require disclosure or require discussion with, or application of judgment by, other joint auditors, he should communicate the same to all the other joint auditors in writing.

This should be done by the submission of a report or note prior to the finalization of the audit. If any matter as referred above are brought to the attention of the entity or other joint auditors by an auditor after the audit report has been submitted, the other joint auditors would not be responsible for those matters.

The next question is how the responsibility is divided among the Joint Auditors? Are they all liable for the complete work undertaken by all of them or responsible only for the portion of work allotted to them? The answer is each joint auditor is responsible only for the work allocated to him, whether or not he has prepared a separate report on the work performed by him.

Does this mean that there is no Joint responsibility of Joint auditors? Then without appointing joint auditors I can myself (as an entity being audited) divide the work and appoint separate auditors for separate work and held them responsible for negligence if any. The point I am trying to make here is even if the work is completely divided among the Joint Auditors there are few areas wherein they will be held responsible jointly and severally, like they are responsible –

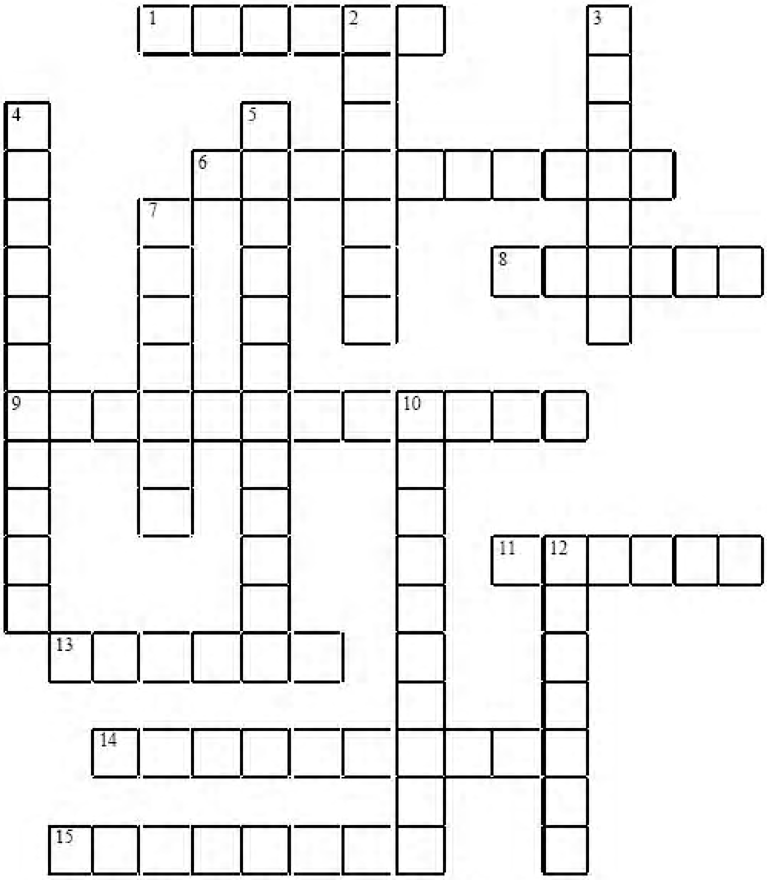
- In respect of the audit work which is not divided among the joint auditors and is carried out by all of them;
- In respect of decisions taken by all the joint auditors concerning the nature, timing or extent of the audit procedures to be performed by any of the joint auditors. It may, however, be clarified that all the joint auditors are responsible only in respect of the appropriateness of the decisions concerning the nature, timing or extent of the audit procedures agreed upon among them; proper execution of these audit procedures is the separate and specific responsibility of the joint auditor concerned;
- In respect of matters which are brought to the notice of the joint auditors by any one of them and on which there is an agreement among the joint auditors;

- For examining that the financial statements of the entity comply with the disclosure requirements of the relevant statute; and
- For ensuring that the audit report complies with the requirements of the relevant statute.

Normally, the joint auditors are able to arrive at an agreed report. However, where the joint auditors are in disagreement with regard to any matters to be covered by the report, each one of them should express his own opinion through a separate report. A joint auditor is not bound by the views of the majority of the joint auditors regarding matters to be covered in the report and should express his opinion in a separate report in case of a disagreement.

\- BHERULAL

CROSSWORD - 31



ACROSS

1 To accuse formally of a crime.(6)

6 This is a person who has disobeyed the law, or is guilty of some crime or failure of duty.(10)

8 The act of violating a legal obligation or a failure to do a duty.(6)

9 Action or inaction which binds a person legally even though it was not intended as such.(12)

11 Intentionally giving up a right.(6)

13 A government controlled area where only certain uses of the land are permitted.(6)

14 Being Insecure.(10)

15 Displacing an existing valid contract with a new one, which happens with the mutual agreement of all the concerned parties.(8)

DOWN

2 A supplement to a will.(7)

3 False and defamatory spoken words tending to harm another's reputation, business, or means of livelihood.(7)

4 To misuse or embezzle funds.(11)

5 Taking back of property by a seller or a lender from the buyer or the borrower due to default of payment.(12)

7 Any willful attempt or threat to inflict injury on some person, with an ability to carry out the threat.(7)

10 A process that is used to ensure the privacy and security of a person's confidential financial information.(10)

12 A legislative or executive proclamation granting pardon for committing some specific crime.(7)

TRANSFER PRICING

One of the objectives of transfer pricing study and related provisions under Income Tax Act, 1961 is to scrutinize the avoidance of tax by Multi-National Enterprises (MNE's) in the form of exploitation of transfer pricing.

To brief in, the general hypothesis with respect to Transfer Pricing is that the transactions between associated/related parties **may** not be influenced by external market forces alone, whereas it is essential that the transactions are unbiased to such dynamics of market forces and correspond to their true nature in order to give an authentic picture. As such, even the tax administrations should not presume that MNE's have manipulated their prices because many MNEs are also independent associations and do negotiate in the same manner. But if transfer pricing does not reflect the market forces it could impinge on the Tax revenues of the other Countries.

This article shall deal with the rule for comparison of uncontrolled transactions as mentioned in the Arm's Length Principle. The Article 9 of Organization for Economic Co-operation and Development (OECD) model tax convention provides the following:

"(when)… condition are made or imposed between two associated enterprises in their commercial or financial relations which differ from those which would be made between independent enterprise, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

In order to have acceptable transfer pricing between MNEs it is necessary for the MNEs to follow **Arm's Length Principle**, which adopts separate entity approach and treats an associate as an independent enterprise on same footing for the purpose of taxation.

The Rule of Arm's Length- Rule 10 B (3)

Rule 10B(3) of Transfer pricing regulations provides that an uncontrolled transaction shall be made comparable to an international transaction, if difference does not materially affect the price or profit in open market or reasonable accurate adjustments can be made to remove such material effect. This article tries analyzing the factors that could affect the comparability of such transactions.

Comparability analysis is one of the most vital functions in application of Arm's Length Principle. It is also very essential in selecting the most appropriate method of determining the nature of transactions involved in transfer pricing. The success of such comparability analysis generally depends upon the nature and adequacy of the comparables, which are corresponding in independent situations and can also be used to justify the tested transaction prices at arm's length.

As we are aware every enterprise operates in different dynamics and their objectives are also unique & distinct from the others, hence it is obvious that the price for a similar product and service may differ from an enterprise to another enterprise.

There are several factors either at transaction level or at enterprise level that might affect the prices of any commercial transactions. Such factors require reasonable and accurate adjustment with respect to the prices, to make it comparable.

Following are the few important factors discussed in brief, to consider when implementing such comparables:

CHARACTERISTICS OF PROPERTY OR SERVICES:

In determining the comparability of controlled and uncontrolled transactions it is very indispensable to compare the specific characteristics of such property or services in the open market, in order to determine the prices of such transactions. It is also very essential to understand that the similarity in the nature of such property or services transferred will have a superior impact for the comparison of the prices of such transactions. Some of the few characteristics that are useful in comparing transactions in case of tangible property could be physical features, quality, production process, supply volume, market conditions such as demand and supply; for services rendered, the nature & extent of services, manpower cost, analytical & technical issues; for intangible property, type of transactions, brand value, marketing approach, estimated future benefits.

FUNCTIONAL ANALYSIS (F-A-R):

The returns from each deal performed are normally derived through the functions which the independent bodies perform respectively. Thus the comparison of the functions performed by the parties is necessary to determine whether the controlled and uncontrolled transactions are comparable. Such comparison is based on a "FAR" study, functional analysis, which contemplates to compare the economically significant activities. Functional study thus forms the basis, and provides a framework for comparability study and subsequent determination of the most appropriate method. It assists in proper assessment of comparability for the purpose of arm's length study.

Functional Analysis is, as such, a process of finding and organizing facts about a business in terms of its **functions, risks and assets** in order to identify how these are divided between the parties involved in the transaction. An analysis in order to determine the profits made on functions, assets and risks to determine the nature of functions performed the degree of risk undertaken and the nature of assets used in such transactions.

CONTRACTUAL TERMS:

The contractual terms in the arm's length classifies the responsibilities, risks and benefits that are to be divided between the parties for a transaction stirring between them. In case of non-existence of such contracts in writing, general economic principles and adopted policies must be presumed for such transactions.

Independent parties normally shall abide by the contractual relationship they enter into but associated parties may not maintain such contractual relation in order to derive benefit, thus it is very essential to examine the conduct of both the parties are a mere sham and not been followed or are based on general implied contracts.

ECONOMIC CIRCUMSTANCES:

The market scenario and the type of market also influence the Arm's length pries. A transaction of same property or service may be at varied prices due to the influence of the nature of market. It is essential those the markets in which the independent and associated enterprises operate are comparable and that the differences do not have the material effect on the prices of the transactions.

The factors of market that influence the determination and comparability of prices of transactions are:

- Geographic location,
- Size of the market,
- Competition in the market and its extent,
- Demand and Supply,
- Government regulations and its extent,
- Substitute of the product in the market,
- Costs of production,
- Period in which the transaction have occurred and so forth.

BUSINESS STRATEGIES:

Innovation, new product development, risk aversion, etc are few aspects of an enterprise that are taken into consideration for the purpose of business strategies and pricing policies. Business strategies also ought to be considered and examined in order to determine the comparability of controlled and uncontrolled transactions for the purpose of transfer pricing. It will also be considered whether business strategies have been devised by the MNE group. They may also include market penetration schemes thus considering various policies for pricing.

Thus arm's length principle has stated a lucid depiction with respect to the fortitude of transfer pricing transactions and their comparability study with the normal transactions so as to recognize the actual transactions undertaken, evaluating separate and combined transactions and more importantly recognizing revenue on the most appropriate basis.

- PUNEETH

STRAIGHT FROM ICAI

CA. Uttam Prakash Agarwal, President, the Institute of Chartered Accountants of India (ICAI), **has been awarded with the honorary membership of the Certified Practising Accountant of Australia by Prof. Richard Petty, President, CPA Australia** Ltd. CPA Australia is one of the largest accounting bodies in Australia. CA. Uttam Prakash Agarwal was bestowed with this honor during his visit to Washington D.C. to attend the Board Meeting of International Federation of Accountants (IFAC is the global organization for the accountancy profession to protect the public interest by encouraging high quality practices by the world's accountants).

This was a historic moment for the Institute as it was the first time that such an honor was bestowed on any President of the ICAI. The honor was in recognition of his efforts made to build ties across respective organizations at international levels. In a major move to expand the professional horizons of Indian Chartered Accountants, in February 2009, the Institute of Chartered Accountants of India has signed a Mutual Recognition Agreement (MRA) with CPA Australia Ltd, to recognize the qualification, training of each other and admit the members in good standing by prescribing a bridging mechanism.

CA. Uttam Prakash Agarwal, was also awarded an honorary membership of the Institute of Chartered Accountants in Australia (ICAA is the professional body representing Chartered Accountants in Australia) by Mr. Graham Mayor, CEO of ICAA in October 2009 during his visit to Australia where he was heading ICAI's International Study Tour to Australia.

ANSWERS TO CROSSWORD - 31

ACROSS:

1	Bylaws
3	Asylum
5	IPSO
7	Patent
9	Addendum
10	Egress
12	Highseas
13	Heuristic
14	Corrigendum
15	Resolution

DOWN:

2	Washsale
4	Hedge
6	Garnishment
8	Testator
11	Caption

New Year's Day is every man's birthday

APPLICABILITY OF INTEREST RATES AND OTHER CHARGES

In accordance with the directives on interest rates on advances issued by Reserve Bank of India from time to time, Banks charge interest on loans / advances / cash credits / overdrafts or any other financial accommodation granted / provided / renewed by them or discount usance bills.

For the purpose of determining the size of the loan and the applicable rate of interest, Banks club term loans and working capital advances together

I) Benchmark Prime Lending Rate (BPLR) and Spreads

With effect from October 18, 1994, RBI has deregulated the interest rates on advances above Rs.2 lakh and the rates of interest on such advances are determined by the banks themselves subject to BPLR and Spread guidelines.

BPLR to be made uniformly applicable at all branches of a bank.

- Banks charge interest not exceeding BPLR : For credit limits up to Rs.2 lakhs. This is because of the need to continue with concessionality for small borrowers and given the prevailing credit market in India.
- Banks offer some loans at below BPLR : Keeping in view the international practice and to provide operational flexibility to commercial banks in deciding their lending rates, banks offer loans at below BPLR to exporters or other creditworthy borrowers, including public enterprises, on the basis of a transparent and objective policy approved by their respective Boards. Banks to continue to declare the maximum spread of interest rates over BPLR.
- Banks are free to determine Lending Rates : This is in context of without reference to BPLR and regardless of the size in respect of following loans :
    i. Loans for purchase of consumer durables;
    ii. Loans to individuals against shares and debentures / bonds;
    iii. Other non-priority sector personal loans including credit card dues;
    iv. Advances / overdrafts against domestic / NRE / FCNR (B) deposits with the bank, provided that the deposit/s stands / stand either in the name(s) of the borrower himself / borrowers themselves, or in the names of the borrower jointly with another person;
    v. Finance granted to intermediary agencies including housing finance intermediary agencies for on-lending to ultimate beneficiaries and agencies providing input support.;
    vi. Discounting of Bills;
    vii. Loans / Advances / Cash Credit / Overdrafts against commodities subject to Selective Credit Control;
    viii. To a co-operative bank or to any other banking institution;
    ix. To its own employees;
    x. Loans covered by refinance schemes of term lending institutions

II) What is Benchmark Prime Lending Rate (BPLR) and How it is determined?

BPLR is defined as lending rate that a bank charges to its most creditworthy or prime corporate customers (near zero risk), so that the earnings from such lending will cover all costs and leave a margin adequate enough to service the capital.

One resolution I have made, and try always to keep, is this:
To rise above the little things

In order to enhance transparency in banks' pricing of their loan products as also to ensure that the BPLR truly reflects the actual costs, while determining their Benchmark PLR, Banks take into account their (i) actual cost of funds, (ii) operating expenses and (iii) a minimum margin to cover regulatory requirement of provisioning / capital charge and profit margin.

Banks announce a Benchmark PLR with the approval of their respective Boards.

- The Benchmark PLR will be the ceiling rate for credit limit up to Rs.2 lakhs
- All other lending rates can be determined with reference to the Benchmark PLR arrived at as above by taking into account term premia and / or risk premia.

In the interest of customer protection and to have a clear picture, in regard to actual interest rates charged to borrowers, banks continue to provide information on maximum and minimum interest rates charged together with the Benchmark PLR.

III) Floating Rate of Interest on Loans: Differential treatment for new loans and existing loans

The methodology of computing the floating rates to be objective and mutually acceptable to counter parties.

- Methodology adopted for all new loans: As per RBI directives, Banks to use only external or market-based rupee benchmark interest rates for pricing of their floating rate loan products. Banks not to offer floating rate loans linked to their own internal benchmarks or any other derived rate based on the underlying.
- Methodology adopted in case of existing loans of longer / fixed tenure: Banks to reset the floating rates according to the above method at the time of review or renewal of loan accounts, after obtaining the consent of the concerned borrower.

IV) Levying of penal rates of interest

As per RBI directives, Banks are supposed to formulate a clear policy for charging penal interest with the approval of their Board of Directors. Penal interest to be governed by well-accepted principles of fairness, incentive to service the debt and due regard to genuine difficulties of customers

- Penal interest not chargeable: In the case of loans to borrowers under priority sector, no penal interest should be charged for loans up to Rs.25,000.
- Penal interest chargeable for reasons: Default in repayment, non-submission of financial statements, etc.

V) Enabling clause in loan agreement: Not applicable to fixed rate loans

Banks incorporate the following proviso in the loan agreements in the case of all advances, including term loans, thereby enabling banks to charge the applicable interest rate in conformity with the directives issued from RBI time to time.

"Provided that the interest payable by the borrower shall be subject to the changes in interest rates made by the Reserve Bank from time to time."

Thus banks are obliged to give effect to any revision of interest rates whether upwards or downwards, on all the existing advances from the date that the directives / revised interest rate (change in BPLR and Spread) come into force, unless the directives specifically provide otherwise.

However it will not be applicable in case of Fixed Rate Loans.

VI) Interest on withdrawals against uncleared effects: Applicability

- Withdrawals allowed against cheques sent for clearing:

In other words uncleared effects (e.g. uncleared local or outstation cheques). They are in the nature of unsecured advances; hence banks charge interest on such drawals as per the directive on interest rates on advances.

- Credits in respect of cheques sent for collection:

As a measure of customer service, the above instruction will not apply to the facility afforded to depositors for immediate credits in respect of cheques sent for collection.

VII) Loans under consortium arrangement: All member banks need not charge uniform rate of interest

Banks need not charge a uniform rate of interest even under a consortium arrangement. Each member bank may charge rate of interest on the portion of the credit limits extended by it to the borrower, subject to its BPLR.

VIII) Charging of interest at monthly rests: a. Not to increase the burden on borrowers b. Not applicable to Agricultural advances

Banks switched-over to the system of charging interest at monthly rests from quarterly rests, with effect from April 1, 2002. However, the effective rate not to go up merely on account of the switchover to the system of charging / compounding interest at monthly rests and increase the burden on the borrowers. For instance, if a bank is charging in a borrower's account an interest rate of 12 percent with quarterly rests, the effective rate is 12.55 percent with monthly rests.

- Interest at monthly rests not applicable to Agricultural advances: RBI Instructions on charging interest at monthly rests shall not be applicable to agricultural advances Banks charge interest on agricultural advances for long duration crops at annual rests.
- Fixing of due dates: Other agricultural advances in respect of short duration crop and allied agricultural activities such as dairy, fishery, piggery, poultry, bee-keeping, etc., banks take into consideration due dates fixed on the basis of fluidity with borrowers and harvesting / marketing season while charging interest
- <u>Compounding of interest</u>: If the loan/installment becomes overdue, compounding of interest is applicable.
- <u>Total interest debited to an account not to exceed the principal amount</u>: Applicable in respect of short term advances granted to small and marginal farmers.

IX) Zero percent Interest Finance Schemes for Consumer Durables: Do not get misled

As per RBI norms:

- Banks to refrain from offering low / zero percent interest rates on consumer durable advances to borrowers through adjustment of discount available from manufacturers / dealers of consumer goods. As such loan schemes lack transparency in operations and distort pricing mechanism of loan products. These products do not also give a clear picture to the customers regarding the applicable interest rates.
- Banks not to promote such schemes by releasing advertisement in different newspapers and media indicating that they are promoting / financing consumers under such schemes.
- Banks to refrain from linking their names in any form / manner with any incentive-based advertisement where clarity regarding interest rate is absent

X) Banks to announce Ceiling on interest, other charges : Especially in case of small value loans like personal loans .

Though interest rates have been deregulated, charging of interest beyond a certain level is seen to be exorbitant and can neither be sustainable nor be conforming to normal banking practice. As per RBI guidelines, interest and charges should be justifiable having regard to the total cost incurred by the bank in extending the loan, which is sought to be defrayed and the extent of return that could be reasonably expected from the transaction. Especially small value loans like personal loans and similar loans, an appropriate ceiling to be fixed on the interest, including processing and other charges that are levied, and which should be suitably publicized.

- SAILAJA

NEW YEAR WITH NEW-FANGLED GOODS AND SERVICE TAX LAW

The changes in the current indirect tax laws by moving towards consolidated taxes at central level and state level will have impact on economy, trade, revenue, pricing and administration. The basic objective of introducing GST is to reduce the cascading effects, current litigations and make law simpler by adopting less procedures and increasing the tradeoff between the states and country and for better development of trade economy nationally and internationally.

It is well known to us that Discussion paper was released on 10th November 2009 by an Empowered committee consisting of state finance ministers. Then later the Task Force has released the GST report on 15th December 2009. The Author in the following paragraphs highlights the vital difference between the paper and report for better comparison and analyzing the different views.

I) <u>**Scope of taxes subsumed**</u>

Discussion paper: Central taxes like central excise duty, Additional excise duties, Service tax, and Additional customs duty, Special additional duty of customs, cess and surcharges. State taxes like VAT/sales tax, Entertainment Tax, Luxury tax, taxes on lottery, betting and gambling, state cesses and surcharge, Entry tax, etc**.** Purchase tax should not be subsumed to GST**.** Alcoholic beverages, tobacco products, petroleum products should be outside the purview of GST.

Task Force paper: The CGST should subsume the Central excise duties including additional excise duties, service tax, Additional custom duty, surcharges and cesses. SGST should subsume VAT/sales tax, CST, Purchase tax, Entertainment taxes (other than levied by local bodies), Entry tax (not in lieu of octroi), Luxury tax, betting tax, gambling tax and cesses and surcharges. The task force has recommended that the GST should subsume the taxes like stamp duty, taxes on vehicles, taxes on goods and passengers and taxes on electricity.

<u>Analysis:</u>

The current shortcoming of CENVAT is that most of the central taxes were not forming part of it like additional custom duty, surcharges, Therefore as discussed above all the central taxes have to be integrated for the purpose of setoff relief and increase revenue gain. As per our view purchase tax should not be subsumed as it differs from state to state and the GST is based on destination principle.

II) <u>**Threshold limit**</u>

Discussion paper: The threshold limit for SGST may be uniformly ten lakh for goods and services and the threshold limit for CGST may be one and half crore for goods and the threshold limit for services at CGST is not yet fixed.

Task Force paper: The threshold limit for CGST and SGST should be uniform for all the states. The exemption has to be granted if the annual aggregate turnover of all goods and services excluding CGST and SGST shall not exceed Rs.10 lakh.

Analysis:

We consider that the threshold limit should be same for CGST and SGST dealers. As per discussion paper where it is suggested that the threshold limit for the Central GST shall be 1.5 crore and 10 lakh for State GST dealers then in such instance, the dealers with SGST turnover above 10 lakh will be liable to pay SGST and for CGST turnover he will be exempted till 1.5 crore . The objective of threshold limit might be to protect the interest of small traders and industries but it will be difficult to have a dual control on such threshold limit and therefore it is suggested that there should not be wide gap between the threshold limit under for CGST and SGST turnover and it is advisable to have a common threshold limit.

III) Composition scheme

Discussion paper: The composition scheme is expected for fifty lakh with floor rate of 0.5%

Task Force paper: The composition scheme can be opted for the turnover between 10 lakh and 40 lakh at a compounded levy of 1% CGST and SGST without any input tax credit. Even precious metal can have compounded levy of 1% without 40 lakh ceiling limit.

IV) Rates of taxes

Discussion paper: Lower rate of taxes for necessary items and goods of special importance, standard rates for goods in general, special rate for precious metals, and there will be separate list for exempted goods. CGST should have a two rate structure with conformity in the levels of rates under the state. For services there may be single rate for CGST and SGST.

Task Force paper: The CGST for all non SIN goods shall be fixed at single rate that is 5% and the SGST for all non SIN goods shall be fixed at single rate of 7%.

Analysis:

The 12% rate will have a central component of 5% and a state component of 7%. This is different from the structure proposed by an empowered committee of state finance ministers that had proposed two rates—a lower rate for essential items and a standard rate for general goods. The rates of taxes should be proposed based on the essential and general goods so that the prices of essential commodities will not suffer the higher prices.

V) Input tax credit

Discussion paper: The GST will give more relief to industry, trade, agriculture through a more comprehensive and wider coverage of input tax set off and service tax set off. The refund may be applicable only in case of Exports, high value capital goods and input tax at higher rate

The task force paper: There should not be any distinction between raw materials and capital goods for the purpose of allowing tax credit. Full credit of both CGST and SGST on all purchases of capital goods in the year in which capital goods are acquired. Transfer of capital goods at a later stage will attract GST.

VI) Empowered Committee

Discussion paper: Released on November 10th 2009 by empowered committee of state Finance Ministers

Task Force paper: Released on 15th December 2009 by council of finance ministers which suggest that the empowered committee should be a permanent constitutional body comprising of state finance ministers and union finance ministers. The union finance minister should be declared as chairman and the design should be accepted at least by ¾ the of the state finance ministers. Any change in structure either rate or base then it has to be accepted by chairman and 2/3rd of the state Finance Ministers. The council should have a permanent secretariat at Delhi and GST compensation fund has to be created. Any state which deviates the rate or base shall be liable to penalty and such penalty should be deposited to GST compensation fund. Any revenue losses can be met out of the fund subject to certain conditions.

VII) Dual levy

Discussion paper: Dual GST model is expected as With Central GST, State GST and Integrated GST. For interstate transactions an innovative model of integrated GST will be adopted by appropriately aligning and integrating CGST and SGST. Center will levy IGST which would be CGST and SGST on all interstate transactions of taxable goods and services with appropriate provision for consignment and stock transfers of goods and services. The interstate seller will pay IGST on value addition after adjusting available credit of IGST, CGST and SGST on his purchases. The exporting state will transfer to the centre the credit of SGST used in payment of IGST.

<u>The task force paper:</u> The Task Force has recommended a 'flawless' GST which would be a **dual levy** by Centre and States. CGST and SGST should be levied on a **common and identical base** with modified bank model for interstate trade in goods and services. In the above model it is suggested that in case of Inter-State business to business supply, seller in the Origin State should collect SGST on the transaction from the buyer in the Destination State as if it is a sale in the originating State. Seller can use input SGST for both output SGST on intra-State and inter-State transactions. If total output SGST is more than input SGST then the seller should pay the excess output SGST to any of the authorized banks. Thereafter buyer in the Destination State shall make use of the SGST so paid in the State of origin for making payment of output SGST in the Destination State.

Other features of Discussion paper

The GST will be levied by center as CGST and the states as SGST and there will be different statutes for the same

The CGST and SGST will be applicable to all transactions of goods and services made for a consideration except for exemption goods and goods below the exemption limit

They have to be paid separately to the accounts of the center and states separately with separate account head

Central GST has to be adjusted against central GST and State GST have to be adjusted against State GST. In other words cross utilization of Input Tax Credit between the Central GST and state GST would not be allowed.

The Rules for Central GST and State GST is yet to be aligned.

The refund may be applicable only in case of Exports, high value capital goods and input tax at higher rate

There will be uniform procedure to collect both the CGST and SGST

There might be concurrent jurisdiction for central GST and State GST

There is possibility of common format for all the procedures for CGST and SGST

The Tax payers may be allotted PAN linked TIN

Common features of Task force paper

The place of supply rules is separate for B2B (Business to Business) transactions and B2C (Business to Customer) transactions. In case of B2B the place where recipient is located and in case of B2C transactions the place where supplier is located

Article 278 and 288 should be amended to levy GST on supply of electricity

All goods and services to be taxed other than those specified in negative list

Stock transfers should be subjected to tax

Check post should be there with scanners for physical verification

CBEC administration for CGST and State tax administration for SGST implementation

Common procedures to be implemented for SGST and CGST

GST implementation is expected by 1st October 2010

Therefore after evaluating the discussion paper and Task force paper, the task force paper has highlighted that the discussion paper is diluted form of GST and there is less possibility to realize the economy gain therefore the GST should be designed with the prediction of less mistakes and more revenue gain.

- ANNAPURNA

TRANSITION TO IFRS
FIXED ASSETS

The transition from local Accounting policies followed for a long period of time to a new accounting framework can be quite a difficult and reluctant task. Since the transition date for IFRS is for the year 2011-12 (i.e. the period from April 1, 2011 to March 31, 2012), the enterprise need to provide comparative figures for the previous year. Thus, the most critical aspect is to reframe the opening balance sheet as if the new accounting framework was always followed.

Even where accounting principles stipulated in Indian GAAP are not significantly different from those stipulated in IFRS there may be significant gaps between the way those principles are implemented now and the implementation requirements under IFRS.

Through this article we will discuss few issues regarding transition from AS 10 (Fixed Assets) to IAS 16 (Property, Plant & Equipment)

IAS 16 defines Property, Plant and Equipment (PPE) as tangible assets that the enterprise uses for production or administration and does not intend to sell those assets in the normal course of business. An item should be recognized as assets only when the future economic benefits related with the assets will flow to the enterprises and its cost can be measured on a reasonable and reliable basis. There is no variation in recognition of assets under IFRS in comparison with AS - 10.

The first challenge in convergence from AS-10 to IAS-16 is component accounting. If an asset has several components, which can be physically separated and which have different useful life should be recognized separately. Each component shall be depreciated separately based on the useful life of such components individually. Component account is aimed at providing the true value of an asset as to give a true and fair view of the PPE of the enterprise, facilitating improved measurement of operating results and accounting for replacement of asset.

Overview of component accounting:

1. When a component is replaced, the written down value of the component replaced should be written off to the profit and loss account.
2. Cost of new component is capitalized.
3. Cost of each component should be recognized on the basis of fair values on date of acquisition.
4. Component accounting needs to be done retrospectively. This poses a challenge for the organization to determine costs of assets acquired earlier, bifurcation of asset into the various separate components and determining their useful life, and subsequently calculating its net effect to be charged to income statements. Eg. The engine of an aircraft should be recognized separately from the aircraft itself, the engine bearing a significant cost, having a different useful life.
5. The company may apply the concept of materiality. The benefit of recording asset components should not outweigh the cost and practicality of such a move, keeping in mind the procedural and accounting difficulties and total cost of assets. That the assets do not constitute a significant cost, and their effect on the EBIT is marginal, the auditors may decide not to apply component accounting.

Recognition of Assets:

After the initial recognition of the asset is done at cost (including any expenses incurred to bring the asset to its usable condition), IAS-16 gives the option to an enterprise to choose between the following two models for subsequent recognition:

a) The Cost Model ,where the assets is valued at cost less accumulated depreciation and impairment losses which is the amount by which carrying amount of an asset is in excess of its recoverable amount ; or

b) The Revaluation Model, where the asset is valued at fair value on revaluation date less any subsequent depreciation or impairment losses. Fair value is defined as the amount for which an asset could be exchanged between knowledgeable willing parties in an arm's length transaction

Even thought the frequency of revaluation is not fixed by IAS 16, an enterprise should revalue its assets on a regular basis so that the fair value carried on balance sheet date does not differ materially.

AS-10 does not give any option and allows only the cost model. Therefore, an enterprise can revalue the assets once in a while and continue with the cost model.

If an enterprise adopts cost model, at the first time adoption of IFRS, an enterprise can choose the revalued amount, determined at or before the transition date, as the deemed acquisition cost, if the amount does not materially differ from the Fair value of the asset The deemed acquisition cost in this situation will be the revalued amount less any accumulated depreciation. But, if an enterprise selects the revaluation model, it has to revalue the asset at the balance sheet date of the first balance sheet prepared using IFRS. Therefore, transition to IFRS will not be difficult even for an enterprise, which revalued its PPE earlier.

There are difficulties and complexities in adoption of IFRS over accounting standards, but the results outweigh the costs, and a move to a global system of accounting will enable us to enter the global markets with uniform accounting principal enabling better financial understanding and providing a strong base for opportunities and growth on a world wide scale.

\- SHWETHA & RAHUL

CURRENT AFFAIRS

Tributes:

Tributes came pouring in for the four legends of Kannada filmdom Vishnuvardhan, C Ashwath, stuntman Circus Boranna and Producer Chandulal Jain, who all passed away in the space of a fortnight at a Shraddanjali organised by the Karnataka Film Chamber of Commerce on Tuesday.

NRIs can soon vote in India's polls !?!

Prime Minister Manmohah Singh has announced that the Non-Resident Indians (NRIs) may soon vote in the elections, and it may happen as early as the next general elections also said that the government should ensure the security of Indian students abroad.

Nepal to free Child Soldiers from Camps shortly

The U.N. estimated in 2007 that almost 3,000 children were living in camps housing ex- Maoist fighters, part of a deal to end a decade-long conflict that caused more than 13,000 deaths. Nepali government and the ex- Maoist rebels agreed on Wednesday to start freeing 1000's of child soldiers in Maoist camps within weeks,

Auto Expo slew of small cars

The 10th Auto Expo with some of leading global auto makers vying with each other to grab share in India's growing auto market by focusing on small cars.

Breathtaking test: Australia beat Pakistan by 36 runs in Sydney

Australia has completed a remarkable Test victory over Pakistan, coming from 206 runs behind in the first innings to win the second Test at SCG by 36 runs.

\- POORNIMA

The object of a new year is not that we should have a new year.

THE EDITORIAL

Currency	Rate
Australian Dollar (AUD)	42.14
British Pound (GBP)	72.97
Chinese Yuan (CNY)	6.81
Euro (EUR)	65.62
Hong Kong Dollar (HKD)	5.87
Japanese Yen (JPY)	0.49
Pakistani Rupee (PKR)	0.54
Singapore Dollar (ZAR)	32.66
South African Rand (SEK)	6.13
Swiss Franc (CHF)	44.49
UAE Dirham (AED)	12.40
US Dollar (USD)	45.55

Values as on 08th January, 2010.

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