The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Volume 58 | No. 11 | May, 2010 | Rs. 100

THE CHARTERED ACCOUNTANT

JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GOVERNMENT ACCOUNTING

Volume 58 | No. 11 | May, 2010
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Government Accounting

Editorial

Governance at all levels has to be responsible for management of the public resources under their control and for providing social services. For the resources under their control, the liabilities they incur, the cost of services they provide and the cost of the recoveries they make, the executive or the administration is accountable to the legislature or other people's representative bodies at appropriate level. This accountability is what differentiates democracy from other systems of the government. In this scenario, it has become increasingly necessary for the government to respond to the needs of its population by measuring citizen's responses to government initiatives. Also, new economic realities have indeed changed the form, content and context of accounting and auditing highlighting the need for greater vigilance, scrutiny and transparency in the working of organisations. This emerging role or philosophy of the government rightly demands that citizens in a democratic society deserve a fair account of how their government manages financial affairs of the economy, as investors, similarly, in a company need fair accounts of the company's financial position and performance.

It is in this context that a need has been felt for reviewing the existing government accounting system in India. In fact, the reforms in government accounting system have been a subject-matter of debate for quite some time now. This demand becomes far more crucial in the wake of a series of concerns, such as lack of resources, unplanned investment, high level of development expenditure and, above all, the need for effecting economy, efficiency and accountability in the utilisation of scarce resources. It is significant that both the RBI and the World Bank, in recent years, have emphasized on the need to improve transparency and accountability in fiscal management.

The 13th Finance commission has also made major recommendations with reference to accounting reform such as, (a). The Government of India (GOI) should ensure uniformity in the budgetary classification code across all states and (b). To buttress the accounting system, the finance accounts should include a separate statement indicating head-wise details of actual expenditures under the same heads as used in the budget for both Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs). The Commission has recommended that these changes be brought into effect from 31st March 2012. The Finance Commission has also recommended a uniform classification code for all states up to the object head level be adopted. Such uniform application would facilitate comparison across states while ensuring consistency. Further preparation of financial statements under economic classification would also require that information on primary allocation basis, i.e., object head level, be uniform. However, the flexibility in the operation of object heads at state level continues. Since there is a lot of support from different quarters to the view that changes are required in the current government accounting system, it is hoped that it will be considered favourably by all concerned.

The Government of India has also accepted in principle to migrate to accrual basis of accounting. In view of this, a broad roadmap and an operational framework has also been developed by the GASAB and has been issued to the Government. In order to leverage this accounting reforms process, The Institute of Chartered Accountants of India felt the need to provide a broad framework for reforming the accounting systems so as to provide the guidance for switching to double-entry accrual system in local bodies. In this direction, the ICAI in the year 2005 constituted *Committee on Accounting Standards for Local Bodies* to formulate the accounting standards for local bodies.

Further, a proposal has been sent to the Government Accounting Standards Advisory Board (GASAB) with regard to the formulation of the accrual accounting standards for the Government by the ICAI. The proposal suggests that the ICAI may formulate the Indian Government Financial Reporting Standards (IGFRSs) and the GASAB should review the standards formulated by the ICAI. In the proposed scenario, the GASAB may be approving the Indian Government Financial Reporting Standards (IGFRSs) to be formulated by the ICAI, as the NACAS is presently approving the accounting standards for the companies.

In this backdrop, there is a need to enhance the understanding about the role that chartered accountants can play in helping the Government in realising many of the objectives which are the need of the hour, prime amongst them being financial discipline, smooth fiscal administration, augmentation of revenue, reduction of potentially litigative situations, establishment of a culture of accountability and ushering in definitive systems of transparency and disclosure about the deficiencies in the existing system of the government accounting.

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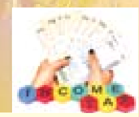




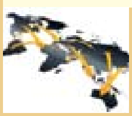

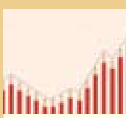



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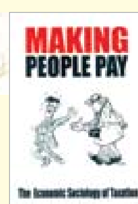
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CROSS
WORD
Please

Dear All,

'Success is a journey, not a destination,' so goes the saying which is true for our profession too. We should not rest with success but instead should sustain it as a continuous journey to ultimate excellence - season after season. April and May are the months of hectic and breathless activity in a chartered accountant's office, with the March year end closing of the financial statements and the pressures from all the clients, especially public-sector banks and listed company clients, to get their financial statements audited on a priority basis. Friends, indeed it's the time that tests our resource management skills. But more importantly, it is the time that tests our grip not only on the understanding of client and its business environment, but also our understanding of the sacrosanct Engagement and Quality Control Standards and our ability to apply them in the face of the pressures exerted by clients and others.

Moment of Pride for Profession

It was a moment of pride for the profession, when the ICAI past-President CA. T. N. Manoharan was conferred with the 'Padma Shri' at the hands of Hon'ble President of India Smt. Pratibha Devisingh Patil on April 7, 2010, in 'Trade and Industry' category. It was highly satisfying, inspiring and encouraging to see the contributions of one of our professional bretheren being recognised at the highest echelon of Indian polity. While we have already felicitated him, we congratulate CA. Manoharan for this accomplishment and wish him all the best for his future endeavours.

Ensuring Compliance

Hard as that task might appear in some cases, we should never forget that the auditing standards are the hallmark of the highest quality in our work and our commitment to serve the public interest. In fact, it is our only safeguard in the face of undue criticism that we auditors sometimes face on account of expectation gap. We need to send a clear and strong message to our clients, and, more importantly, to the members of audit teams who actually work at the grassroots level, that we cannot simply make compromises on that account. For your convenience and ready reference, the ICAI has made available the complete text of the auditing standards on its website under the link titled *Resources*. I urge you to please refer to and apply the standards (as applicable) in all your audit and assurance engagements. It is also my earnest request to you to remain alert to the announcements regarding new auditing standards that appear on the Institute website and get published in our Journal. In addition to complying with the auditing standards, it is also necessary that you actively participate in the auditing standard setting process by sending your comments on the exposure drafts of auditing and other engagement standards issued by the Auditing and Assurance Standards Board (AASB) from time to time. Please see this as an opportunity to share your wealth of knowledge and experience with the Institute for the benefit of the members at large as well as a platform to raise any concerns that you perceive in application of the proposed standards. This will help the Institute bring about standards which are firmly rooted in the ground realities and are amenable both to application and enforcement without, obviously, compromising on the need to be at par with the globally-accepted best practices and to be fair and objective to all the stakeholders in the financial reporting process, especially the common man.

Now let you be updated on major developments pertaining to the profession over the past one month:

International Initiatives

As part of our drive to raise the global standing of the Indian CAs, we recently organised an eventful and enlightening visit to the Gulf region, which is the work zone of a sizeable number of our members.

Dubai-Abu Dhabi Visit: Hon'ble Mr. Salman Khurshid, Minister of State (Independent Charge), Ministry of Corporate Affairs and Minority Affairs headed a delegation to *Dubai and Abu Dhabi*, which also included Mr. R. Bandyopadhyay, Secretary Ministry of Corporate Affairs. ICAI Vice President CA. G. Ramaswamy and the undersigned also accompanied them. The objective of the visit was to highlight the role played by Indian CAs in UAE and other parts of world, and promote the brand Indian Chartered Accountant.

Addressing a programme on the theme *'Accountancy Profession in New Economic Order',* which was attended by more than 450 Indian CAs, the minister spoke highly of the Indian accountancy profession and said that he had come to the region after 10 years just to promote the Indian CA profession. Reminding Indian CAs that they owed an obligation to their country and their alma mater, he urged the members and the Indian community to keep the Indian flag flying high. The Consul General of India at Dubai Mr. Sanjay Verma was also present on the occasion. The minister also addressed the Indian Business Professionals Council and the members' meet to apprise them of various initiatives by the Government of India in regard to corporate governance and related issues. The ICAI membership shared with the minister, various issues that are currently affecting the ICAI members working at the UAE like induction of local partners and non-recognition of chartered accountants as a graduate level programme. The minister assured to take up the ICAI's case with the Ministry of Labour at the UAE.

Later on, the Minister of Corporate Affairs along with the Secretary, MCA, met H.E. Sheikh Nahyan Bin Mubarak Al Nahyan, Minister of Higher Education and Scientific Research at his palace. He was highly supportive of the ICAI initiative for a customised programme for the UAE nationals and promised full government support and backing in the matter. Dr. Tayab A. Kamali, Vice Chancellor, the Higher Colleges of Techonology (HCT) was also present during the meeting. During the visit, we had extensive discussions, including with Dr. Saeed Hamad Al-Hassani, Director General, Ministry of Higher Education and Scientific Research, with regard to the ICAI's initiatives to promote international curriculum in the nature of the mid-tier certification programme for the UAE nationals and providing all technical know-how to set up an Institute of Accounting Technicians tailormade to their needs. We agreed to soon have an MoU in this regard. This move would spread goodwill and support to the ICAI membership present in the Middle East and North Africa (MENA) region. While children of the Indian diaspora will be able to undertake the CPT and IPCC coaching at such Institute, the UAE nationals would get a world -class professional programme to excel in the emerging financial markets within the region.

The delegation also interacted with Mr. Ahmed Humaid Al Tayer, Governor of Dubai International Financial Center, and both sides agreed to explore the common areas on which they can work together in public interest.

Oman Visit: We also visited Oman for exploring the possibilities of promoting and developing accounting profession in Oman. There, a conference on *'Financial Recovery & Challenges Ahead'* organised by our Muscat Chapter, was quite a success with more than 350 delegates attending it. Ambassador of India to Oman Mr. Anil Wadhwa was the Chief Guest on the occasion, who promised full support in promotion of brand Indian CA. Chairman, College of Banking & Financial Studies (CBFS) of Oman Mr. Iqbal Ali Khamis Al Lawati also addressed the gathering. It was particularly heartening for us to know that Indian CAs hold key positions in that region.

We also separately met the Chairman, CBFS, and other high officials to consider the opportunities to develop professional capabilities. The meeting with CBFS, which is the sponsor for our Muscat chapter, was pathbreaking as it allowed both sides to formulate the operational strategies for carrying forward the broad framework of bilateral co-operation as envisaged in the MoU signed with them in 2008. The CBFS chairman highly appreciated the services being rendered by Indian CAs in that region and called for a long term relationship between the ICAI and

the CBFS for development of accountancy profession. We have decided that the ICAI will assist the CBFS after a need-based analysis of the local competency needed in designing a country specific Accounting Technician programme. While this model would be by and large structured on the lines of the Accounting Technician programme being offered by the ICAI; it would have the local customisation and the range of subjects to have these incumbents trained in specific skill set to meet the growing demand of the local market. We have decided to start our CPT programme in Oman as well, which shall be available to all nationals albeit the programme for chartered accountancy would be targeted in addition to the normal contemplated international programme.

Here, we must acknowledge the excellent support extended by the Muscat Chapter Chairman, CA. Yashpal Mehta and his team to our visit.

The ICAI Vice President addressed our Doha Chapter on issues arising out of Indian budget in the presence of Mrs. Deepa Gopalan Wadhwa, Ambassador of India at Doha, and other dignitaries.

Australian Delegation Visit: Meanwhile, a delegation comprising Mr. Graham Meyer, CEO, The Institute of Chartered Accountants in Australia (ICAA), and Mr. Bill Palmer, Director Asia, ICAA, visited the ICAI recently to further strengthen the relationship between the ICAI and the ICAA. During their visit, they had meetings with Mr. R. Bandyopadhyay, the Secretary, MCA, and Mr. Sunil Verma, the Deputy C&AG of India, in addition to the ICAI President and its other functionaries. Discussions were held to work more closely in future for mutual benefit. Thrust was laid on improving the networking ties between the members of the two institutes. We have agreed to host a joint event of Australia, India, Hong Kong, Singapore and New Zealand on emerging accounting and auditing issues either in Singapore or India. Such an event would be first to be organised jointly by the multiple accounting institutes across the globe. To further augment the bilateral relationships and the MoU entered into between the ICAI and the ICAA, it has been decided to work towards recognising each others' CPE programmes, which would benefit the membership of both the Institutes. It was also decided that on the local law/taxation specific regime, both the institutes would provide focused training programme in consultation with each other at either end.

Helping in Implementation of IFRS

As the members are aware, the ICAI is going ahead full steam for convergence with IFRS from 1^{st} April 2011 to meet the timelines set by the Ministry of Corporate Affairs in its announcements on Roadmap for companies for application of IFRS - converged Accounting Standards for certain class of larger and listed companies in Phase I from 1^{st} April 2011, Phase II companies from 1^{st} April 2013 and rest of the listed companies from 1^{st} April 2014, and Roadmap for Insurance Companies from 1^{st} April 2012 and for scheduled commercial banks, certain urban cooperative banks and Non-Banking Finance Companies from 1^{st} April 2013. One of the endeavours of the ICAI in this direction is formulating Accounting Standards fully converged with IFRSs. The ICAI plans to complete the formulation of drafts of all Accounting Standards by end of June 2010. These are being considered by the National Advisory Committee on Accounting Standards (NACAS) simultaneously. Thus, it is expected that the Government will be able to notify the same thereafter.

For proper implementation of the IFRSs, it is imperative that education and training is provided to all concerned. As such, the ICAI has undertaken the task of training its members, corporates and other stakeholders with converged accounting standards. For this purpose, last year, IFRS Certificate Course was started. Till date 32 batches have been completed and seven batches are in process. More than 1800 members have already undergone this course. In addition to the Certification Course, IFRSs e-learning Course has been started. By the time this communique reaches you, we would have begun, in collaboration with the Ministry of Corporate Affairs, a large-scale IFRS awareness drive from 29^{th} April 2010, to hold workshops at 58 places in the country, to equip the ICAI members and other stakeholders on the essentials of Indian Accounting Standards converged with International Financial Reporting Standards (IFRS).

Partner in Nation Building

We are happy to inform you that as part of our initiative to assist the Government of India, the ICAI has entered into an MoU with the Central Board of Excise and Customs (CBEC) on 31^{st} March 2010 to act as a facilitator for their Automation of Central Excise and Service Tax (ACES) project under which our practising members will provide facility of e-filing of returns and documents to central excise and service tax assessees through certified facilitation centres (CFCs). A certified facilitation centre is a facility other than the physical front offices or facilitation centres of the CBEC, which will be set up and operated by practising chartered accountants in individual capacity or as proprietor or firm. The MoU opens a new professional avenue to the members in practice. This initiative will immensely benefit the government, the profession and industry. With this MoU, the members can not only provide services as envisaged, but can also provide other services on request of the assessees. It will also facilitate the capacity building of our members. Queries relating to the setting up of CFCs may be sent to cfcaces@icai.org. The salient features of the MoU have been hosted on the ICAI website.

Meeting with Gujarat CM

We had a meeting with Gujarat Chief Minister Shri Narendra Modi wherein we requested him to review the provisions of Gujarat VAT Act, 2003 in the light of the Supreme Court judgement of May, 2008 whereby only chartered or cost accountants are considered eligible to audit. Further, services of chartered accountants were offered for conversion of accounts of local bodies to accrual based accounting system for an efficient and transparent financial reporting system. Moreover, to bring transparency and objectivity in the allotment process, it was proposed to have a panel of chartered accountants/firms based in Gujarat sourced from multipurpose panel prepared by the Institute on an annual basis.

Capacity Building Initiatives

This year we are paying special attention on strengthening the ICAI's initiatives to enlarge visibility of the CA profession and to rejuvenate practice portfolio of small and medium practitioners. We are working for consolidation of the CA firms through networking mergers and for setting up management consultancy services by popularising effective consolidation of the CA Firms. The focus is on enriching the CA firms through capacity building. It is proposed to conduct a survey to create a database of CA firms engaged in different professional areas. The intention is to help create Indian global brand in the field of accountancy.

Amendments to Listing Agreement

Many of you may be aware that the SEBI vide its circular, dated 5th April 2010, has made certain amendments to the Listing Agreement. By these amendments, the SEBI has reduced the timeline for publishing the audited annual results on standalone as well as consolidated basis from 90 days to 60 days from the end of the financial year for those entities which opt to submit their audited annual financial results in lieu of the last quarter unaudited financial results with Limited Review. It has also been decided that in respect of all listed entities, limited review/statutory audit reports submitted to the stock exchanges shall be given only by those auditors who have subjected themselves to the peer review process of the ICAI and who hold a valid certificate to this effect.

We are sure that these changes, as made by the SEBI, will bring in uniformity in the Reporting of financial results by all listed entities and would definitely be in the interest of all the stakeholders. We fully support the move. However, as these amendments have been made in the beginning of April 2010 and immediately applicable for the year ended 31st March 2010, we have represented to the SEBI to ensure that there is no undue pressure on both auditor and/or auditee to complete the audit. SEBI has been requested to defer the applicability of the said amendment by six months so that there is sufficient notice for not only the audit firms but also the listed entities to plan their affairs accordingly.

Appointment of Tax Auditors in Public Sector Banks

Reserve Bank of India, vide its circular no. DBS.ARS.BC.No.3/08.92.001/ 2007 -08 dated 25th July, 2007, followed by the circular no. Ref.DBS.ARS.BC. No.09/ 08.92.001/ 2009-10 dated 31st December, 2009 allowed all public-sector banks to appoint at branch/head office level, any CA firm as their tax auditor at a reasonable fee with approval of their Board/ ACB. In pursuant to these circulars, the State Bank of India decided to appoint a single firm of chartered accountants as its tax auditor, and not to allot tax audit assignment to the existing branch/central auditors. As soon as this came to our knowledge, the matter was taken up with the senior officials of the SBI and we convinced them to get the tax audit done from the existing branch auditors. However, in the process, the SBI brought down the tax audit fee to 7.5 per cent from the existing rate of 15 per cent of the branch audit fee. They were requested to reconsider the said proposal, as it might have significant implications in terms of proper observance of generally-accepted auditing procedure by a firm not associated with the statutory audit of the bank. Also, such a proposal may be counter productive because SCAs and SBAs having familiarity with the bank have an edge in performing the assignments.

IT Initiatives

It is our endeavour to make the ICAI hi-tech in such a way that it comprehensively caters to the needs of its members, students and other stakeholders just at the click of a mouse. Our ongoing Project *Parivartan* is one such path breaking initiative aimed at improving e-governance in the ICAI. We have made important headway on this front. The goal is to create an integrated IT system for catering to the entire community of chartered accountants and students irrespective of their geographical locations through the Internet. Further, as you know, a full-fledged Information Technology Directorate has been set up to bring all the IT activities under one umbrella and to facilitate coordination and optimum use of the IT resources for the benefit of members and students.

Launch of ICAI e-*Sahaayataa*

In order to provide prompt services to the expanding base of members and students, the ICAI is launching its e-*Sahaayataa* service on June 1, 2010. The e-*Sahaayataa* shall act as the only e-channel for the entire base of members and students of the Institute and other stakeholders of the profession at large wherein all their queries/complaints/ grievances pertaining to the day-to-day working shall be acted upon and resolved by the ICAI within 3 to 7 days from the date of their receipt. The main purpose of this service is to eliminate the operational bottlenecks and smoothen the flow of the education process of chartered accountancy. It will provide timely services to all the stakeholders of the profession throughout the globe with a motto of 'zero tolerance for pendancy'. This is a major initiative of the ICAI wherein the complete history of the query/complaint/grievance from the date of entering it into the system till the date of resolving it shall be available for future reference. In this service, the user has an option of reopening the query/complaint/ grievance in case of dissatisfaction from the service provided. The demo version of the e-*Sahaayataa* shall be uploaded on the ICAI website from 10th May 2010 to 15th May 2010 for your valuable inputs and suggestions for improvement. After incorporating such inputs and suggestions, the e-*Sahaayataa* shall be officially launched and will be fully operational from 1st June 2010.

President

Students' Initiatives

Students are high on the list of our priorities this year and we are constantly working for their all-round development. As part of this drive, it is gratifying to announce that we will soon release *practice manuals* consisting of model questions and answers of all subjects, which will help our students in strengthening their fundamentals of those subjects. Till this January, *manuals* of only three subjects were published. We take pride in announcing formally that a *BoS Knowledge Portal* has been created to provide our students, in electronic form, with study material, revision test papers, suggested answers, supplementary study material, model/mock test papers, etc. Students must take full benefit from this portal to prepare for examinations. Under *Gyandarshan*, special lectures on Accounting Standards 30, 31 and 32, and on Standards on Auditing were organised for our students.

It is a matter of pleasure for us to announce that, in May 2010, there will be crash courses in Quantitative Aptitude, Economics, Accounting and Mercantile Law for CPT students. While we take such effective measures for our students, a dynamic participation should come from the beneficiary. I am sure our efforts and their participation will be quite productive together.

Our Institute has signed MoUs with the Bharathiar University, the Netaji Subhas Open University and the Indira Gandhi National Open University. The students and members must take full advantage of these MoUs otherwise the very purpose of having such arrangements gets defeated. While a number of other universities have also requested us for similar MoUs, we are pondering over the justification for such tie-ups when not many students and members are taking benefit of such arrangements. We call upon you to take advantage of such arrangements in larger numbers so that we feel encouraged to have similar tie-ups with more universities of repute for your benefit.

Campus Placement

We are happy to take note of good response to our latest February-March campus placement programme. In all, 94 recruiting organisations participated and offered jobs to 1411 newly-qualified chartered accountants. The improving employment and the pay packages that are offered by the companies show universal acceptance of our young members in industry. Companies are offering lucrative financial packages to employ fresh chartered accountants. The best offer made was to 11 candidates, which is $ 1.5 lakh (about Rs. 70 lakh) for international posting. In spite of this lucrative offer only seven candidates actually accepted the offer. We have also planned to have special placement programme in the month of June for the experienced chartered accountants as well.

However, irrespective of good response from industry and zero-unemployment among CAs, we need to do soul-searching as to why not 100 per cent of young CAs participating in our campus placement programme are being picked up by companies. Although the trends are quite positive as percentage of jobs offered vis-à-vis attended candidates has jumped to 48 per cent in comparison to meagre 27.52 per cent in the last campus, still a lot is needed to be done on this front. We plan to increase the number of companies participating in campus placement process and will take all necessary measures to ensure 100 per cent placements in such programmes. We also propose to put a condition that no less than Rs. 5 lakh package is offered to our young members in our campus placement programmes.

Activities in the Regions

As part of our drive to strengthen the ICAI infrastructure, reach and services to members, students and society at large, we recently inaugurated yet another branch of the ICAI, at Ratlam in Madhya Pradesh. About 300 members attended the programme, which was very well organised and deserves all the appreciation from us.

An orientation programme of the office-bearers of 39 branches of CIRC of the ICAI was also organised at Indore where we emphasised on observing financial discipline at the branch level. It was heartening to see that office bearers of all the 39 branches were present during the programme. These orientation programmes, organised every year, provide a platform for direct interaction with all management levels of the Institute and enhance our branch level efficiency.

Before concluding, we would like to remind you that the primary qualification of a chartered accountant must be his commitment to a lifetime of learning, unlearning and relearning, and to change with times. In a time of fast-paced changes it is the learners who inherit the future. Knowledge, skills and experience may not be enough unless we develop wisdom to use them. "These days people seek knowledge, not wisdom. Knowledge is of the past, wisdom is of the future", so goes a saying, which is worth taking note of in the present times.

Best wishes,

Yours sincerely,

CA. Amarjit Chopra,
April 28, 2010

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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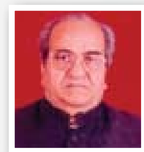
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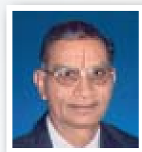
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21	507803	CA. Aman Ahooja	11000.00
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31	099104	CA. Amit Gupta	5100.00
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38	087925	CA. Rakesh Jain	5100.00
39	092938	CA. Sandeep Rawal	5100.00
40	502497	CA. Girish Aneja	5100.00
41	099097	CA. Pradeep Arora	5100.00
42	500171	CA. Navdeep Mittal	5100.00
43	511884	CA. Davinder Kumar	5100.00
		TOTAL	**975704.00**

Informative Content in the Journal Highly Useful

I am reading this journal for long, ever since I was a CA student, and I'm happy to note the vast improvements in its contents and presentation. I want to point out although we had heard budget speech of the Finance Minister and the views of various speakers in different forums of the CA fraternity, still the budget-based April 2010 issue was found to be very refreshing. It was highly satisfying to read the budget-related articles which cleared a number of my doubts on various topics. This issue was really useful for the professionals, particularly for me, as it gave tremendous input for my various budget-related presentations. Keep up the good work.

- CA. Rinkesh Shah, Ahmedabad

Gone are the days when the members used to keep the Journal for reference purpose only. For some time in the past, there have been significant additions to the value and importance of the journal. The value addition in the journal have come mostly by way of various new sections, legal updates, comprehensive information about ICAI activities and events, informative advertisements and overall presentation, etc. In the present challenging scenario, when the chartered accountants, are shouldering important responsibilities at various levels, the Journal is, very ably, catering to their knowledge needs. It has become a very reliable mode of professional knowledge update.

- CA. Jayesh Mahesh Mishra, Mumbai

I congratulate the ICAI leadership and the editorial team for the highly-informative content and facelift of the Journal of April 2010. The informative 'From the President' very effectively presented the thoughts of a visionary and was electrifying for the entire CA fraternity. The approach of the ICAI leadership as specifically reflected in the headlines, 'Consolidating the ICAI Tie-Ups Abroad,' 'Reactivating Foreign Chapters,' 'Four New Groups to Make ICAI More Robust,' 'Tendering Process for Utilizing Our Services,' was par excellence and at par with that of leading foreign regulatory accounting bodies. A separate icon on the 'foreign tie-ups' on the ICAI website too shall be greatly appreciated. The 'News and Views' of foreign professional bodies too shall be welcome.

- CA. P. K. Chopra, New Delhi

With reference to the article titled 'Money Laundering and Financing of Terrorism - A Study on Methods to Fight Money Laundering in India & USA,' published in April 2010 issue of the Journal, I would like to share that there has been a lot of progress post-2005 in the arena on AML/CFT in India. India got observer status in FATF on November 27, 2006. Three-four amendments have been carried out on the PMLA Rules on client identification, record keeping and reporting obligations of financial institutions. India is being evaluated on compliance with 40+9 standards of the FATF. I also take this opportunity to request for articles on insurance business which is fast evolving and promising aspect of the financial sector.

- CA. B. Padmaja

E-Learning IFRS Course is Welcome

I am thankful to the ICAI for starting the E-learning course on the IFRS. The topics have been explained in lucid manner and the course is well structured and certainly beneficial to the members. However, I would like to draw the attention of the ICAI towards non-providing of any study materials in hard copy. The course is only available online and it is very difficult to refer the course every time in online mode. I feel the hard copy of the course should be provided for ready reference and easy learning, as the time limitation of the course is only nine months and the IFRS being a new concept, requires study materials for references.

- CA. Priti Tulsyan

Timely Delivery of Journal Welcome

I am happy to note the timely delivery of the Journal to us month after month. I really appreciate the delivery of April 2010 issue of the Journal on the first of April, which shows the efficiency and efficacy of the system behind publication and distribution of the Journal. I congratulate the ICAI for this and hope that journal delivery system remains efficient in future too. All the best for your future endeavours.

- CA. M. K. Shah, Ahmedabad

Help Green Cause — Reduce Number of Pages

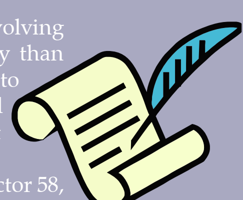
Support the green cause, the Institute should seriously consider reducing the number of pages in the journal and encouraging the members to read the e-Journal instead. This step will not only save paper and help the cause of environment but will also help save money and valuable human resources and time. A lot of content like latest circulars, legal decisions, etc., is already available on government websites and there is no need to repeat the same in the journal. We shall aim at gradually stopping the printing of Journal altogether and host/e-mail only the e-Journal for reference of our members and other readers to ultimately help the cause of the earth.

- CA. Atul Jain

EDITOR

Write to Editor

'Information is Power' and our ever-evolving profession needs more and more of that today than ever before. Do you have any relevant points to make, experiences to share, and views to spread among the CA fraternity? If yes, e-mail us at eboard@icai.org/ nadeem@icai.org or write to:
The Editor, The Journal Section, ICAI, A-94/4, Sector 58, Noida (UP) - 201301



Moment of Pride: Padma Shri to Past President, ICAI

Hon'ble President of India Smt. Pratibha Devisingh Patil presenting Padma Shri to Shri T. N. Manoharan, past-President, ICAI, in Trade & Industry category. (April 7, 2010)

ICAI President CA. Amarjit Chopra and ICAI Vice President CA. G. Ramaswamy greet the ICAI past-President CA. T. N. Manoharan on his being conferred with Padma Shri.

Multipurpose Empanelment Form for the year 2010-11

Multipurpose Empanelment Application Form for the year 2010-11 would be hosted on www.meficai.org as per following schedule:

Hosting of online MEF application form for the year 2010-11 on the website www.meficai.org	1st May, 2010
Last date of submission of the MEF form for the year 2010-11	15th June, 2010 (05.30 PM)
Last date of receipt of duly signed declaration	30th June, 2010

A hard copy of the Declaration duly signed by all partners/proprietor/member practising in individual name accompanied by a print of the e-mail acknowledging submission of MEF must be sent to ICAI by courier/speed post/ hand delivery at ICAI Bhawan, Indraprastha Marg, New Delhi – 110 002, in an envelope superscribed with the words "DECLARATION FOR MEF 2010-11" so as to reach on or before 30th June, 2010.

Further, we may inform that this year, up to 10% of the applicants (selected randomly from the list of applicants of MEF 2010-11) would be called for to submit following documents:

1. (Latest) Financial Statements of the firm
2. Partnership deed in vogue and as on 1st January, 2010
3. Copy of acknowledgement of (latest) Income Tax Returns of the firm and partners
4. Copy of computation of (latest) income of the firm and partners
5. Copy of (latest) Assessment Order of the firm and partners

CPE 6 Hours

NATIONAL CONFERENCE ON TAX LAWS

Organised by: Direct Taxes Committee of ICAI jointly with SIRC of ICAI
Hosted by: Ernakulam Branch of SIRC of ICAI

Date & Time: 22nd May 2010, 9:00 a.m. to 5:30 p.m; **Venue:** The Dream Hotel, S. A. Road, Ernakulam
Fee: Rs. 750/- (Cheque/DD should be drawn in favour of "Ernakulam Branch of SIRC of ICAI" payable at Ernakulam)
For further details visit www.icai.org, www.sircoficai.org, www.kochiicai.org
Mail your registrations to ernakulam@icai.org; sirc@icai.in, 0484 - 2369238

India-Dubai Ties

Shri Salman Khurshid, Hon'ble Minister of State (Independent Charge), Ministry of Corporate Affairs addressing the gathering while CA. Amarjit Chopra, President, ICAI, with Dr. Tayeb Kamali, Vice Chancellor, Higher College of Technology, looks on. (April 2-5, 2010)

Visit to Dubai-Abu Dhabi to Promote Indian CAs

Shri Salman Khurshid, Hon'ble Minister of Corporate Affairs, and Shri R. Bandyopadhyay, Secretary, Ministry of Corporate Affairs, share the dais with CA. Amarjit Chopra, President, and CA. G. Ramaswamy, Vice President, of the ICAI at ICAI's Dubai Chapter. (April 3-5, 2010)

ICAI Delegation at Muscat

CBFS Chairman and Dean, Mr. Iqbal Ali Khamis Al Lawati and Dr. Ashraf Abdullah Al Nabhani with the ICAI President and Vice President CA. Amarjit Chopra and CA. G. Ramaswamy, and CA. Yashpal Mehta, Chairman, ICAI Muscat Chapter, and other office bearers. (April 10, 2010)

Seminar on Financial Recovery and Challenges Ahead at ICAI Muscat chapter

CA. Amarjit Chopra, President, and CA. G. Ramaswamy, Vice President, of the ICAI can be seen with other dignitaries at the seminar during their visit to Muscat chapter of ICAI. (9th April, 2010)

Visit to Doha Chapter of ICAI

President CA. Amarjit Chopra and the Vice President CA. G. Ramaswamy of the ICAI with CA. Kurian Kuriakose, Chairman, Doha Chapter of the ICAI. (April 2, 2010)

ICAA Delegation Visits ICAI

CA. Amarjit Chopra, President, ICAI, shakes hands with Mr. Bill Palmer, Director Asia, ICAA , and Mr. Graham Mayer, Chief Executive Officer, ICAA. (April 12, 2010)

ICAI Ratlam Branch Inaugurated

ICAI President CA. Amarjit Chopra lights the lamp and inaugurates the Ratlam Branch in presence of ICAI Vice President CA. G. Ramaswamy, Central Council member CA. Manoj Fadnis and other dignitaries. (April 17, 2010)

Seminar in Ludhiana

ICAI President CA. Amarjit Chopra addresses the gathering, while ICAI Vice President CA. G. Ramaswamy, Central Council member Pankaj Tyagee, NIRC Chairman CA. Atul K. Gupta and other dignitaries share the stage during a seminar on 'Statutory Bank Branch Audit'. (March 16, 2010)

Seminar in Bangalore

ICAI President CA. Amarjit Chopra inaugurates the Seminar on Bank Branch Audit in the presence of ICAI Vice President CA. G. Ramaswamy, Central Council member CA. K. Raghu and other dignitaries. (March 20, 2010)

Visit to Jaipur Branch of ICAI

ICAI President CA. Amarjit Chopra and Vice President CA. G. Ramaswamy being felicitated during their visit to the branch, while Central Council member CA. Vijay Garg, among others, shares the joy. (March 21, 2010)

Gujarat CM Extends All Support

Hon'ble Chief Minister of Gujarat Shri Narendra Modi in discussion with the ICAI President CA. Amarjit Chopra, Vice President CA. G. Ramaswamy, Central Council members CA. Mahesh Sharda and CA. Dhinal Shah, and Regional Council member CA. Bhailalbhai K. Patel. (April 19, 2010)

Legal Decisions

DIRECT TAXES

Income-tax Act

Section 37(1) of Income-tax Act, 1961 – Business Expenditure – When allowable

Donation to employees on occasion of festival, unless is a part of settlement, is to be disallowed [Assessment Year 2005-06]

Pik Pen Private Limited vs. ITO, 28 January 2010 (ITAT-MUM)

Donations were given to workers on the occasion like Navaratri. The only argument of the assessee was that the donations were given for maintaining healthy relations with the worker and peoples in locality.

The Mumbai Bench of Tribunal held that donations are not allowable expenditure. Further, nothing was placed to show that there was any clause or term in settlement, if any arrived at between assessee company and their workers that assessee would have to pay donations on such occasions and then only it could be said that for maintaining industrial relations, assessee had given donations. Therefore, the donations were to be disallowed.

Section 37(1) of Income-tax Act, 1961 – Business Expenditure – When allowable

Advances for purchase of machinery which was written off due to non-supply, is revenue expenditure [Assessment Year 2005-06]

Pik Pen Private Limited vs. ITO, 28 January 2010 (ITAT-MUM)

Where advances were made for purchase of machinery but as machinery was not supplied, and hence assessee written off said advances treating same as revenue expenditure under the Section 37(1), it was just.

Section 43A of the Income-tax Act, 1961 – Foreign Currency, Change in rate of, exchange of

Roll over charges paid to bank in respect of foreign exchange forward contracts in respect of liabilities relating to acquisition of fixed assets are required to be capitalized [Assessment Year 1986-87]

Assst. CIT vs. Elecon Engineering Co. Ltd, 26 February 2010 (SC)

Exchange differences are required to be capitalized if the liabilities are incurred for acquiring the fixed asset, like plant and machinery. It is the purpose for which the loan is raised that is of prime significance. Whether the purpose of the loan is to finance the fixed asset or working capital is the question which one needs to answer and in order to ascertain that purpose, the facts and circumstances of the case, including the relevant loan agreement and the correspondence between the parties concerned are required to be looked into.

Assessee procured a foreign currency loan for expansion of existing business. Since the repayment of loan was stipulated in instalments, assessee desired to ensure that foreign currency required for repayment of the loan be obtained at a pre-determined rate and cost. Accordingly, the assessee booked forward contracts with Citibank for delivery of the required foreign currency on the stipulated dates. The contract was entered into for entire outstanding amount and the delivery of foreign currency was obtained under the contract for instalment due from time to time. The balance value of the contract, after deducting the amount withdrawn towards repayment, was rolled over for a further period up to the date of the next instalment. The Revenue sought to disallow the amount of the roll over premium charges paid by the assessee in respect of foreign exchange forward contracts to Citibank N.A. on the ground that the said charges were incurred in connection with the purchase of a capital asset.

The Supreme Court held that Section 43A was not applicable in this case, as there was no increase or reduction in liability because such roll over charges were paid to avoid increase or reduction in liability consequent upon change in the rate of exchange.

One need to keep in mind that during the relevant assessment years, Section 43A applied to the entire liability remaining outstanding at the year-end, and it was not restricted merely to the instalments actually paid during the year. Therefore, at the relevant time, the year-end liability of the assessee had to be looked into. Further, it cannot be said that roll over charge has nothing to do with the fluctuation in the rate of exchange. In the present case, the Notes to the Accounts for the year ending 31st December, 1986, indicated adverse fluctuations in the exchange rate in respect of liabilities pertaining to the assets acquired. This Note clearly established existence of adverse fluctuations in the exchange rate which made the assessee opted for forward cover and which made the assessee paid roll over charges. The word "adverse" in the Note itself presupposed increase in the liability incurred by the assessee during the year ending 31st December, 1986. In the circumstances, there was no merit in the contention of the assessee that roll over charges had nothing to do with the fluctuation in the rate of exchange. Lastly, this case was concerned with capitalization of exchange difference in respect of acquisition of fixed assets acquired from abroad. According to Indian Accounting Standards by Dolphy D'Souza, roll over charges are indicative of the increase or decrease in the liability of the company in the next specified period, generally of six months. Roll over charges represent the difference arising on account of change in foreign exchange rates. Roll over charges paid/ received in respect of liabilities relating to the acquisition of fixed assets should be debited/ credited to the asset in respect of which liability was incurred. However, roll over charges not relating to fixed assets should be charged to the profit & loss account.

Section 43B of Income-tax Act, 1961 – Expenses Disallowed – Certain deductions to be allowed only on actual payments

Contribution to P.F./E.S.I.C beyond grace period but before filing of return is covered under Section 43B [Assessment Year 2005-06]

Pik Pen Private Limited vs. ITO, 28 January 2010 (ITAT-MUM)

Where in respect of payment of employees contribution to P.F./E.S.I.C beyond grace period which was relating to the month of February but before filing of the return of income is covered under Section 43B.

Section 73 of Income-tax Act, 1961 – Losses – In Speculation Business

Explanation to Section 73 stipulates that where an assessee is a company whose business consists in any part of purchase and sale of shares of other Companies, it shall be deemed to be carrying on a speculation business to extent to which business consists of purchase and sale of such share; assessee is entitled to set off carried forward speculation lossees against profit or loss that has resulted from carrying on business of purchase and sale of shares of other Companies [Assessment Year 2003-04]

CIT vs. Lokmat Newspapers Pvt. Ltd, 16 February 2010 (BOM)

The deeming fiction created by the explanation to Section 73 defines when an assessee is to be deemed to be carrying on a speculation business for the purposes of the Section. The deeming fiction is, therefore, one which arises specifically in the context of the provisions of Section 73 and is confined to that purpose alone. The explanation stipulates that where an assessee is a company whose business consists in any part of the purchase and sale of shares of other companies, it shall be deemed to be carrying on a speculation business to the extent to which the business consists of purchase and sale of such shares. Whether or not it is a profit or loss that has resulted from carrying on such business, is a consideration which is alien to the meaning of what constitutes a speculation business by the explanation to Section 73. Once an assessee is deemed to be carrying on a speculation business for the purpose of Section 73, any loss computed in respect of that speculation business, can be set off only against the profits and gains of an other speculation business. Similarly, for the purposes of sub-Section (2), the loss in respect of a speculation business which has not been set off either in whole or in part, can be carried forward and can be set off against profits and gains "of any speculation business". The expression "any speculation business" means a speculation business of the assessee in respect of which profits and gains for the assessment year in question have arisen and there is no justification to restrict the content of that speculation business where profits have arisen by excluding a business involving actual delivery of shares. No such restriction is found in the Explanation. To impose one is a legislative function. In other words, once the assessee is carrying on a speculation business and the profits and gains have arisen from that business during the course of the assessment year, the assessee is entitled to set off the losses carried forward from a speculation business arising out of a previous assessment year.

Section 80-I of Income-tax Act, 1961 – Deduction – Profits and gains from Industrial Undertakings after a certain date

For purposes of calculating deduction, loss sustained in one of units is not to be taken into account because sub-section (6) contemplates that only profits shall be taken into account as if it was only source of income [Assessment Years 1992-93 to 1995-96 and 2000-01]

CIT vs. Sona Koyo Steering Systems Limited, 10 February 2010 (DEL)

A plain reading of the provisions of Section 80-I is that the deduction is to be made in case the gross total income includes any profits and gains derived from an industrial undertaking, etc., in case such profits and gains are included in the gross total income of the assessee. The deduction in the case of a company, in view of the proviso to Section 80-I (1), is to be given to the extent of 25 per cent of such profits and gains of such an industrial undertaking. It is also clear that in view of Section 80-I (6), which begins with a non-obstante clause, the quantum of deduction is to be computed as if the industrial undertaking were the only source of income of the assessee during the relevant years. In other words, each industrial undertaking or unit is to be treated separately and independently. It is only those industrial undertakings, which have a profit or gain, would be considered for computing the deduction. The loss making industrial undertaking would not come into the picture at all. The plain reading of the provision suggests that the loss of one such industrial undertaking cannot be set off against the profit of another such industrial undertaking to arrive at a computation of the quantum of deduction that is to be allowed to the assessee under Section 80-I (1).

The Supreme Court in the case of Synco Industries Ltd v. Assessing Officer 299 ITR 444 clearly held that while computing the quantum of deduction under Section 80-I(6), the Assessing Officer, no doubt, has to treat the profits derived from an industrial undertaking as the only source of income of the assessee in order to arrive at a deduction under Chapter VI-A. The Supreme Court also held that under Section 80-I(6), for the purposes of calculating the deduction, the loss sustained in one of the units is not to be taken into account because sub-Section (6) contemplates that only the profits shall be taken into account as if it was the only source of income.

Section 90 of the Income-tax Act, 1961, read with Article 13 of the Indo Mauritius DTAA – Double Taxation Agreement – Existence of

Motive of tax avoidance is not relevant so long as act is done within framework of law; if a resident of a third country, in order to take advantage of tax reliefs *and economic benefits arising from operation of a Treaty between other countries through a conduit entity set up by it, legal transactions entered into by that conduit entity cannot be declared invalid and lifting of corporate veil is not permissible to deny benefits of a tax treaty*

E-Trade Mauritius Ltd., In Re, 22 March 2010 (AAR)

'Treaty shopping' broadly means "the use of a Tax Treaty by a person who is not resident in either of the treaty countries, usually using a conduit entity residing in one of the countries".

In Union of India v Azadi Bachao Andolan [2003] 263 ITR 706, the Supreme Court found no legal taboo against 'treaty shopping'. Treaty shopping and the underlying objective of tax avoidance/mitigation was apparently not equated to a colourable device. That means, if a resident of a third country, in order to take advantage of the tax reliefs and economic benefits arising from the operation of a Treaty between other countries through a conduit entity set up by it, the legal transactions entered into by that conduit entity cannot be declared invalid. The motive behind setting up such conduit companies and doing business through them in a country having beneficial tax treaty provisions was held to be not material to judge the legality or validity of the transactions. The approach adopted in Mc Dowell and Co. Ltd. vs. Commercial Tax Officer (1985) 154 ITR 148 by one of the Judges that judicial approval should not be accorded to a transaction meant to be a device to avoid the tax irrespective of whether it is prohibited by Statute was not endorsed. The principle pithily stated in IRC vs. Duke of West Minister 1936 AC-1 (HL) that "every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be" was emphatically approved. However, a colourable device adopted through dishonest methods is one of the areas which could be looked into in judging a legal transaction from the tax angles. At the same time, it was made clear in Azadi Bachao case that the word 'device' cannot be used 'in any sinister sense' and the design of tax avoidance by itself is not objectionable if it is within the framework of law and not prohibited by law. However, a transaction which is 'sham' in the sense that "the documents are not bona fide in order to intend to be acted upon but are only used as a cloak to conceal a different transaction" would stand on a different footing. It was pointed out that for acts or documents to be a 'sham', the parties thereto must have a common intention that the they are not to create the legal rights and obligations which they give the appearance of creating. Thus, in regard to 'colourable devices' and 'sham' arrangements, the scope is still left to ignore such dubious methods subject to the clarifications and caveat entered on the import of the said expressions.

The applicant is a company incorporated in Mauritius. It did not have any Permanent Establishment in India as defined in Article 5 of the India-Mauritius DTAA. During the period the Applicant held shares in an Indian Company. The applicant received the funds for the purchase of shares from its US parent company by way of capital contribution and loans. The Applicant sold shares in the Indian Company to a Mauritius company and realized long term capital gains thereon in India.

The Authority for Advance Rulings held that the applicant was undoubtedly the legal owner of the shares entered into a transaction of sale of shares backed up by Board's resolution and received the sale price. In this fact situation, ex-facie, it is difficult to assume that the capital gain had not arisen in the hands of the applicant, more so when according to the binding pronouncement of the Supreme Court, the motive of tax avoidance is not relevant so long as the act is done within the framework of law, the 'treaty shopping' through conduit companies is not against law and the lifting of corporate veil is not permissible to deny the benefits of a tax treaty. The capital gains cannot be attributed to the holding company situated in USA. The tax residency certificate issued by the Mauritius authorities is at least a presumptive evidence of the beneficial ownership of the shares and the gains arising therefrom, even if it does not give rise to a conclusive presumption. The facts that the source of funds for the purchase of shares is traceable to the holding company or that the holding company had played a role in suggesting or negotiating the sale or that the consideration received ultimately goes to the parent company in the form of dividends or the diminution of capital do not lead to a legal inference that the holding company in reality owned the shares and/or the recipient of capital gains arising from transfer of shares is the holding company but not the subsidiary. To take such a view would be clearly contrary to the ground realities of the mutual business and economic relations between a holding and subsidiary company and the inter-se legal structure. The fact that the subsidiary has its own corporate personality and is a separate legal entity cannot be overlooked. The fact that the holding company exercises acts of control over its subsidiary does not in the absence of compelling reasons dilute the separate legal identity of the subsidiary. It is unrealistic to expect that a subsidiary should keep off the clutches of the holding company and conduct its business independent of any control and assistance by the parent company. It would have been a different matter if the Supreme Court had disapproved the treaty shopping and the tax avoidance measures. In the present state of law i.e. the treaty provision, the Circular of CBDT, the law laid down in Azadi Bachaoo Andolan and the legal incidents of corporate personality, the attempted distinction between legal and beneficial ownership cannot be sustained on any reasonable basis. By virtue of the Article 13.4 of India-Mauritius DTAA, capital gain tax is not liable to be charged in India.

Section 147 read with Section 115JB of Income-tax Act, 1961 – Income Escaping Assessment

On the date on which Assessing Officer purported to exercise his power to reopen assessment under Section 147, legislative amendment by insertion of clause (i) to Explanation (1) to Section 115JB had not been brought into force on statute book; obviously, therefore, subsequent amendment could not have been and is not a ground which has been taken by Assessing Officer, while reopening assessment [Assessment Year 2004-05]

Rallis India Limited vs. Assistant Commissioner of Income Tax, 4 March 2010 (BOM)

It is a settled principle of law that for the computation of book profits under Section 115JB, the Assessing Officer has to accept the authenticity of the accounts maintained in accordance with the provisions of Parts II and III of Schedule VI of the Companies Act, 1956 which are certified by the auditors and passed by the company in its general meeting. The Assessing Officer does not have jurisdiction to go beyond the net profits as shown in the profit and loss account, save and except to the extent which is provided for in the Explanation. The Assessing Officer can increase the net profits as reflected in the profit and loss account prepared under Parts II and III of Schedule VI to the Companies Act, 1956 only to the extent that is permissible in the Explanation.

Clause (i) to Section 115JB by the Finance Act of 2009 came to be inserted in Explanation (1) so as to provide for the amount or amounts set aside as provision for diminution in the value of an asset. Though the amendment was made with retrospective effect from 1st April 2001, it was enacted into law after the Assessing Officer had exercised the power to reopen the assessment in the present case by his notice dated 16th July 2008. Consequently, on the date on which the Assessing Officer exercised his jurisdiction under Section 148, the amendment which was brought in subsequently by the Finance Act of 2009 was not in existence.

On the date on which the Assessing Officer purported to exercise his power to reopen the assessment under Section 147, the legislative amendment by the insertion of clause (i) to Explanation (1) to Section 115JB had not been brought into force on the statute book. Obviously, therefore, the subsequent amendment could not have been and is not a ground which has been taken by the Assessing Officer, while reopening the assessment. The validity of the notice issued by the Assessing Officer in seeking to reopen the assessment must be determined with reference to the reasons which are found in support of the reopening of the assessment. These reasons cannot be allowed to be supplemented on a basis which was not present to the mind of the Officer and could not have been so present on the date on which the power to re open the assessment was exercised. The order of the Assessing Officer with reference to the computation of book profits under Section 115JB was at the least a probable. There was no warrant for reopening the assessment in exercise of the power conferred under Section 147.

Section 147, read with Section 36(1)(vii) of Income-tax Act, 1961 – Income Escaping Assessment

Where there is an absence of tangible material on basis of which assessment could have been reopene and reason which weighed with Assessing Officer is extraneous to basis on which deduction can legitimately be claimed under Section 36(1)(vii), this is a case of a mere change of opinion without any tangible material; reopening of assessment on this ground is unsustainable [Assessment Year 2004-05]

Rallis India Limited vs. Assistant Commissioner of Income Tax, 4 March 2010 (BOM)

The reopening of assessment is sought to be effected within a period of four years of the expiry of the relevant assessment year. However, it is now a well settled position of law that a mere change of opinion would not justify the Assessing Officer in seeking recourse to the powers under Sections 147 and 148 and there must be tangible material before the Assessing Officer to prove that income chargeable to tax has escaped assessment. The principle is that there must be tangible material on the basis of which an assessment is sought to be reopened even within a period of four years.

During the course of the assessment proceedings, the Assessing Officer brought his mind to bear upon the question as to whether the assessee is entitled to claim a deduction under Section 36(1)(vii), with respect to bad debts of Rs. 12 crores, details of which were furnished to the Assessing Officer, pursuant to which an assessment order came to be passed under Section 143(3).

As a result of the order that was passed by the Commissioner of Income Tax (Appeals), the assessee has been allowed a deduction in the amount of Rs. 12,00,43,394/ which comprises of an amount of Rs. 6.46 crores, which was allowed by the Assessing Officer and the amount of Rs. 5.54 crores which came to be allowed in the order of the Commissioner of Income Tax (Appeals). The reopening of the assessment is sought to be effected only in respect of the deduction of an amount of Rs. 6.46 crores that was granted by the Assessing Officer and not in respect of the additional amount which was allowed by the order of the Commissioner of Income Tax (Appeals).

The Bombay High Court held that the reason which weighed with the Assessing Officer to reopen the assessment was that the assessee had not debited any amount towards the write off of debts / advances to the profit and loss account. Such a requirement was not contained in Section 36(1)(vii).

In the present case, there was an absence of tangible material on the basis of which the assessment could have been reopened. The reason which weighed with the Assessing Officer is extraneous to the basis on which the deduction can legitimately be claimed under Section 36(1)(vii). This is a case of a mere change of opinion without any tangible material. The reopening of the assessment on this ground is hence unsustainable.

Section 254 of Income-tax Act, 1961 – Appellate Tribunal – Orders of

Re-evaluating correctness on merits of an earlier decision lies beyond scope of power conferred under Section 254(2) [Assessment Year 2000-01]

CIT vs. Earnest Exports Ltd, 25 February 2010 (BOM)

Re-evaluating the correctness on merits of an earlier decision lies beyond the scope of the power conferred under Section 254(2). The power under Section 254(2) is confined to a

rectification of a mistake apparent on record. The Tribunal must confine itself within those parameters. Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection. The provision empowers the Tribunal to correct mistakes, errors and omissions apparent on the face. The Section is not an avenue to revive a proceeding by recourse to a disingenuous argument nor does it contemplate a fresh look at a decision recorded on merits, however appealing an alternate view may seem. Unless a sense of restraint is observed, judicial discipline would be the casualty. That is not what Parliament envisaged.

Section 271(1)(c) of Income-tax Act, 1961 – Penalty – For Concealment of Income

Where there was no finding that any details supplied by assessee in its return were incorrect or erroneous or false, there would be no question of inviting penalty under Section 271(1)(c); a mere making of claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding income of assesseeand such claim made in Return cannot amount to inaccurate particulars [Assessment Year 2001-02]

CIT vs. Reliance Petroproducts Pvt. Ltd, 17 March 2010 (SC)

In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars.

It is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise.

Where there was no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false, there would be no question of inviting the penalty under Section 271(1)(c). A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.

Where the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part; it was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature.

Section 201 Income-tax Act, 1961 – Deduction of Tax at Source – Failure to Deduct or Pay, Consequences of

If assessee has not applied to Assessing Officer under Section 195(2) for deduction of tax at a lower or nil rate of tax under a bona fide belief that no part of payment made to non-resident is chargeable to tax, then he is not under any statutory obligation to deduct tax at source on any part of payment [Assessment Year 2002-2003]

The Income-tax Officer, International Taxation vs. Prasad Production Ltd, 9 April 2010 [ITAT - Chennai (SB)]

Who decides whether payment bears any income character or not

The Income-tax Act is enacted to levy taxes on income earned by a person. It is the statutory obligation of the person earning income to prepare his tax return, determine his tax liability, pay the same and furnish the return. He also pays tax in advance during the financial year as he earns income. All these obligations are on the person earning the income and he is to fulfill these obligations according to his understanding of the various

provisions of the Act. The question is, if he is expected to know what income is taxable or not taxable in his own case, why can't he decide in respect of the payment he is making to non-resident. It is to be appreciated that the payer has not to determine the tax liability of the total income of the payee. He has to consider the chargeability only in respect of the payment he is making to the payee. Further, sub-Section (2) of Section 195 clearly indicates that it is the payer who will first consider whether the payment or any part of it bears income character. Therefore, it is the payer who is the first person to decide whether the payment he is making bears any income character or not. Various situations that can arise for the applicability of Section 195 are as follows:

(a) If the bona fide belief is that no part of the payment has any portion chargeable to tax, Section 195 would be totally inapplicable.
(b) If the payer believes that whole of the payment is income chargeable to tax, he will be liable to deduct tax under Section 195(1).
(c) If he believes that only a part of the payment is chargeable to tax, he can apply under Section 195(2) for deduction at appropriate rates.
(d) If the payer believes that a part of the payment is income chargeable to tax, and does not make an application under Section 195(2), he will have to deduct tax from the entire payment.
(e) If the payer believes that the entire payment or a part of it is income chargeable to tax and fails to deduct tax at source, he will face all the consequences under the Act.
(f) If the payer believes that he has to deduct tax and expresses this duty of his to the payee, it is for the payee then to apply under Section 195(3) to receive the payment without any deduction at source.
(g) If the payee fails to obtain certificate under Section 195(3), the payer, based on his belief will certainly withhold the tax. Thus, these are the various situations which one can visualise for the application of the entire provision of Section 195. The above discussion goes to show that in case of a bona fide belief by the payer that no part of the payment bears income character, it is not mandatory for him to undergo the procedure of Section 195(2) before making any payment to a non-resident.

One should consider the fallout of each situation and how the interests of both, the tax payer as well as the tax collector are safe-guarded under the Act.

(a) If the bona fide belief of the payer is that no part of the payment has any portion chargeable to tax, he will not enter into any procedure under Section 195. However, if the department is of the view that the payer ought to have deducted tax at source, it will have recourse under Section 201. Thus, here the interest of the revenue is protected. In the proceedings under Section 201, the Assessing Officer will determine the portion chargeable to tax according to the provisions of the Act and determine the tax payable by the payer. The Assessing Officer is bound to determine the income chargeable to tax in accordance with the provisions of the Act for two reasons. Firstly, because it is the mandate of the Supreme Court in the case of Transmission Corporation of A.P Ltd v CIT (239 ITR 587). Secondly, the Delhi High Court has held in the case of D.D.A. vs. ITO (230 ITR 9) that an order passed under Section 201(1) is an assessment order and the said decision has been affirmed by the Supreme Court in 252 ITR 772. In any case, the liability of the payer cannot exceed that of the payee. And if the payer is dissatisfied with the order under Section 201, he will have recourse to appeal against the said order. Thus, interests of both the parties are protected.
(b) If the payer believes that whole of the payment is chargeable to tax and if he deducts and pays the tax, no problem arises.
(c) If the payer believes that only a part of the payment is chargeable to tax, he can apply under Section 195(2) for deduction at appropriate rates and act accordingly. No interest is jeopardised.
(d) If the payer believes that a part of the payment is income chargeable to tax, and does not make an application under Section 195(2), he will have to deduct tax from the entire payment. This is the mandate of the judgment in the case of Transmission Corporation of A.P Ltd's case (Supra). Thus, the interest of the revenue stands protected.
(e) If the payer believes that the entire payment or a part of it is income chargeable to tax and fails to deduct tax at source, he will face all the consequences under the Act. The consequences can be the raising of demand under Section 201, disallowance under Section 40(a)(i), penalty, prosecution, etc. The interest of the revenue stands protected.
(f) If the payee wants to receive the payment without deduction of tax, he can apply for a certificate to that effect under Section 195(3) and if he gets the certificate, no one is adversely affected.
(g) If the payee fails to get the certificate, he will have to receive payment net of tax. No interest is jeopardised.

Thus, in all the possible situations described above, the interests of all the parties are protected. Further, one cannot lose sight of one underlying principle in the above processes that the entire exercise is tentative as has been held in the case of Transmission Corporation of A.P Ltd's case (Supra). If the payer is under a bona fide belief that no part of the payment is chargeable to tax, he will have the right to defend that belief in the proceedings under Section 201. Number of such proceedings have taken place and have been adjudicated upon by various High Courts as well as by the Supreme Court. To repeat, the payer is an assessee under the Act and the order under Section 201 is an assessment order. Therefore, the payer has the right to get his liability determined as per the provisions of the Act despite the entire exercise being tentative in nature. The ultimate result would depend on what is determined in the assessment of the recipient. The ultimate result in the case of the recipient will determine whether the payer can be treated as an assessee in default or not. Yet, the entire tentative exercise described above may have to be undergone.

Alternative procedure prescribed by Board.

This procedure was first announced by the Board by its circular No.759 dated 18.11.1997. Two important aspects are noteworthy in the above circular. Firstly, in the first paragraph the Board confirms that the payer has to deduct tax at source only when he is paying any sum chargeable under the Act. Secondly, it was the Office Manual of RBI which compelled the payer to obtain a No Objection Certificate from the department. The Board must have appreciated the difficulty faced by the remitters that even where the sums paid to the non-resident were not chargeable under the Act, the RBI Manual compelled the remitter to obtain the No Objection Certificate. To mitigate this hardship, the Board evolved the procedure of filing an undertaking by the remitter and a certificate obtained from a Chartered Accountant. Considering the circumstances in the background of which the procedure was evolved, it is clear indication that as per Board's interpretation also, the payer need not enter into the procedure of Section 195 if no part of the payment was chargeable to tax. Again, it needs to be appreciated that the procedure prescribed is only to comply with the provisions of the RBI Manual and not that of the statute because statutory compliance would be necessary only when the entire payment or a part of it is chargeable to tax under the Act. Therefore, there is no gainsaying that the payer ought to undergo the procedure of section 195 irrespective of the fact whether the payment is chargeable to tax or not. The fact that the procedure of obtaining C.A. Certificate is alternative to the procedure under Section 195(2) is clear from what is stated in paragraph 4 of circular 767 dated 22.5.1998

The undertaking to be furnished by the payer and the format of the C.A. Certificate were amended by the Board by its circular No.10/2002 dated 9.10.2002. Considering the amendments made, it is interesting to note that it covers any type of payment, viz., be it purely capital, or revenue in nature but exempt either under the Act or the relevant DTAA or payments bearing pure income character. So far as the undertaking by the assessee is concerned, except for some more details, the substantial requirement remains the same as it was in the earlier undertaking. However, the Certificate to be given by the C.A. has been made more elaborate. It is elaborate almost to the extent of determining whether the sum paid is chargeable to tax or not. It covers remittances for royalties, fees for technical services, etc. It also covers remittance for supply of articles or things, computer software and so on. It also necessitates an enquiry whether the beneficiary of the remittance has a permanent establishment (PE) in India or not and the remittance attributable to such PE. Column No. 8 in the certificate is with regard to business income and asks a question, amongst others, whether it is liable to tax in India or not, and if not, the reasons thereof. Finally, column No.9 requires the C.A. to state the reasons for non-deduction of tax at source if no tax is deducted. The new format of the C.A. Certificate clearly establishes the legal position of Section 195 that the payer need not undergo the procedure of section 195 at all if he is of the bona fide belief that no part of the payment is chargeable to tax in India. If at all the payer believes that the entire payment is chargeable to tax, he has to deduct tax at source under Section 195(1). If he is of the bona fide belief that only part of the payment is chargeable to tax, he may apply for deduction at appropriate rates under Section 195(2). The payer need not undergo the procedure of Section 195 at all if he is of the bona fide belief that no part of the payment is chargeable to tax. In this situation, the payer has the option to furnish the undertaking and the C.A. Certificate. He may also furnish these documents in case the tax is deducted at lower rates. If the payer has a bona fide belief that no part of the payment is Chargeable under the Act, -

(a) he may not undergo the procedure under Section 195 at all and,

(b) he may not furnish the C.A. Certificate also except for complying with the RBI Manual for the purpose of making remittance.

This is so because, as mentioned earlier, the undertaking and the C.A. Certificate are not the conditions of the statute but are only for the purpose of complying with the RBI Manual. It may be noted that even in the absence of an undertaking by the payer, the department will have the power under the Act to proceed against the payer if later it is found that the payment made was chargeable to tax. The payer in that event will face all the consequences under the Act depending on the fact whether entire payment was chargeable or only a part of it was chargeable.

From the details to be furnished in the C.A. Certificate, it is evident that the payer, through his Chartered Accountant, would be almost determining whether the payment is chargeable to tax or not. Since the undertaking is to be furnished to the Assessing Officer having jurisdiction over the remitter, he too would be making almost an assessment about the chargeability of the payment made by the payer. Of course, this entire exercise, both by the payer as well as by the Assessing Officer would be tentative in nature. However, if the Assessing Officer comes to the conclusion that the payment or a part of it is chargeable to tax, it will culminate into an order under section 201. It is noteworthy that because of the exercise that precedes the making of the order under section 201, the Supreme Court has held it to be an assessment order. And since quite an intense exercise precedes the order under Section 201, the payer has every reason to be aggrieved if the order is adverse to him and hence the same is appealable under Section 246A. Whatever may be the final outcome of the proceedings under Section 201, the ultimate liability of the assessee including the consequences provided under Section 40(a)(i) would depend on the assessment in the case of the payee.

Based on the language used in Section 195(2) and on the basis of the principles laid down by the superior courts, it was to be concluded that at the first instance it is the payer who decides whether the payment has any income character or not. The second issue is whether the payer can enter into an exercise which almost amounts to determining the tax liability of the payee which further entails action on the part of the Assessing Officer to enter into the said exercise. On the basis of the alternative procedure and on the basis of various judgments, it was to be concluded that the assessee and the Assessing Officer both may enter into such an exercise.

The assessee and the Assessing Officer may have to enter into the exercise of determining the tax liability of the non-resident to a limited extent. This entire exercise is tentative and the ultimate liability of the payer will depend on as to what happens in the assessment of the payee. When the payer is of the view that no part of the payment bears income character, such a view has to be bona fide. If the bona fides are doubtful, the payer will have to face all the consequences under the Act.

In the final analysis, that if the assessee has not applied to the Assessing Officer under Section 195(2) for deduction of tax at a lower or nil rate of tax under a bona fide belief that no part of the payment made to the non-resident is chargeable to tax, then he is not under any statutory obligation to deduct tax at source on any part of the payment.

Section 201 Income-tax Act, 1961 – Deduction of Tax at Source – Failure to Deduct or Pay, Consequences of

Where along with main agreement for purchase, a separate maintenance agreement was made which provided for provision of variety of services for which separate consideration was payable, and payment made was merely a part of equipment price which included services of installation and training, it followed that said sum was not chargeable to tax in India no tax was to be deducted at source[Assessment Year 2002-03]

The Income-tax Officer, International Taxation vs. Prasad Production Ltd, 9 April 2010 [ITAT - Chennai (SB)]

The assessee entered into an agreement with IMAX Ltd., Canada for purchase of equipment, maintenance and installation. The assessee remitted an amount to IMAX Ltd. on account of technology transfer fee without deducting tax at source (TDS). The Assessing Officer was of the view that the amount remitted by the assessee was for provision of technical services by IMAX which falls under Section 9(1)(vii) and concluded that since the assessee has not obtained any order under Section 195(2), 195(3) or under Section197, the gross sum remitted by the assessee was liable to tax under section195. Accordingly, he raised a demand of tax and also levied interest under Section 201(1A).

The Special Bench of the Tribunal held that the agreement entered into by the assessee with IMAX is very clear. Schedule C to the agreement is also very clear to point out that IMAX is to install the equipment, test it and also provide training for upto four projectionists. The Assessing Officer has mistaken these services to be as payment of technology transfer whereas they are auxiliary to the sale of the equipment. The department has not been able to show that these services are independent of the equipment. The maintenance agreement which provided for provision of variety of services and for which separate consideration was payable in the course of time was different from the main purchase agreement. However, the payment for technology transfer fee was a part of the equipment price, which included the services of installation and training. Therefore, it followed that the said sum for technology transfer fee was not chargeable to tax in India and hence, the, assessee was justified in not deducting any tax at source. Accordingly, the order of the CIT (A) cancelling the demand raised by the Assessing Officer under Sections 201(1) and 201(1A) was to be upheld.

CIRCULARS/NOTIFICATIONS

DIRECT TAXES

NOTIFICATIONS

1. Notification No. 18/2010 dated 22-03-2010

A Corrigendum to notification 09/2010 bearing S.O. 424 (E) dated 18.02.2010 has been made vide this notification.

2. Notification No. 21/2010 dated 31-03-2010

Section 118 of the Income-tax Act, 1961 empowers the Board to direct, by way of notification in the official Gazette, that any income-tax authority or authorities specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in such notification.

Accordingly, the CBDT has, vide Notification No. 21/2010 directed that for the purpose of the functions under Section 144C of the Income-tax Act, 1961, Commissioners of Income-tax or Directors of Income-tax being members of the Dispute Resolution Panels [as listed hereunder] would be subordinate to the Director General of Income-tax (International taxation):

1. DRP, Ahmedabad
2. DRP, Bangalore
3. DRP, Chennai
4. DRP- I, Delhi
5. DRP- II, Delhi
6. DRP, Hyderabad
7. DRP, Kolkata
8. DRP- I, Mumbai
9. DRP- II, Mumbai
10. DRP, Pune

This notification shall come into force on the date of its publication in the Official Gazette.

3.Notification No 23/2010 dated 8-04-2010

The Finance (No. 2) Act, 2009 had inserted clause (vii) in Section 56(2) to bring within its scope, the value of any property received without consideration or for inadequate consideration.

The said clause provides that, if a property other than immovable property is received without consideration, the aggregate fair market value of such property on the date of receipt would be taxed as the income of the recipient if it exceeds Rs.50,000. In case the property other than immovable property is received for inadequate consideration, and the difference between the aggregate fair market value and such consideration exceeds Rs. 50,000, such difference would be taxed as the income of the recipient. CBDT is empowered to prescribe rules for the determination of fair market value of the property other than immovable property.

Accordingly, the Central Board of Direct Taxes has vide notification no. 23/2010 made rules for determination of fair market value of the property other than immovable property, which would be effective from 1st October, 2009.

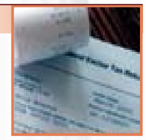
4.Notification: No 24 /2010 dated 08-04-2010

Section 2(48) defining zero coupon bonds requires that such bonds should be notified by the Central Government. Accordingly, the Central Government has, vide Notification No. 24/2010 dated 08-04-2010 has specified the ten year Deep Discount Bond (Zero Coupon Bond) of Rural Electrification Corporation Limited (REC) to be issued by 31st March 2011 for the purpose of Section 2(48) of the Income-tax Act, 1961.

For complete text of the above notifications and circulars please refer to the link: http://law.incometaxindia.gov.in

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

INDIRECT TAXES



A. EXCISE

I. Notification:

1. Notification No. 17/2010-CE (N.T.) dated 13.04.2010 has notified Jarda scented Tobacco manufactured with the aid of packing machine and packed in pouches for the purpose of levying excise duty under Section 3A. Consequential amendment have been made in the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010.

II. Circulars:

1. Circular No. 919/9/2010-CX dated 23.03.2010 is issued to provide a comprehensive procedure for electronic filing of excise and service tax return and electronic payment of taxes under ACES.

2. Circular No. 920/10/2010-CX dated 01.04.2010 has clarified that alumina balls/ ceramic pebbles used in ceramic tile industry should be considered as component/ part of the machines to be classified as capital goods for CENVAT credit purposes. Similarly, bolting cloth/ screens/silicon cylinders which carry designs and which are fitted on the

machines used for printing of designs are also essential for operating of the machines. Therefore, these items would also be considered as capital goods for the purpose of CENVAT Credit Rules, being part/component of the machines.

B. CUSTOM

I. Notification:

1. Notification No. 44/2010 Cus. dated 09.04.2010 has exempted export of cotton waste from so much of the duty of customs leviable thereon which is specified in the said Second Schedule as is in excess of the amount calculated at the rate of 3 per cent ad valorem.

II. Circulars:

1. Circular No. 5/2010-Cus. dated 16.03.2010 has been issued to specify a verification mechanism in respect of the duty credit scrips issued under Chapter 3 schemes of the Foreign Trade Policy (FTP) and in respect of the Export Promotion Schemes viz. Advance Authorization/Duty Free Import Authorization (DFIA)/Export Promotion Captial Goods (EPCG) schemes.

2. Circular No. 6/2010-Cus. dated 19.03.2010 has been issued to reiterate the settled position that rebate under Rule 18 of the Central Excise Rules, 2002 is admissible for supplies made from DTA to SEZ even if Rule 18 does not mention such supplies in clear terms.

3. Circular No. 7/2010-Cus. dated 23.03.2010 has been issued to clarify that 'Drawback' would not be payable in cases where export proceeds have not been realised in accordance with the provisions of the Foreign Exchange Management Act, 1999 even if the claim has been settled by ECGC or realisation waived by RBI.

The complete text of the above-mentioned circulars and notifications on Excise and Customs can be referred from the link: http://www.cbec.gov.in

C. SERVICE TAX

I. Notifications:

1. Notification No. 20/2010 ST dated 30.03.2010 has amended Notification No. 07/2010 ST dated 27.02.2010 so as to extend the benefit of exemption granted to service provided in relation to 'transport of goods by rail' vide Notification No.33/2009 dated 01.09.2009 till 30th June, 2010.

2. Notification No. 21/2010 ST dated 30.03.2010 has amended Notification No. 08/2010 ST dated 27.02.2010, so as to extend the restoration of the benefit of exemption to service provided in relation to 'transport of goods by rail' on specified goods vide Notification No.28/2009 dated 31.08.2009 from 01.07.2010 instead of 01.04.2010.

3. Notification No. 22/2010 ST dated 30.03.2010 has amended Notification No. 09/2010 ST dated 27.02.2010, so as to provide the benefit of an abatement of 70 per cent of the gross value of the freight charged on goods (other than exempted goods) from 01.07.2010 instead of 01.04.2010.

The complete text of the above-mentioned notifications service tax can be referred from the link: http://www.servicetax.gov.in

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

FEMA

RBI/2009-10/358 A. P. (DIR Series) Circular No.42 dated March 25, 2010
Exim Bank's Line of Credit of USD 50 million to the Government of the Republic of Zambia

RBI/2009-10/366 A. P. (DIR Series) Circular No.43 dated March 29, 2010
Deferred Payment Protocols dated April 30, 1981 and December 23, 1985 between Government of India and erstwhile USSR

(Ref - A.P. (DIR Series) Circular No.3 dated July 17, 2009)

In the above referred circular the Rupee value of the special currency basket was indicated as Rs. 66.5719 effective from June 25, 2009.

Further revision has taken place on January 06, 2010 and accordingly, the Rupee value of the special currency basket has now been fixed at Rs. 65.29 with effect from January 11, 2010.

RBI/2009-10/367 A. P. (DIR Series) Circular No.44 dated March 29, 2010
Buyback/ Prepayment of Foreign Currency Convertible Bonds (FCCBs)

(Ref - A.P. (DIR Series) Circular No. 39 dated December 08, 2008, A.P. (DIR Series) Circular No. 65 dated April 28, 2009 and A.P. (DIR Series) Circular No. 58 dated March 13, 2009)

Through above referred circulars Indian companies were allowed to buyback their Foreign Currency Convertible Bonds (FCCBs) both under the automatic route and approval route until December 31, 2009. The Scheme was discontinued with effect from January 1, 2010.

In view of the representations made by the issuers of FCCBs, RBI has decided to consider applications, under the approval route, for buyback of FCCBs until June 30, 2010, subject to issuers complying with all the terms and conditions of buyback/prepayment of FCCBs, as mentioned in A.P. (DIR Series) Circular No.39 dated December 08, 2008 and A.P. (DIR Series) Circular No.65 dated April 28, 2009.

Accordingly, applications complying with the conditions may be submitted, together with the supporting documents, through the designated

AD Category - I bank to the Chief General Manager-in-Charge, Reserve Bank of India, Foreign Exchange Department, External Commercial Borrowings Division, Central Office, 11th Floor, Central Office Building, Shahid Bhagat Singh Road, Mumbai-400 001.

RBI/2009-10/376 A. P. (DIR Series) Circular No.45 dated April 01, 2010
Overseas Investments – Liberalisation

(Ref - A.P. (DIR Series) Circular No. 48 dated June 03, 2008)

Presently, Indian entities are permitted to invest in overseas **unincorporated entities in the oil sector**, up to 400 per cent of the net worth of the Indian company, under the automatic route.

As a measure of further liberalisation, RBI has now decided, in consultation with the Government of India, **to allow Indian companies to participate in a consortium** with other international operators to **construct and maintain submarine cable systems on co-ownership basis under the automatic route.**

Indian company needs to obtain license from the Department of Telecommunication, Ministry of Telecommunication & Information Technology, Government of India, to establish, install, operate and maintain International Long Distance Services.

Accordingly, AD Category - I banks would allow remittances by Indian companies for overseas direct investment, after ensuring that the Indian company has obtained necessary license and also obtain a certified copy of the Board Resolution approving such investment.

Reporting Requirements-

Accordingly, these transactions needs to be reported by the Indian entities investing in the consortium to the AD Category - I banks in the format laid down in A.P. (DIR Series) Circular No. 68 dated June 1, 2007 and by the AD Category – I banks to the Reserve Bank in terms of A.P. (DIR Series) Circular No. 36 dated February 24, 2010 for allotment of Unique Identification Number. All such investments would be subject to the reporting requirements as prescribed in Regulation 15 (iii) of Notification No. FEMA 120/RB-2004 dated July 7, 2004 [Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004], as amended from time to time.

RBI/2009-10/386 A. P. (DIR Series) Circular No.46 dated April 08, 2010
Deferred Payment Protocols dated April 30, 1981 and December 23, 1985 between Government of India and erstwhile USSR

(Ref - A.P. (DIR Series) Circular No.43 dated March 29, 2010)

In the above referred circular the Rupee value of the special currency basket was indicated as Rs.65.29 effective from January 11, 2010.

Further revision has taken place on March 8, 2010 and accordingly, the Rupee value of the special currency basket has been fixed at Rs.63.0381 with effect from March 11, 2010.

RBI/2009-10/393 A. P. (DIR Series) Circular No.47 dated April 12, 2010
Maintenance of Collateral by Foreign Institutional Investors (FIIs) for transactions in the cash segment

(Ref - Notification No. FEMA 120/RB-2004 dated July 7, 2004, Notification No. FEMA 20/2000-RB dated May 3, 2000 and A.P. (DIR Series) Circular No. 4 dated July 28, 2006)

As per the extant Securities and Exchange Board of India (SEBI) norms, the FIIs are required to post collaterals for their transactions in the cash segment of the market.

RBI has decided, in consultation with the Government of India and the SEBI, to permit the FIIs to offer domestic Government Securities (acquired by the FIIs in accordance with the provisions of Schedule 5 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time and subject to the overall limits specified by the SEBI from time to time; the current limit being USD 5 billion), and foreign sovereign securities with AAA rating, as collateral to the recognised Stock Exchanges in India, in addition to cash, for their transactions in the cash segment of the market.

However, cross-margining of Government Securities (placed as margins by the FIIs for their transactions in the cash segment of the market) shall not be allowed between the cash and the derivative segments of the market. The operational guidelines in this regard will be issued separately by the SEBI.

The existing guidelines on collateral for the FIIs transactions in the derivative segment shall remain unchanged. Presently, FIIs are permitted to offer cash and foreign sovereign securities with AAA rating as collateral to the recognised Stock Exchanges in India for their transactions in the derivative segment.

The complete text of the above-mentioned circulars and notifications on FEMA can be downloaded from the link: http://www.rbi.org.in

(Matter on FEMA has been contributed by CA. Manoj Shah and CA. Hinesh Doshi)

CORPORATE LAW

1. Buyback / prepayment of foreign currency convertible bonds

The RBI has issued Circular No. 44 dated 29.03.2010 and revived the scheme for companies to buy back foreign currency convertibles bonds (FCCBs) for which the RBI will keep the window open to consider applications till June 30, 2010 subject to the issuers complying with all the terms and conditions of buyback/ prepayment of FCCBs as per extant regulations. Indian companies were allowed to buy back FCCBs, both under automatic and approval routes, until December 31, 2009. The scheme was discontinued with effect from January 1, 2010.

www.rbi.gov.in

2. Clarification on dealings between a client and a stock broker

The SEBI has issued Circular No. MIRSD/SE/Cir-5/2010 dated 31.03.2010 whereby stock brokers are now directed to ensure the full compliance of an earlier circular dated December 3, 2009 in respect of all clients - existing and new - latest by June 30, 2010. The earlier circular was issued and applicable to stock brokers with a view to instill greater transparency and discipline in the dealings between the clients and the stock brokers, it has been decided, in consultation with investor associations, secondary market advisory committee of SEBI (SMAC), market participants and major stock exchanges, that the stock brokers shall comply with the requirements as annexed to the circular in relation to client registration procedure, mandatory documentation requirements in relation to KYC norms/ member-client or tripartite agreement where sub-broker is involved/risk disclosure document, non-mandatory documentation, running account authorisation, authorisation for electronic contract notes, etc.

www.sebi.gov.in

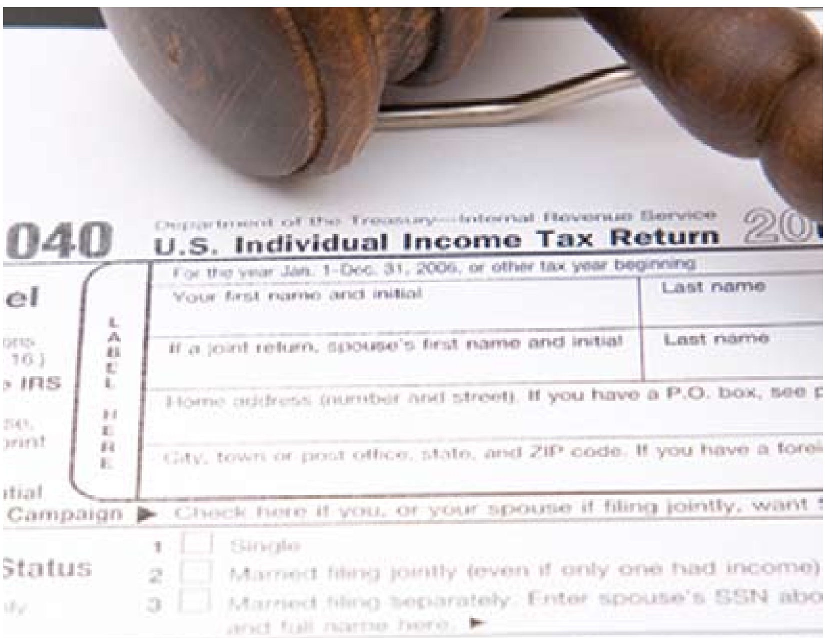
3. Amendments to the equity listing agreement

The SEBI has issued Circular No. CIR/CFD/DIL/1/2010 dated 05.04.2010 whereby it has decided to specify certain listing conditions so as to amend the equity listing agreement in relation to:

(a) requirement of auditors' certificate for accounting treatment under schemes of arrangement on account of amalgamation/merger/ reconstruction, etc. of listed companies which are submitted to the concerned stock exchange, the auditors' will be required to issue a certificate to the effect that the accounting treatment contained in such schemes is in compliance with all the applicable accounting standards;

(b) the timelines for submission and publication of financial results by listed entities are changed by reducing the same whereby the listed entities shall disclose, on standalone or consolidated basis, their quarterly (un-audited with limited review and audited with audit report), financial results within 45 days of the end of every quarter (other than last quarter. For the last quarter, the timeline would be same at 45 days unless audited results are submitted where it would be 60 days coupled with intimating the stock exchange within 45 days about exercising the option of submitting the audited results. It is also provided that as a part of audited / unaudited financial results for the half-year, a statement of assets and liabilities as at the end of the half-year shall be provided by way of a note. However, when a company opts to submit un-audited financial results for the last quarter of the financial year, it shall submit a statement of assets and liabilities as at the end of the financial year only along with the audited financial results for the entire financial year as soon as they are approved by the Board;

(c) voluntary adoption of International Financial Reporting Standards (IFRS) by listed entities having subsidiaries for which various regulatory authorities are working on arriving at a roadmap for implementation of IFRS in India and on the steps to be taken for convergence of the Indian Accounting Standards with IFRS by April 1, 2011 and in order to familiarise listed entities with the IFRS requirements within the aforesaid timeline, an option is given to listed entities having subsidiaries to submit their consolidated financial results either in accordance with the accounting standards specified in Section 211(3C) of the Companies Act, 1956, or in accordance with IFRS. Also, where the figures for the current period are as per IFRS and the figures for the corresponding previous period are as per the notified Accounting Standards,



a reconciliation shall be provided in respect of significant differences between the figures as disclosed as per IFRS and the figures as they would have been if the notified Accounting Standards were adopted such that submission of stand-alone financial results to the stock exchanges shall continue to be in accordance with the Indian GAAP;

(d) in relation to the requirement of a valid peer review certificate for statutory auditors, in respect of all listed entities, limited review/statutory audit reports submitted to the concerned stock exchanges shall be given only by those auditors who have subjected themselves to the peer review process of the ICAI and who hold a valid certificate issued by the 'Peer Review Board' of the ICAI;

(e) in relation to interim disclosure of Balance Sheet items by listed entities and with a view to have more frequent disclosure of the asset-liability position of entities, listed entities shall disclose within 45 days from the end of the half-year, as a note to their half-yearly financial results, a statement of assets and liabilities in the specified format;

(f) modification in formats of limited review report and statutory auditor's report is done to make it clear that disclosures pertaining to details of public shareholding and promoters' shareholding, including details of pledged/encumbered shares of promoters/promoter group, contained in the format have been traced from disclosures made by the management; and

(g) in order to ensure that the CFO has adequate accounting and financial management expertise to review and certify the financial statements as required under Clause 49 of the Listing Agreement, the appointment of the CFO is approved by the Audit Committee before finalisation of the same by the management and the Audit Committee, while approving the appointment, shall assess the qualifications, experience and background, etc. of the candidate.

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4. Master circular for stock exchanges

The SEBI has issued Master Circular No. CIR/MRD/DSA/10/2010 dated 06.04.2010 combining all the regulations and directives issued by SEBI on the captioned subject and the various directives issued vide circulars from time to time, covering matters relating to, (a) allotment of codes to stock exchanges, (b) subsidiary management by stock exchange, (c) responsibilities of parent exchange towards subsidiary, (d) governance of recognized stock exchanges, and, (e) arbitration in recognised stock exchanges.

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5. ASBA facility in public issues

The SEBI has issued Circular No. CIR/CFD/DIL/2/2010 dated 06.04.2010 in relation to Applications Supported by Blocked Amount (ASBA) facility in public issues which is presently available to all the investors except Qualified Institutional Buyers (QIBs) and it has now been extended to QIBs in public issues opening on or after May 1, 2010, for which SEBI has stated that stock exchanges, merchant bankers, registrar to an issue and bankers to an issue acting as self certified syndicate banks are advised to ensure that appropriate arrangements are made to accept ASBA forms from QIBs also in addition to the existing categories of investors.

www.sebi.gov.in

6. Maintenance of Collateral by FIIs for transactions in the cash segment

The RBI has issued Circular No. 47 dated 12.04.2010 whereby it has now permitted FIIs to offer domestic Government Securities (acquired by the FIIs in accordance with the provisions of Schedule 5 to Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time and subject to the overall limits specified by the SEBI from time to time; the current limit being USD 5 billion), and foreign sovereign securities with AAA rating, as collateral to the recognised Stock Exchanges in India, in addition to cash, for their transactions in the cash segment of the market. However, cross-margining of Government Securities (placed as margins by the FIIs for their transactions in the cash segment of the market) shall not be allowed between the cash and the derivative segments of the market. The operational guidelines in this regard will be issued separately by the SEBI. Presently, FIIs are permitted to offer cash and foreign sovereign securities with AAA rating as collateral to the recognised Stock Exchanges in India for their transactions in the derivative segment and as per the extant Securities and Exchange Board of India (SEBI) norms, the FIIs are required to post collaterals for their transactions in the cash segment of the market.

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

Virtual certainty in respect of deferred tax assets.

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 public sector company is engaged in construction of ships and ship repair activities. The company has an accumulated loss of Rs.847.42 crore as on 01.04.08 and a deferred tax asset of Rs.102.36 crore. As per the Income-tax Returns filed by the company and income tax assessments, the amount of unabsorbed depreciation and carried forward losses of the company is Rs. 255.51 crore. The company has also realised deferred tax asset to the extent of Rs.6.66 crore in the financial year 2007-08.

2. During the audit of accounts of the company for the financial year 2007-08, the government auditor had raised an observation in respect of accounting for deferred tax asset and issued a provisional comment as follows:

> "As per paragraph 17 of Accounting Standard (AS) 22, 'Accounting for Taxes on Income', where an enterprise has unabsorbed depreciation or carry forward of losses under tax laws, deferred tax assets should be recognised only to the extent that there is virtual certainty supported by convincing evidence that sufficient future taxable income will be available against which deferred tax assets can be realised. Inspite of non-existence of virtual certainty supported by convincing evidence of availability of future taxable income and carrying an unabsorbed depreciation of Rs. 13,019.94 lakh as on 31.03.08, the company recognised deferred tax asset. This has resulted in overstatement of deferred tax assets and profit after taxation, and understatement of accumulated losses by Rs. 11,446.90 lakh."

3. The company replied to the government auditor that there exists virtual certainty that sufficient future taxable income will be available for realising the above-mentioned deferred tax asset based on the following facts:

(a) The company has secured an order from Indian Navy for refit and modernisation of a submarine for a contract value of Rs. 629 crore on nomination basis. As a part of this contract, the Indian Navy has catered Rs. 50 crore for creating additional infrastructural facilities and it has been agreed in the contract on the modus operandi for amortisation of the said amount of Rs. 50 crore over the future medium refits/normal refits. This fact confirms the existence of future profitable orders from Indian Navy in addition to the existing order.

(b) The company secured profitable orders for construction of six 53000 DWT Bulker for an order value of Rs. 625.28 crore. The total ship-building order book position at present is around Rs. 970 crore.

(c) The company also diversified its activities into repair of oil rigs and successfully acquired this expertise and completed the repairs of Jack-up Rig (JUR) of a company at a cost of more than Rs. 100 crore. Recently, the company also secured another order for repair of another JUR of the same company at a contract price of Rs. 361 crore. The company expects a series of such repair orders continuously.

(d) The financial restructuring proposal of the company is in the advanced stage of consideration by the Government of India. The said proposal has been submitted by the administrative ministry, the Ministry of Shipping, Road Transportation & Highways to the Cabinet Committee on Economic Affairs for their approval. The proposal envisages sanction of grants/waiver of loans and interests amounting to Rs. 1,03,200 crore. On approval of the proposal, the said amount will be credited to the profit and loss account as income and the company will immediately realise the entire deferred tax asset accounted for in the previous years.

(e) The books of account are prepared under 'going concern concept'.

(f) Further to the above, the querist has submitted that an amount of Rs. 141.15 crore representing the items covered under Section 43B of the Income-tax Act, 1961 which shall be disallowed for computation of tax for the assessment year 2008-09, shall be allowed as expenditure in the year of payment without any time limit. Accordingly, as per the querist, virtual certainty exists for realisation of deferred tax assets in respect of these items amounting to Rs. 47.98 crore.

(g) As regards provisions made in the accounts for liquidated damages, doubtful advances, guarantee repairs and other contingencies which shall be disallowed at the time of assessment, shall be allowed in the year of crystallisation of the expenditure without any time limit. Hence, the deferred tax asset so provided amounting to Rs. 18.09 crore shall be realised with certainty.

(h) The querist has also submitted that there exists unabsorbed depreciation under the Income-tax Act, 1961 available for set-off in the future years

to the tune of Rs. 130.20 crore and the deferred tax asset on the said amount of unabsorbed depreciation would be Rs. 44.25 crore, which will also be realised with certainty, since, according to the querist, as per the Income-tax Act, 1961, the unabsorbed depreciation can be set off without any time limit in accordance with Section 32(2) of the Act. The querist has further submitted that the company is having brought forward losses to the tune of Rs. 185.00 crore and deferred tax asset in respect of the same has not been considered since there is a time limit of 8 years for absorption of the same as per the Income-tax Act, 1961.

Based on the above facts, the company is of the view that there exists virtual certainty with convincing evidence that the company will have taxable income in the immediate future and will be able to realise the deferred tax assets.

4. The querist has mentioned that the deferred tax asset as at 31-3-2008 comprises the following:

	(Rs. Lakh)
(a) Deferred tax asset	
(i) Unpaid interest and taxes, sums payable as employer, etc.	4,797.66
(ii) Provisions made against doubtful debts, doubtful advances and contingencies, etc.	1,809.14
(iii) Set off of unabsorbed depreciation available under the Income-tax Act, 1961	4,425.48
	11,032.28
(b) Deferred tax liability	
i) Timing difference between book depreciation and tax depreciation	796.69
Net deferred tax asset	**10,235.59**

5. The querist has stated that having examined the management's contention mentioned at paragraph 3(a) to (d) above in the light of specific clarifications of Accounting Standards Interpretation (ASI) 9, 'Virtual certainty supported by convincing evidence', issued by the Institute of Chartered Accountants of India, read with specific provisions in paragraphs 17, 18 and 32 of AS 22, and also in the light of the past trend that ship-building activity of the company was a loss making activity, the auditor opined that there does not exist virtual certainty with convincing evidence in a concrete form as on the date of the balance sheet, i.e., on 31st March, 2008 about the company having taxable income in the immediate future and hence, the accounting for deferred tax assets is not in line with AS 22.

6. The company replied to the government auditor that considering that most of the ship-building orders are profitable and further, submarine refit order and all ship repair orders including major repair orders, such as, lay-up repairs of rigs are profit making, the deferred tax assets are realisable based on the overall profitability of the company. Since there is a virtual certainty of earning future profits which would realise the deferred tax assets recognised in the accounts, the accounting for deferred tax assets is in line with AS 22.

B.Query

7. The querist has sought the opinion of the Expert Advisory Committee as to whether the accounting for deferred tax assets by the company is in compliance with AS 22, based on the inputs as stated above in respect of virtual certainty of future taxable income.

C.Points considered by the Committee

8. The Committee notes that the basic issue raised in the query relates to recognition of deferred tax asset in situations of unabsorbed depreciation and brought forward losses. The Committee has, therefore, considered only this issue and has not touched upon any other issue arising from the Facts of the Case, such as, offsetting of deferred tax assets and deferred tax liabilities, propriety of accounting to be done by the company in respect of expected grants/waiver of loans and interests, etc. Further, the Committee's opinion is based on accounting principles and it has not gone into the calculations or computation of deferred tax assets.

9. The Committee notes paragraphs 17 and 18 of AS 22, which provide as below:

"17.Where an enterprise has unabsorbed depreciation or carry forward of losses under tax laws, deferred tax assets should be recognised only to the extent that there is virtual certainty supported by convincing evidence that sufficient future taxable income will be available against which such deferred tax assets can be realised.

18.The existence of unabsorbed depreciation or carry forward of losses under tax laws is strong evidence that future taxable income may not be available. Therefore, when an enterprise has a history of recent losses, the enterprise recognises deferred tax assets only to the extent that it has timing differences the reversal of which will result in sufficient income or there is other convincing evidence that sufficient taxable income will be available against which such deferred tax assets can be realised. In such circumstances, the nature of the evidence supporting its recognition is disclosed."

10.The Committee further notes that AS 22 notified by the Central Government under the Companies (Accounting Standards) Rules, 2006, contains, inter alia, an Explanation to paragraph 17 thereof regarding virtual certainty (which was hitherto contained in the consensus portion of ASI 9) which provides as below:

"**Explanation:**

1. Determination of virtual certainty that sufficient future taxable income will be available is a matter of judgement based on convincing evidence and will have to be evaluated on a case to case basis. Virtual certainty refers to the extent of certainty, which, for all practical purposes, can be considered certain. Virtual certainty cannot be based merely on forecasts of performance such as business plans. Virtual certainty is not a matter of perception and is to be supported by convincing evidence. Evidence is a matter of fact. To be convincing, the evidence should be available at the reporting date in a concrete form, for example, a profitable binding export order, cancellation of which will result in payment of heavy damages by the defaulting party. On the other hand, a projection of the future profits made by an enterprise based on the future capital expenditures or future restructuring etc., submitted even to an outside agency, e.g., to a credit agency for obtaining loans and accepted by that agency cannot, in isolation, be considered as convincing evidence."

11. On the basis of the above, the Committee is of the view that the orders secured by the company, as mentioned by the querist in paragraphs 3(a) to (c) above, may be considered while creating deferred tax asset provided these are binding on the other party and it can be demonstrated that they will result in future taxable income. However, mere projections made by the company indicating the earning of profits from future orders contemplated in paragraphs 3(a) and (c) above, or financial restructuring proposal under consideration of the Government of India or the fact that the books of account of the company are prepared on 'going concern' basis as mentioned by the querist in paragraphs 3(d) and (e) respectively, may not be considered as convincing evidence of virtual certainty

as contemplated in the 'Explanation' to paragraph 17 of AS 22 reproduced above. Further, the mere fact that the items covered under section 43B of the Income-tax Act, 1961, the provision for liquidated damages, doubtful advances, guarantee repairs and other contingencies, and unabsorbed depreciation can be carried forward for unlimited number of years, can also not be a ground for recognising a deferred tax asset, as mentioned by the querist in paragraphs 3(f), (g) and (h) respectively, since paragraph 17 of AS 22 read with its 'Explanation', requires virtual certainty supported by convincing evidence at the date of the balance sheet. The Committee also wishes to point out that a deferred tax asset can be created to the extent that future taxable income will be available from future reversal of any deferred tax liability recognised at the balance sheet date. To that extent, it would not be necessary to consider the level of virtual certainty supported by convincing evidence.

D.Opinion

12. On the basis of the above, the Committee is of the opinion that subject to paragraph 8 above, accounting for deferred tax asset by the company would be in compliance with AS 22 only to the extent it is in accordance with paragraph 11 above.

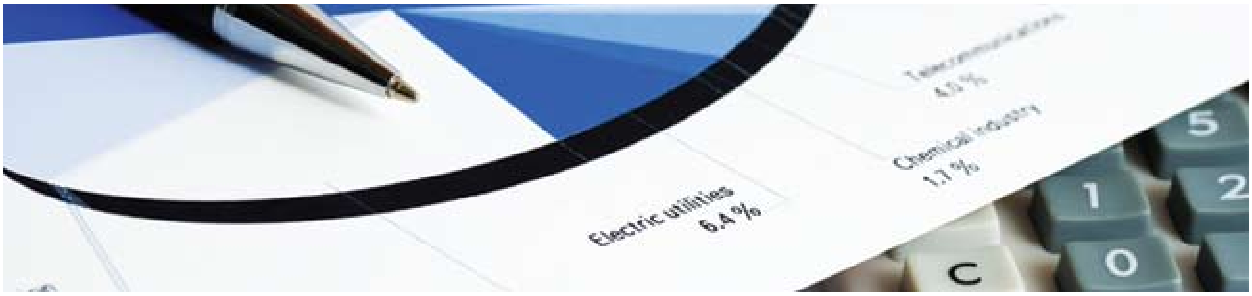
1. The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.

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 six volumes. A CD of Compendium of Opinions containing twenty five volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.

4. Recent opinions of the Committee are available on the website of the Institute at URL: http://www.icai.org/category.html?c_id=146

IPSAS: Harmonising Government Accounting with Commercial Accounting



The world is witnessing a convergence in every walk of life. Accounting cannot remain insulated from this global trend. Countries across the world started moving towards the International Financial Reporting Standards (IFRS). Alongside, the need for globally applicable government accounting standards has taken centre stage. This article seeks to examine the trends in India and elsewhere in government accounting, as it harmonises with commercial accounting through the International Public Sector Accounting Standards (IPSAS).

CA. G. Srinivas
(The author is a member of the Institute, Technical Advisor to the IPSAS Board and Director in the office of the Comptroller and Auditor General of India. He can be reached at srinivas.gurazada@icai.org)

Rationale

For long, government accounting in most countries has remained as a distinct sub-discipline in accounting discipline with minimal interaction with the developments in commercial accounting (or private sector accounting to distinguish from public sector accounting). This was felt acceptable during times when every country has its own set of commercial accounting standards that companies have to follow. Over a period of time, accounting profession realised the need for a set of globally acceptable accounting standards. It was felt that accounting information is similar irrespective of geographic distinctions, as such there are no valid reasons for having different accounting treatment for identical transactions across jurisdictions. Countries across the world started moving towards the International Financial Reporting Standards (IFRS). Alongside, the need for globally applicable government accounting standards has taken centre stage.

International Federation of Accountants

International Federation of Accountants (IFAC) is the global organisation for the accountancy profession. The IFAC was founded in 1977 to serve the public interest. It continues to strengthen the worldwide accountancy profession and contribute to the development of strong international economies by establishing and promoting adherence to high-quality professional standards, furthering the international convergence of such standards and speaking out on public interest issues where the profession's expertise is most relevant. The IFAC comprises 159 members and associates in 124 countries worldwide, representing more than 2.5 million accountants in public practice, industry and commerce, the public sector, and education. The Institute of Chartered Accountants of India (ICAI) is a member of the IFAC that constituted the International Public Sector Accounting Standards Board (IPSASB) for issue of global accounting standards for public sector. The ICAI's nominee is a member of IPSASB.

International Public Sector Accounting Standards (IPSAS)

International Public Sector Accounting Standards (IPSAS) are high-quality public sector financial reporting standards facilitating convergence of international and national standards, thereby enhancing the quality and uniformity of financial reporting throughout the world. IPSAS are applicable to core government sector. IPSAS are designed to apply to the general purpose financial statements of all public sector entities. Public sector entities include national governments, regional (state, provincial, territorial, etc.) governments, local (city, town, etc.) governments and their component entities (departments, agencies, boards, commissions, etc.), unless otherwise stated. The Standards do not apply to government business entities (GBEs), which apply IFRS that are issued by the International Accounting Standards Board (IASB). For example, GBEs will have to follow appropriate commercial accounting standards like IFRS, US Generally Accepted Accounting Practices (US GAAP), or, accounting standards issued by the ICAI. Public sector under international parlance refers to core government, i.e. Government of India, Government of Andhra Pradesh, Municipal Corporation of Hyderabad. Public sector does not include government companies or corporations like NTPC, BHEL, etc. They are governed by commercial accounting standards as issued by The Institute of Chartered Accountants of India and notified by the Government of India.

The Cash versus Accrual Dilemma

Most countries in the world still follow cash-basis accounting for reporting the core governmental activities. Taking into account these requirements, the IPSAS Board issued standards on both cash and accrual basis distinctly. It has issued one comprehensive cash-basis IPSAS to cover all the requirements of countries following the cash-basis accounting. Alongside, it has issued so far 31 accrual-basis IPSAS for countries that have moved or are in the transition path to accrual-basis accounting.

Cash-Basis IPSAS:

The cash-basis IPSAS prescribed by IPSASB are divided into two parts: mandatory requirements and non-mandatory requirements. The mandatory portion sets out the requirements which are applicable to all entities preparing general purpose financial statements under the cash-basis accounting. The requirements in this part must be complied with by entities which claim to be reporting in accordance with the cash-basis IPSAS. The non- mandatory portion of the cash-basis IPSAS standard identifies additional accounting policies and disclosures that an entity is encouraged to adopt to enhance its financial accountability and the transparency of its financial statements. It includes explanations of alternative methods of presenting certain information.

Accrual-Basis IPSAS:

The IPSASB issues accrual-basis IPSAS for entities following accrual-basis accounting. The attempt of the IPSASB is to harmonise the accrual-basis IPSAS with the IFRS. So far, the IPSASB has issued 31 accrual-basis IPSAS. It follows 'Rules of Road' project for harmonisation with the IFRS. It involves keeping intact the requirements of the IFRS unless public sector requirements necessitate deviation. Since many accounting transactions requirements do not differentiate between public sector and private sector, the IPSAS corresponds very closely with the IFRS. The table below summarises the

International Public Sector Accounting Standards (IPSASs) are high-quality public sector financial reporting standards facilitating convergence of international and national standards, thereby enhancing the quality and uniformity of financial reporting throughout the world. The IPSASs are applicable to core government sector and are designed to apply to the general-purpose financial statements of all public-sector entities.

accrual IPSAS and the corresponding IFRS and ICAI accounting standards:

Subjects	IFAC-PSC	IASB	AS - ICAI
1. Presentation of Financial Statements	IPSAS 1	IAS 1	Framework for preparation and presentation of Financial Statements
2. Cash Flow Statements	IPSAS 2	IAS 7	AS 3
3. Accounting Policies, Changes in Accounting Estimates and Errors	IPSAS 3	IAS 8	AS 1
4. The Effects of Changes in Foreign Exchange Rates	IPSAS 4	IAS 21	AS 11
5. Borrowing Costs	IPSAS 5	IAS 23	AS 16
6. Consolidated and Separate Financial Statements	IPSAS 6	IAS 27	AS 21
7. Investments in Associates	IPSAS 7	IAS 28	AS 23
8. Interests in joint Ventures	IPSAS 8	IAS 31	AS 27
9. Revenue from Exchange Transactions	IPSAS 9	IAS 18	AS 9
10. Financial reporting in Hyperinflationary Economies	IPSAS 10	IAS 29	No Comparable
11. Construction Contracts	IPSAS 11	IAS 11	AS 7
12. Inventories	IPSAS 12	IAS 2	AS 2
13. Leases	IPSAS 13	IAS 17	AS 19
14 Events After the Reporting Date	IPSAS 14	IAS 10	AS 4
15 Financial Instruments: Disclosure and Presentations	IPSAS 15	IAS 32 & IFRS 7	AS 31
16. Investment property	IPSAS 16	IAS 40	AS 13
17. Property, Plant & Equipments	IPSAS 17	IAS 16	AS 6 & AS 10
18. Segment Reporting	IPSAS 18	IFRS 8	AS 17
19. Provisions, Contingent Liabilities and Contingent Assets	IPSAS 19	IAS 37	AS 29
20. Related Party Disclosures	IPSAS 20	IAS 24	AS 18
21. Impairment of Non-Cash Generating Assets	IPSAS 21	No Comparable	No Comparable
22. Disclosure of Information about the General Government Sector	IPSAS 22	No Comparable	No Comparable
23. Revenue from Non-Exchange Transactions (Taxes & Transfers)	IPSAS 23	No Comparable	No Comparable
24. Presentation of Budget Information in Financial Statements	IPSAS 24	No Comparable	No Comparable
25. Employee Benefits	IPSAS 25	IAS 19	AS 15
26. Impairment of Cash Generating Assets	IPSAS 26	IAS 36	AS 28
27. Agriculture	IPSAS 27	IAS 41	No Comparable
28. Financial Instruments – Presentation	IPSAS 28	IAS 32	AS 31
29. Financial Instruments – Recognition and measurement	IPSAS 29	IAS 39	AS 30
30. Financial Instruments – Disclosure	IPSAS 30	IFRS 7	AS 32
31. Intangible Assets	IPSAS 31	IAS 38	AS 26

Distinction of IPSAS from IFRS

Public-sector (government) requirements in certain ways differ from commercial entities. Government operates in an arena of sovereign powers to tax which are not available to commercial entities. The IPSASB has so far not issued any standard covering 'right to tax'. Further, social, regional and other public policy considerations determine government activities as against commercial entities whose operations are essentially with profit motive. Non-exchange transactions are a distinct feature of government functioning. Non-exchange transactions are transactions that are not exchange transactions. In a non-exchange transaction, an entity either receives value from another entity without directly giving approximately equal value in exchange, or gives value to another entity without directly receiving approximately equal value in exchange. Taking into account these unique requirements of the government, few IPSAS were issued with no comparable IFRS. These include:

i. Impairment of Non-Cash Generating Asset (IPSAS 21)
ii. Disclosure of Information about General Government Sector (IPSAS 22)
iii. Revenue from Non-Exchange Transactions (Taxes & Transfers) (IPSAS 23)
iv. Presentation of Budget Information in Financial Statements (IPSAS 24)

Further, all other IPSASs with the comparable IFRS provide guidance as to how they differ from the IFRS and the reasons thereof. A review of the IPSAS brings out a large extent harmonisation with the IFRS.

United Nations Experiences

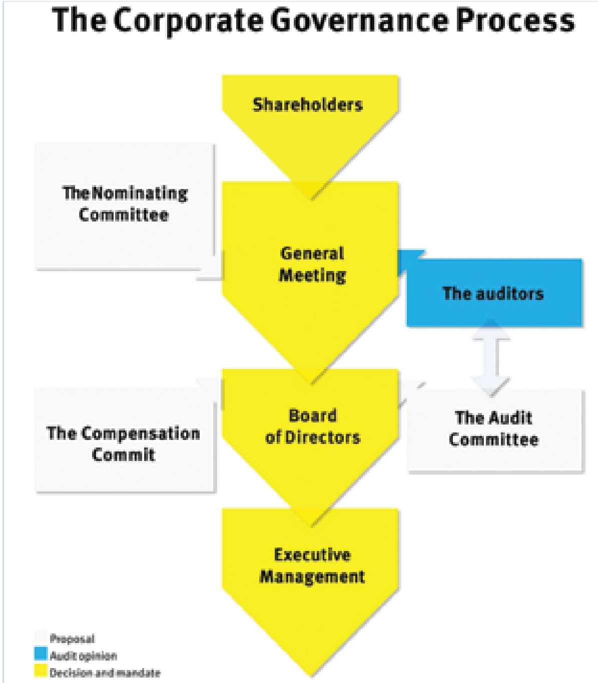
The United Nations (UN) and its specialised agencies followed the United Nations System Accounting Standards (UNSASs). The United Nations General Assembly has decided in 2006 to adopt the IPSAS as accounting standards for the United Nations. The United Nations and its specialised agencies are migrating to the IPSAS between 2009 and 2014. The World Food Programme (WFP) is the first agency under the UN system to issue financial statements under the IPSAS. The decision of the UN would go a long way in improving the accounting and financial management of the United Nations and would also provide an impetus to the global accounting standards.

Experiences of India with IPSAS

India so far has not adopted either cash or accrual IPSAS for governments. The Comptroller and Auditor General of India has constituted the Government Accounting Standards Advisory Board (GASAB) with support of the Government of India with the mission of formulating and recommending the Indian government accounting standards (IGAS) with a view to improving standards of government accounting and financial reporting, which will enhance the quality of decision-making and public accountability. The President of the ICAI is a member of the Board on the GASAB. The GASAB focuses on reforms in government accounting. Presently, the task of the GASAB is two-fold: improvements in the existing cash basis accounting system and facilitating eventual migration to accrual basis accounting. The GASAB develops accounting standards under cash basis known as the IGAS, which on notification by the Government of India are applicable for the Government of India and those of the state governments. The GASAB also issues accrual standards under the nomenclature of the Indian Government Financial Reporting Standards (IGFRS) essentially for facilitating pilot studies. In its role of standard-setting authority, the GASAB examines various International developments on accounting standards to adapt them to the Indian requirements. The World Bank has been conducting gap analysis of government accounting with cash-basis IPSAS. In the South Asian region, it has conducted studies in Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka. The GASAB has conducted a similar gap analysis study comparing cash-basis IPSAS with government accounting in India. The report is available on the GASAB website (www.gasab.gov.in). While no attempt to completely adopt cash-basis IPSAS has been taken by the Government in India, the attempts at the government accounting reforms have been to incorporate the best practices of cash-basis IPSAS. Further, the IGFRS issued by the GASAB for use in pilot studies on migration to accrual-basis accounting are largely harmonised with the accrual IPSAS. The developments in government accounting in India indicate the possibility of harmonisation with the IPSAS in future.

The Way Ahead

The IPSASs, cash and accrual, are gaining acceptance across world. While many countries are already in the process of adoption of cash-basis IPSAS, very few have decided in favour of the adoption of the accrual IPSAS. This is understandable, since many countries follow cash-basis accounting. Cleaning up the existing cash-basis accounting is an appropriate first step before adopting accrual-basis IPSAS. Adoption of the IPSAS would increase the acceptability of accounts of the government, internationally. Global adoption of the IPSAS would enable comparability of the financial statements of all the countries. The IPSAS contributes to the development of the globally acceptable accounting knowledge and practices across both public and private sector as the IPSAS are harmonised with the IFRS. This also facilitates the Indian chartered accountants play a much more meaningful role in the government/public-sector accounting across the globe.



India, so far, has not adopted either cash or accrual IPSAS for governments. The Comptroller and Auditor General of India has constituted the Government Accounting Standards Advisory Board (GASAB) with support of the Government of India with the mission of formulating and recommending the Indian Government Accounting Standards (IGAS) with a view to improving the standards of government accounting and financial reporting, which will enhance the quality of decision-making and public accountability.

Reporting and Disclosure of Intangible Assets of Selected IT Companies in India

In the highly competitive world of today, wealth and growth are primarily driven by intangible (intellectual) capital particularly in service industries. Today's much of a new economy company's worth is represented by intangible assets like brand, clients, professionals, BPO services, software etc. With a large number of intangibles in terms of value and volumes in IT services and products companies, the question of displaying these assets on the balance sheet is becoming important for a large number of companies and users of their financial statements. Thus, accounting for intangible assets is likely to occupy the agenda of accounting professionals, regulators and academicians in the coming decades across the globe. IT giant of the country *Infosys* has adopted most widely used models for measuring brand value- the brand-earnings-multiple model and the Lev and Schwartz model to compute the value of human resources. In the present article, an attempt is made to study the reporting and disclosures practices of intangible assets in selected IT companies.

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From the 1840s to the early 1990s, a corporate's value was mainly driven by its tangible assets – values presented in the corporate balance sheet. With the shift from resources and manufacturing to knowledge and services as the prime movers of modern economies, many new economy companies, especially IT companies, are now paying a great deal of attention to management of intangible assets because it is, today, the key to survive and grow. A people-oriented and knowledge-intensive company's worth is represented by its intangible assets like human resources, brand, clients, its services and products, software, etc. It has been revealed that the brand value of Google represented 119 per cent of market cap while it was 42.7 per cent for Infosys. There is a gap between book value (BV) and market capitalisation (MC) which reflects the value of intangible assets (Table 1). It observes that the BV and MC of Infosys was Rs. 310.9 crore and Rs. 75,837 crore in 2009. Thus, the intangible value was Rs. 75,526 crore. The IT giant has adopted financial reporting and disclosure practices of intangible assets – Brand value and Human resources. Thus, this article mainly focuses on reporting and disclosure practices of intangibles of selected IT companies in India. For this purpose a study of the annual reports (2008-09) of the IT giants - Infosys Technologies Limited (Infosys), Tata Consultancy Services Limited (TCS), Wipro Limited (WIPRO), GTL Infrastructure (GTL), Cranes Software International Limited (CRANES – 2006-07) and Sonata Software Limited (SONATA) has been undertaken.

Reporting and Disclosure

The term 'disclosure' is widely known as corporate disclosure, financial reporting, corporate financial reporting, information disclosure, or, corporate financial reporting practices. Corporate reporting is a bundle of information relating to operating results and economic activities of business firms communicates to the internal as well as external users from time to time through annual accounts/ reports for the purposes of economic decisions such as investment and credit. In accounting parlance, there are three concepts proposed for disclosure:

1. *Fair Disclosure:* It implies that the accounting and the other information are unbiased and impartial.
2. *Full Disclosure:* It implies that all relevant information of business firm should be presented in the financial statements and reports.
3. *Adequate Disclosure:* It implies that in the event of any deviation from the accounting standards (ASs) or non-compliance of ASs, adequate disclosures are required to be made so that the users of financial statements may be aware of such deviations.

US GAAP and Disclosure Levels

US Securities and Exchange Commission (1976) identified the levels of disclosure saying that all GAAP including disclosure requirements be identified as having either universal applicability or limited applicability to one or more levels. To illustrate, a three level approach might be established that would provide the following classifications:

1. *Main Body of GAAP:* Universally applicable that would apply to all financial statements of both public and private companies.
2. *Supplemental GAAP:* Additional disclosures that would be required of public companies, whether in the financial statements proper or in some other part of the annual report.
3. *Specialised Compliance:* The requirements of SEC (read SEBI) and the other regulatory agencies – IRDA, RBI, SEs are applicable to all listed companies.

Indian GAAP: A Case Study

In our country, the financial statements are prepared in accordance with the Indian GAAP. The GAAP comprises mandatory accounting standards as prescribed by the Companies (Accounting Standards) Rules, 2006, the provisions of the Companies Act, 1956, and guidelines issued by the ICAI, or any other regulatory authority like SEBI, RBI, or, IRDA.

As per the Indian GAAP a complete set of financial statements of a company should include:

- Income statement/profit and loss account,
- Balance sheet,
- Cash-flow statement,
- Schedules forming part of the income statement and balance sheet and
- Notes comprising a summary of accounting policies and other explanatory notes and
- Consolidated financial statements (listed companies) in accordance with the AS 21 and the AS 23

A Model Annual Report: Annual report is a basic and formal means through which management of an enterprise make public communication of financial information. Annual report of a company comprises quantitative and qualitative information in the form of reporting and disclosures. The objective of general purpose financial statements and disclosures is to provide information about the financial position, financial performance and cash flows of an entity that is useful to a wide range of users in making economic decisions such as credit and investment.

Indian corporate financial reporting of the giant companies, especially IT companies and particularly Infosys, is among the most comprehensive in the world. Infosys showed the way by giving detailed information and guidance reports in its 200-plus page (approximately, as it varies from year to year) annual report. So much so, that the US Securities and Exchange Commission has been asking US companies to use the Infosys annual report as a model.

A typical annual report (2008-09) of Infosys includes the following components:

1.	Letter to the shareholder	21.	Additional information
2.	Historical data	22.	Select historical data
3.	The year at a glance	23.	Revenue segmentation
4.	Board and committees	24.	Statutory obligations
5.	Awards for Excellence 2008-09	25.	Human resources valuation
6.	Directors' report	26.	Value-added statement
7.	Statement pursuant to Section 212 of the Companies Act, 1956	27.	Brand valuation
8.	Management's discussion and analysis	28.	Economic Value-Added (EVA) statement
9.	Risk management report	29.	Balance sheet including intangible assets
10.	CEO and CFO certification	30.	Intangible assets score sheet
11.	Auditors' report	31.	Value Reporting
12.	Balance Sheet	32.	Management structure
13.	Profit and Loss account	33.	Infosys Foundation
14.	Cash Flow statement	34.	Report on environment, health and safety
15.	Schedules	35.	Financial statements (unaudited) presented in substantial compliance with GAAP requirements of various countries and International Financial Reporting Standards
16.	Balance Sheet abstract and the Company's general business profile		
17.	Consolidated financial statements		
18.	Corporate governance report		
19.	Shareholder information	36.	Extract of audited IFRS financial statements
20.	Share price chart	37.	Global presence

From the above, it reveals that the Annual Report of Infosys includes mandatory financial statements (12, 13, 14, 15, 16 and 17) and non-mandatory information either in form of reports or statements (9, 25, 26, 27, 28, 29, 30 and 31). The company provides mandatory disclosures (7, 8, 9, 10, 11, 18, 19 and 20) and non-mandatory disclosures in form of additional information (1, 2, 3, 4, 5, 21, 22, 23, 24, 32, 33, 34, 35, 36 and 37) in its Annual Report 2009.

AS 26: Intangible Assets

AS 26 "Intangible Assets", originally issued in 2002 by the ICAI, has come into effect in respect of expenditure incurred on intangible items during accounting periods commencing on or after 1.4.2003 by enterprises whose debt or equities are listed or will be listed on a recognised stock exchange in India and all other commercial, industrial and business reporting enterprises whose turnover for the accounting period exceeds Rs. 50 crore.

Meaning of Intangible Assets (AS 26): An intangible asset is an identifiable non-mandatory asset without physical substance, held for use in the production or supply of goods or services, for rental to others, or for administrative purposes. The AS 26 clearly states that to recognise an intangible asset, e.g. computer software, patent, copyrights, marketing rights, etc., three conditions must be satisfied:

(i) It should be identifiable;
(ii) It should be controlled by the enterprise; and
(iii)It should have future economic benefits.

If the item does not meet the definition of intangible, it should be recognised as an expense even though these are intangibles.

Meaning of Cost of an Intangible: Intangible assets, like tangible assets, are recorded at cost. Cost includes all cost of acquisition and expenditures necessary to make the intangible asset ready for its intended use. Intangible assets acquired at no cost and internally generated brands, mastheads, publishing titles, customer lists and items similar in substance are not shown on the balance sheet, even though they may be of considerable value to an enterprise because the costs of these assets cannot be separately identifiable from the cost of developing business as a whole. Similarly any "home-grown" (or internally generated) goodwill cannot be recorded in the financial statements because inclusion of amount of goodwill may give a misleading view of the worth of an entity and undermine the reliability of these statements.

There are some items contained in or on a physical substance with not much of value such as a compact disc (in the case of computer software), legal documentation (in case of a licence or patent) or film (in case of motion pictures). Accordingly, the physical substance, containing an intangible asset, though tangible in nature, is commonly treated as a part of the intangible asset contained in or on it.

In some cases, an asset may incorporate both intangible and intangible elements that are in practice, inseparable. For example, computer software for a computer controlled machine tool that cannot operate without that specific software

In our country, the financial statements are prepared in accordance with the Indian GAAP. The GAAP comprises mandatory accounting standards as prescribed by the Companies (Accounting Standards) Rules, 2006, the provisions of the Companies Act, 1956, and guidelines issued by the ICAI, or, any other regulatory authority like SEBI, RBI, or, IRDA. As per the Indian GAAP, a complete set of financial statements of a company should include income statement/ profit and loss account, balance sheet, cash-flow statement, schedules forming part of the income statement and balance sheet, notes comprising a summary of accounting policies and other explanatory notes, and consolidated financial statements (listed companies) in accordance with the AS 21 and the AS 23.

is an integral part of the related hardware and it is treated as a fixed asset (AS 10). The same applies to the operating system of a computer where the software is not an integral part of the related hardware; computer software is treated as an intangible asset (AS 26).

Computer software and website are common examples of internally-generated intangible assets. Internally-generated computer software for internal use is developed or modified internally by the enterprise solely to meet the needs of the enterprise and, at no stage, it is for sale (AS 26).

The intangible assets of IT companies include its brand, e.g. Infosys, Wipro, etc., professionals, clients, etc. These assets do not meet the conditions of intangible assets and hence do not reflect in the financial statements of a company.

Intangible Assets of Infosys: The intangible assets of Infosys can be classified into four major categories:

1. *Human Resources:* These represent the employees of the organisation.
2. *Intellectual Property (IP) Assets:* These include know-how, copyrights, patents, products and tools that are owned by a corporation.
3. *Internal Assets:* These are systems, technologies, methodologies, processes and tool that are specific to an organisation.
4. *External Assets:* These are marquee clients or image-enhancing clients (97.6 per cent of revenues) and brand value.

Market Value of Intangibles

A gap between the MC and the BV of a firm indicates value of intangibles (intellectual) assets. Table 1 shows that the BV of the Infosys has shown uptrend while the MC shown mixed trends. The BV was increased to Rs. 310.9 crore (20 times) from Rs. 15.75 crore while the MC has shown fluctuation as it depends upon the movement of scrips price of stock markets across the globe.

Table 1: Statement showing the value of intangibles as at March 31, 2009, of Infosys

(Rs. in crore)

Year (1)	Book Value (BV) Rs. (2)	Market Capitalisation (MC) Rs. (3)	Intangibles Rs. (4) = (3) – (2)
2000	15.75	59,338	59,322
2001	26.26	26,926	26,900
2002	39.29	24,654	24,615
2003	53.98	26,847	26,793
2004	61.03	32,909	32,848
2005	96.87	61,073	60,976
2006	125.15	82,154	82,029
2007	195.41	1,15,307	1,15,112
2008	253.84	82,362	82,108
2009	310.90	75,837	75,526

Source: *Annual Report 2008-09, p.4.*

Brand Valuation of Infosys

A brand is much more than a trademark or a logo. It is a trust mark – a promise of quality and authority that clients can rely on. It is the financial premium that a buyer is willing to pay for the brand over a generic or less worthy brand. The task of measuring brand value is a complex one. Several models are available for accomplishing this. The company has adopted the generic brand-earnings-multiple model of Michael Birklin to value its corporate brand, Infosys. The methodology followed with assumptions for valuing the brand is given in the Annual Report, p.131. It reveals from the Table 2 that the brand value represented 42.7 per cent of market capitalisation and the ratio of brand value to revenue was 1.49:1 in 2009.

Table 2: Brand valuation as at March 31, 2009 of Infosys

(Rs. in crore)

	2009
Profit before interest and tax	6,907
Less: Non-brand income	426
Adjusted profit before tax	6,481
Inflation factor	1,000
Present value of brand profits	6,481
Weightage factor	3
Weighted average profits	5,731
Remuneration of capital	801
Brand-related profits	4,930
Tax	1,676
Brand earnings	3,254
Brand multiple	9.94
Brand Value	32,345
Market capitalisation	75,837
Brand value as a percentage of market capitalisation	42.7 per cent
Brand value / revenue (x)	1.49

Source: *Annual Report, p.131.*

Human Resources Valuation of Infosys

In traditional accounting, a fundamental dichotomy in accounting practices is between human and non-human capital. As a standard practice, non-human capital is considered as tangible assets and reported in the financial statements, whereas human capital (intellectual capital) is mostly ignored by accountants. With the shift from resources and manufacturing to knowledge and services as the prime mover of new economy companies, particularly IT-sector companies, are now paying a great deal of attention to management of intellectual capital. In the words of the IT pioneer N. Murthy, "every evening our core assets walk out of the gates. We need to have a way to bring them back every morning." Infosys has used popular method of human resource valuation model the Lev & Schwartz to compute value of human resources. The evaluation is based on the present value of future earnings of employees.

AS 26 "Intangible Assets", originally issued in 2002 by the ICAI, has come into effect in respect of expenditure incurred on intangible items during accounting periods commencing on or after 1.4.2003 by enterprises whose debt or equities are listed or will be listed on a recognised stock exchange in India, and all other commercial, industrial and business reporting enterprises whose turnover for the accounting period exceeds Rs. 50 crore.

Table 3: Human resources valuation as at March 31, 2009 of Infosys

(Rs. in crore)

	2009
Employees (no.)	
Software professionals	97,349
Support	7,501
Total	1,04,850
Value of human resources	
Software professional	95,600
Support	6,533
Total	1,02,133
Total income	21,693
Total employee cost	11,405
Value-added	19,073
Net profits excluding exceptional items	5,988
Ratios	
Value of human resources per employee	0.97
Total income / human resources value (ratio)	0.21
Employee cost / human resources value (%)	11.2
Value-added / human resources value (ratio)	0.19
Return on human resources value (%)	5.9

Source: *Annual Report, p.129-130.*

Table 3 provides information relating to important indicators of human capital of Infosys. These include the number of employees (104850), skill-wise break-up of the employees – professional (97349) and support (7501), total value added as per the VAS (p.130), total employee cost and important cost and productivity ratios such as value of human resources per employee (0.97), total income/human resource value (0.21), employee cost/human resource value (11.2 per cent), value added/human resource value (0.19) and return on human resource value (5.9 per cent). It observes that the human resources are the most valuable assets of the companies of new economy like Infosys. The human capital could not be recognised due to the stringent tests of the AS 26.

Financial Reporting of Intangible Assets

In knowledge-intensive companies like Infosys, professionals are vital assets, even though these assets are not reflected in the financial statements, as organisations do not own them but only hire services. Similarly, costs incurred to develop human resources are recognised as expenses in the financial statements as per accounting practices. However, the quality of employees is the most crucial factor in the success of an organisation. Hence, it is important to recognise human capital in the statement of intellectual capital. Infosys has made effort to prepare balance sheet including intangible assets (Table 4). Generally, assets are classified into tangible and intangible. The ratio of these assets was 1:25. It means that the value of intangible was 25 times more than tangible. Intangible assets comprised mainly two types of assets – brand value and human resources. The ratio of these assets was 1:3 in 2009.

Table 4: A summary of balance sheet including intangible assets as at March 31, 2009, of Infosys

(Rs. in crore)

	2009	2008
SOURCES OF FUNDS		
Shareholders' funds		
Share capital	286	286
Reserves and Surplus		
Capital reserves – intangible assets	1,34,478	1,30,684
Other reserves	17,968	13,509
	1,52,446	1,44,193
Minority interest	----	----
	1,52,732	1,44,479
APPLICATIONS OF FUNDS		
Fixed assets : Tangible	5,354	5,439
Fixed assets : Intangible		
Brand value	32,345	31,863
Human resources	1,02,133	98,821
	1,34,478	1,30,684
Investments	----	72
Deferred tax assets	126	119
Current assets, loans and advances	16,646	13,018
Less: Current liabilities and provisions	12,774	8,827
	1,52,732	1,44,479

Source: *Annual Report 2008-09, p.133.*

Note: The figures above are based on consolidated Indian GAAP financial statements.

Reporting of Selected IT Companies: Table 5 represents the tangible and intangible assets of the examined units. It reveals that the intangible assets were less than one per cent for three companies while it was nine per cent for TCS and 93 per cent for CRANES. As discussed earlier that professionals, clients and brand value are vital intangible assets for IT companies, but they do not meet the conditions of the AS 26, therefore they could not be included in the fixed assets.

Table 5: A summary of consolidated fixed assets: tangible and intangible of selected IT companies as at March 31, 2009

(Rs. in crore)

	Particulars	Gross Block/ Original Cost	Accumulated Depreciation & Amortisation	Net Book Value
I	Infosys			
	Fixed assets : Tangible	7081 (99.83)	2404	4677
	Intangible	12 (0.17)	12	---
		7093 (100)	2416	4677
II	WIPRO			
	Fixed assets : Tangible	72442 (96)	35234	37208
	Intangible	2911 (4.10)	1108	1803
		75353 (100)	36342	39011
III	TCS			
	Fixed assets : Tangible	4346 (99.7)	1677	2669
	Intangible	13 (0.3)	13	---
		4359 (100)	1690	2669
IV	GTL			
	Fixed assets : Tangible	2427.6 (99.95)	271.7	2155.9
	Intangible	1.4 (0.05)	0.3	1.1
		2429 (100)	272	2157
V	CRANES			
	Fixed assets : Tangible	22 (7)	9	13
	Intangible	308 (93)	92	216
		330 (100)	101	229
VI	SONATA			
	Fixed assets : Tangible	7474 (100)		
	Intangible	---		
		7474 (100)		

Source: *Annual Report of selected companies*

Note: Figures in parenthesis indicate percentage of total assets.

In knowledge-intensive companies like Infosys, professionals are vital assets, even though these assets are not reflected in the financial statements since organisations do not own them but only hire services. Similarly, costs incurred to develop human resources are recognised as expenses in the financial statements as per accounting practices. However, the quality of employees is the most crucial factor in the success of an organisation. Hence, it is important to recognise human capital in the statement of intellectual capital.

Disclosure of Selected IT Companies

Intangible assets are amortised as under:

I. Infosys

Software – Amortised over their estimated useful lives on a straight line basis. It was amortised in the year in which it was acquired because its value was very negligible (Rs.12 crore or 0.17 per cent).

II. WIPRO

Technical know-how, brands, patents, trademarks and rights – Amortised over the determined useful life ranging between 20 to 25 years based on expected life, performance, market share, niche focus and longevity of the brand (4 per cent).

III. TCS

Acquired contract rights – Straight line in 12 years
Intellectual property/distribution rights – Straight line in 24-36 months
Software licences – Straight line in licence period @ 20 per cent.

IV. GTL

Software (other than internally generated) – Which is not an integral part of the related hardware is classified as an intangible and is amortised over the economic useful life of three years (0.05 per cent).

V. CRANES

Computer software (IP) is vital intangible asset – 93 per cent of fixed assets.
Customised software/commercial rights – Amortised over their estimated useful life 3 years on a straight line basis.
Other intangible assets – Amortised over their individual estimated life on a straight line basis.

VI. SONATA

There was no intangible asset reported either in the balance sheet or in the schedule of fixed assets. And, hence there was no disclosure related to intangible as per the AS 26.

Conclusion

It is obvious that the time has come to think and develop a model which represents items of intangible assets in financial statements of a company. Infosys has made an endeavour to value and report its vital intangible assets to incorporate in the annual report as additional information. At the end, we conclude that accounting professionals, regulators, academicians and corporates should devise a model for measuring and reporting of intangible assets in the books of business entity

Changing over to Accrual System of Accounting by Central Autonomous Bodies & Central Universities

Most autonomous bodies and central universities were till recently following the cash-accounting system and single-entry system of bookkeeping. The Government of India made it mandatory for these organisations to follow the accrual system of accounting and double-entry bookkeeping and to present their annual financial statements in standard formats prescribed. This article brings out some of the salient features of the standard formats and the accounting aspects involved in the first year of change over from the existing system to the new system, in respect of some important items unique to their accounts.

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Introduction

There are nearly 500 central autonomous bodies in the country with diverse activities including academic activities. Till recently, there was considerable diversity in the form and contents of financial reporting system followed by these institutions. Most of them followed cash-accounting system and single-entry system of bookkeeping and did not provide depreciation on fixed assets. In addition to a receipts and payments account (in some organisations several receipts and payments accounts), they however prepared an income and expenditure account (in some organisations several income and expenditure accounts) and a balance sheet.

Many of them are registered as societies under the Societies Registration Act. Some of them have been set up under specific acts of legislature. Almost all of them are dependent on government grants for meeting the revenue deficit as well as capital expenditure.

The Comptroller and Auditor General of India is the sole auditor of the accounts of many autonomous organisations. Even where the accounts are audited by firms of chartered accountants, the Comptroller and Auditor General of India conducts audit of the expenditure pertaining to grants-in-aid received, if any, from the government, exceeding the prescribed monetary limit.

With a view to bringing uniformity and transparency in the accounts of these bodies, the Parliamentary Committee on papers in its 60th report had recommended that a committee of experts may be set up to examine and work out a Common Format of Accounts.

Accordingly, the Ministry of Finance constituted a committee in May 1999 with the Controller General of Accounts (CGA) as the Chairman, Advisor (Cost), Dept. of Expenditure and one representative each from The Institute of Chartered Accountants of India, the Institute of Cost and Works Accountants of India, and Indian Bankers' Association as members.

The report of the committee dated 2nd February, 2001, was considered by the government in consultation with the CAG of India. While concurring with the Common Format of Accounts recommended by the Expert Committee, the CAG of India desired that in respect of autonomous bodies governed by the separate Acts of Parliament where he is the sole auditor, formats of accounts wherever already prescribed may remain unchanged. Accordingly, the Ministry of Finance made it mandatory for all central autonomous bodies which are *not* governed by the separate Acts of Parliament to prepare their accounts in the common formats with effect from 1st April, 2001.

In 2003, the Ministry of Human Resource Development adopted these formats for presentation of the annual accounts by central universities and institutes of higher education.

The standard formats consist of:

- Statement of receipts and payments,
- Income and expenditure account, and
- Balance sheet, with schedules, significant accounting policies and notes on accounts forming an integral part of the accounts.

The standard formats provide an overall structure of final accounts modelled on the vertical formats prescribed under the Companies Act except two aspects. The first difference is in the headings used in the balance sheet. In companies, the headings used are "*Sources of funds*" (liabilities side) and *"Application of Funds"* (assets side). In the balance sheet format for autonomous organisations however, the headings in the conventional horizontal format, viz., *"Capital and Liabilities"* and *"Assets"* have been retained. The second difference is in the exhibition of current assets and current liabilities. In the company accounts, funds utilised for working capital are shown in one place as one figure so that by looking at the assets side, the viewer could know the quantum of funds utilised for creation of fixed assets and that applied in meeting the needs of working capital. For this purpose, *"current liabilities and provisions"*, is shown on the assets side as a deduction from *"Current Assets, loans and advances"* in the inner column extending to the outer column the net working capital. But in the balance sheet format for autonomous bodies, current liabilities and provisions are retained on the liabilities side.

Individual organisations have been allowed flexibility while adopting the standard formats to incorporate special features peculiar to the organisations to meet their specific requirements and to delete items/heads not relevant to their operations, activities etc. They are, in other words, free, without disturbing the basic structure, to add new heads which are relevant and delete heads which are not relevant to the nature of their activities/operations.

With the adoption of the standard formats, the organisations would follow double-entry bookkeeping and accrual system of accounts. They would also comply with the applicable Indian accounting standards and would be following the basic accounting concepts and conventions including the historical cost convention, going concern concept, materiality concept, consistency concept, convention of conservatism, etc.

Changing Over to Accrual System of Accounting

Salary and Wages:

- Organisations switching over from cash accounting to accrual accounting and presently following the government-pattern of salary payments, i.e. making payment of salary for March on 1st April of the next financial year, will have to account for 13-months salary in the income and expenditure account in the first year of change over, as they have to provide liability for March on accrual basis in the accounts of the year in which the change over takes place, and account for salary paid on 1st April, for the month of March of the previous financial year, as *'Prior Period Expenditure'*, which is a distinct item in the standard formats.

Interest bearing advances to staff :

- In government and autonomous organisations, recovery of interest commences after the principal is recovered in full. Interest is calculated on the diminishing balances of the principal from month to month after the recovery of the last installment of the principal and is in turn recovered in instalments.

  Under the accrual system of accounting, the advances outstanding at the end of each month in the financial year, will have to be aggregated for the financial year and interest thereon taken credit of in the income and expenditure account against the head *"Interest earned"* and exhibited as *"Interest accrued but not due"* in the balance sheet under the head *"Current Assets, Loans and Advances"*.

  In the first year of change over, interest accrued will have to be calculated for all previous years commencing from the dates of sanction, till 31st March of the previous financial year, crediting prior-period income and debiting interest accrued but not due. It should be noted that while following this accounting procedure all the requirements of the accounting standard on revenue recognition are fulfilled. The interest on these advances actually recovered subsequently should be credited to the head *"Interest accrued but not due and not treated as income in the year of recovery."*

Retirement Benefits to Employees:

- All the autonomous organisations are statutorily required to pay gratuity to their employees at the time of retirement, resignation or death. Many of them also follow the government practice of leave encashment, as well as payment of *"Pension''* and *"Family Pension"* as retirement benefits. All these are long-term liabilities. Entitlement for gratuity, leave encashment and pension accrue over the entire service of the employee and hence, under the accrual system, the liabilities, should be provided in the years of service instead of being debited at the time of payment to the income and expenditure account of the year under the cash accounting system, which places an undue burden on one year's accounts.
- Provision towards these benefits should be made at the end of each year on the basis of actuarial valuation at the end of each year in the first year of change over two valuations have to be carried out - one on 1st April to cover all the previous years and on 31st March for the year, determining the future liability on that date for all past services, so that the provision built up would be adequate

to meet the actual payment when due. For the purpose of carrying out the actuarial valuation, data about the date of birth, date of entry into the organisation's service and the pay and allowances, qualifying for calculation of each of the benefits, as on 31st March in respect of each of the employees on the roles of the organisation has to be provided to qualified actuaries, who will determine the future liability for past service towards each of the benefits on the last day of the financial year. These are only provisions and payments will be due in future on the occurrence of events like retirements, resignation and death. When payments are made, they are debited to the **provision account** and not the income and expenditure account for the year. Merely making a provision in the accounts will not necessitate simultaneous provision of funds. Some organisations, however, treat these provisions particularly in respect of pension, as earmarked funds, so that adequate funds, are available with the investments made from time to time and the accumulated interest, for meeting the payments when they become due.

Depreciation:

- One of the most important tasks faced by autonomous organisations while switching over to the accrual system is to arrive at the current net block value of assets after providing depreciation for all the previous years and to provide depreciation thereafter regularly every year.
- Since most of the autonomous organisations have carried the fixed assets at their original cost (gross block), the first task for them will be to bring down the value of the assets (net block) on the date of change over by providing depreciation as accurately as possible for earlier years in which no depreciation was provided. In most organisations, asset records are not maintained properly and accurately and it may not also be practicable to determine the depreciation charge for each block of assets from inception. In most organisations it would however be possible to tabulate with reference to the balance sheets of the last 10 years, the opening balance, the additions, the deletions and the closing balance against each asset head for each year. As a pre-requisite to the exercise of deriving the net block figure from the gross block figure on the date of change over, it would be essential to arrange for a physical verification of all the assets and link them, to the extent possible, with the records relating to the acquisition of assets from time to time and generally be satisfied about the physical existence of the assets included in the gross block.

The organisation should then, as an accounting policy, decide the method of depreciation (straight line or diminishing balance); rates of depreciation that will be adopted for different classes of assets (rates as per the Companies Act or as per Income Tax Rules, 1962, or the organisation's own rates based on technical assessment of the life of classes of assets, susceptibility to obsolescence, etc.); and the basis for charging depreciation on additions during the year (Prorata; or full depreciation for the year; or full depreciation on assets acquired during the first half of the financial year and 50 per cent of the depreciation on assets acquired during the second half of the financial year). Using the tabular statement drawn up of the opening and closing balances of assets for the 10 years and applying the method and rates of depreciation, depreciation of each head of assets for each of the last 10 years and the total depreciation for all the 10 years can be arrived at. On the earliest tabulated opening balance (10 years earlier), depreciation can be provided at an ad hoc rate, (multiple of the ordinary rates fixed after judging the number of years of existence of the organisation) to cover all the earlier years. The depreciation for the last 10 years and the ad hoc depreciation for the earlier years can be reduced from the gross block by passing a journal entry debiting capital fund and crediting asset accounts. It should be debited to the capital fund as but for non-provision of depreciation, the balance in the capital fund would not have been at the level shown in the opening balance sheet. Finally, a fixed assets schedule which will support the net block figure should be prepared. A note forming part of the accounts for the year in which the change over has taken place should also be incorporated, briefly describing the methodology adopted in arriving at the net block as on the day of change over. An item should

With the adoption of the standard formats, the organisations would follow double-entry bookkeeping and accrual system of accounts. They would also comply with the applicable Indian accounting standards and would be following the basic accounting concepts and conventions including the historical cost convention, going concern concept, materiality concept, consistency concept, convention of conservatism, etc.

also be incorporated in the significant accounting policies disclosing the method of depreciation followed, the rates of depreciation adopted and the policy about depreciation on additions during the year. The depreciation for the year of change and subsequent years should be debited to the income and expenditure accounts. Whenever the book value of an asset is removed from the accounts, the corresponding original value and the accumulated depreciation have to be removed from the schedule of fixed assets. This is done by deleting the original cost of the asset in col. 3 of the gross block and the accumulated depreciation from col. 3 of the depreciation block.

Some of the other features of the standard formats are dealt with below:

Earmarked/Endowments Funds: These are funds created with certain specific and well-defined objectives. These are usually carried for a long term and are invariably represented by corresponding investments (earmarked/endowment fund investments) on the assets side of the balance sheet. Another characteristic of such funds is that the income from investments of such funds flows back to the fund and does not form part of the income of the organisation. The expenditure on fulfilling the objectives of the fund is also directly reduced from the fund's accumulations and the balance carried forward from time to time. Apart from exhibiting the account of each fund, where there are a number of such funds in an organisation in a schedule supporting the figure in the balance sheet, it is desirable to:

a) disclose what each fund is represented by on the assets side (bank balance, investments and interest accrued).
b) briefly disclose the object and the accounting policy in respect of each of the earmarked/ endowment funds in the significant accounting policies.

A specimen schedule of earmarked/endowment funds is at Annexure-1:

	ANNEXURE-1 (EARMARKED/ENDOWMENT FUNDS IN RS.)						
		Fund-wise Break up					
Particulars	**Pension Fund**	**Rajiv Gandhi Fellowship**	**Anuvrat Trust**	**CBCI Chair**	**Grover Award/**	**UNESCO Chair**	**Total Current Year**
a) Opening Balance	680392336	956814	735327	6768479	102016	32116	688987088
b) Additions during the year	7398378						7398378
(i) Income from investments made of the funds	77169790			400000	8000		77577790
(ii) Accrued interest on investments made out of the funds	41280000			400000	8000		41688000
(iii) Other additions (Saving Bank Int.)	466440			42136	711		509287
(iv) Incentive on Investment							
(v) Other additions	639377						639377
vi) Provision for Pension during the year	0						0
Total	8073466321	956814	735327	7610615	118727	32116	816799920
Less accrued							
interest of 2006-07	15284755			67945	2016		15354716
c) Utilisation/ Expenditure towards objectives							
i) Revenue Expenditure	12563739		17760	85634	5000		12672133
Capital Expenditure							0
Total ©	27848494	0	17760	153579	7016	0	28026849
Closing balance at the year end (a+b+c)	779497827	956814	717567	7457036	111711	32116	78773071
Represented by							
Cash and bank balance	9339994	956814	717567	1426479	3711	32116	12476681
Investments	733795416			5000000	100000		7388000
Interest accrued but not due	41280000			400000	8000		41688000
Due to Non-Plan	-588294			630557			42263
Due from Non-Plan	70734						70734
Due to Provident Fund	-51083						-51083
Due to Non-Plan	-4348940						-4348940
Total	779497827	956814	717567	7457036	111711	32116	788773071

Accounting of Sponsored Projects/ Programmes/ Schemes:

- Autonomous organisations engaged in research/ academic activities, undertake schemes/ programmes/activities, sponsored by outside agencies who agree to fund the expenditure on such schemes including capital expenditure specifically required for carrying out such schemes. Since the funds provided by sponsors do not belong to the organisation and since the expenditure is also incurred on behalf of the sponsors, the accounting treatment for such schemes is different.

  The receipts from sponsors are directly accounted for as a liability under *"Current liabilities – other liabilities – receipts against sponsored programmes"*. The expenditure there - against is debited to the liability account. The figure against this head in the balance sheet is an aggregation of balances against each individual programme. A sub-schedule could support the figure against this head. Debit balances, if any, against individual programmes would reveal that the organisation has incurred more expenditure than the receipts from the sponsors, which should not occur under normal circumstances, if the organisation is alert and is closely monitoring the expenditure and the receipts. The debit balances, if any, should appear under current assets as recoverable from sponsors.

A Specimen Format is at Annexure-2:

- Another feature of sponsored programmes is that the sponsors (particularly government agencies and departments) invariably stipulate a condition that the ownership of the assets created out of their funds vests with the sponsors. Where there is no such stipulation, i.e. where the ownership vests with the organisation/university, the assets have to be merged with the assets of the organisation and depreciation provided in the normal course. Such assets have to be set up in the accounts, as the expenditure has already been debited to the sponsored project account. This is set up by debiting fixed assets accounts and crediting capital fund. Where the ownership in the assets is retained by the sponsors, the organisation holds and uses assets not owned by them. Such assets cannot, therefore, be treated as assets of the organisation, as it does not "own" them. However, since the assets are held and used by the organisation, it becomes necessary to disclose the existence of such assets not owned but held and used by the organisation in the notes on accounts. The disclosure should include the opening balance or original cost against the classified asset heads, the additions during the year, the accumulated depreciation (notional as depreciation cannot be charged in the accounts on assets not belonging to the organisation) and the book value (closing balance). The exhibition of the book value would represent the correct position as these assets are also being continuously used and hence are subject to depreciation.

A third feature of sponsored programmes is that such programmes should not only bear the direct costs but also a portion of the other common costs and infrastructure costs, such as space, electricity, water, security, stationery, computer usage, equipment usage, communication facilities, etc. These are usually recovered by levying a percentage charge on the direct costs, terming it as *"Overhead Recoveries"*. In addition to the direct costs and overhead recoveries, many organisations also levy an *"intellectual fee"* or a *"Management Fee"* or *"Institutional charges"* against the programme. This is again levied as a percentage of the total expenditure. Overhead

ANNEXURE-2
SCHEDULE 3- CURRENT LIABILITIES AND PROVISIONS
ITEM 3.4(B) RECEIPTS AGAINST ON GOING SPONSORED PROJECTS (NET OF EXPENDITURE)

Supported by schedule 3.4(b) in the following Format:-

		Opening Balance				Closing Balance		
Sl.No.	Project Title	Available	Recoverable	Receipts	Total	Payments	Available	Recoverable
Total:-					@	@ @		

@ will be the figure in Schedule 3-Item 4(b)
@@ will appear in Schedule-Current Assets, Loans of Advances, Current Assets, Sundry Debtors

recoveries constitute an abatement of expenditure, which has to be reflected as a line entry in the schedules to the income and expenditure account. Intellectual fee or management fee or institutional charges is an income for the organisation by debit to the programme account exhibited in the income and expenditure account.

The accounting policy in respect of sponsored programmes should be disclosed as an item in the significant accounting polices of the organisation.

Plan and Non-Plan Grants:

- To facilitate grant-in-aid audit, organisations receiving plan and non-plan grants from governments are required to distinctly exhibit the expenditure - both revenue and capital - met out of plan and non-plan grants. This requirement can be fulfilled by inserting separate columns horizontally against the revenue expenditure heads, in schedules supporting the figures against such heads in the income and expenditure account.

A specimen format of *The Schedule of Establishment Expenses* with a sub-schedule for *Retirement Benefits* is at Annexure-3:

ANNEXRUE-3

SCHEDULE-ESTABLISHMENT EXPENSES

Amount in Rs.

Particulars	Current Year 2007-08			Previous Year 2006-07		
	Plan	Non-plan	Total	Plan	Non-Plan	Total
a. Salaries, wages and Allowances	47,88,720	45,18,15,495	45,66,04,215	89,53,746	42,51,01,726	43,40,55,472
b. Contribution to Provident Fund	-	36,88,301	36,88,301	-	33,54,123	33,54,123
c. Contribution to other Funds (New Pension Scheme)	-	1,95,518	1,95,518	-	21,02,545	21,02,545
d. Bonus	-	30,35,368	30,35,368	-	29,66,648	29,66,648
e. Staff Welfare Expenses (LTC, medical Reimbursement, Tuition Fee reimbursement)	-	1,75,61,938	1,75,61,938	-	1,38,199	1,38,199
f. Employees' Retirement and Terminal Benefits (Pension, Gratuity, Leave Encashment)	-	25,57,32,170	25,57,32,170	-	21,16,90,383	21,16,90,383
g. Fees & Honorarium	2,700	17,75,554	17,78,254	76,497	14,18,284	14,94,781
h. Leave Salary and						
Gross Total:- Pension Contribution		3,12,324	3,12,324	-	5,25,446	5,25,446
Total	47,91,420	73,41,16,668	73,89,08,088	90,390,243	64,72,97,354	65,63,27,597

SCHEDULE-EMPLOYEES RETIREMENT & TERMINAL BENEFITS

A.	Gratuity	Pension	Leave Encashment	Total
Opening Balance	17,04,41,000	1,96,07,35,000	14,55,71,000	2,27,67,47,000
Addition: Capitalised value of contribution Received from other organisations	24,01,703	37,49,475	-	61,51,178
Total:	17,28,42,703	1,96,44,84,475	14,55,71,000	2,28,28,98,178
Less: Actual payment during the year 2007-08	1,70,80,039	8,11,28,477	89,56,867	10,71,65,383
Balance Available on 31.03.2008	15,57,62,664	1,88,33,55,998	13,66,14,133	2,17,57,32,795
Provision required on 31.03.08 as per Actuarial Valuation	17,54,89,000	2,09,51,39,000	15,00,75,000	2,42,07,03,000
Provisions to be made in 2007-08	1,97,26,336	21,17,83,002	1,34,60,667	24,49,70,205
B. Contribution to New Pension Scheme				39,07,631
C. Medical Reimbursement to Retired Employees				63,40,989
D. Travel to Hometown on Retirement				3,33,345
E. Deposit Linked Insurance Payment				1,80,000
Total (A+B+C+D+E)				25,57,32,170

Under the accrual system of accounting, the advances outstanding at the end of each month in the financial year, will have to be aggregated for the financial year and interest thereon taken credit of in the income and expenditure account against the head *"Interest earned"* **and exhibited as** *"Interest accrued but not due"* **in the balance sheet under the head** *"Current Assets, Loans and Advances".* **In the first year of change over, interest accrued will have to be calculated for all previous years commencing from the dates of sanction.**

- As regards, capital expenditure, as the fixed assets schedule has several columns horizontally; the main schedule could be used to exhibit the overall position of fixed assets of the organisation, from whatever source they have been created. Two or three sub-schedules can be attached to the main schedule to contain fixed assets and capital works in progress met out of plan funds, fixed assets and capital works in progress met out of non-plan funds and fixed assets and capital works in progress met out of other funds (earmarked funds, sponsored project funds, gifted assets, etc., including own funds).

Accounting for Grants:

- Most central autonomous organisations are dependent on a continuous basis on grants from the government of India mainly to meet deficits on revenue account as well as to meet capital expenditure. Government grants normally have three components, viz. capital expenditure, revenue expenditure and unutilised grants, if any. To the extent grants are utilised for capital expenditure (acquisition of fixed assets), following the capital approach in the accounting standards, they are capitalised and credited to capital fund, by treating them as promoter's/owner's funds. To the extent the grants are utilised for revenue expenditure, they are treated as income of the organisation and exhibited in the income and expenditure account. Un-utilised grants, if any, at the end of the financial year will appear as a liability under *"Current Liabilities"*. The significant accounting policies should briefly disclose the accounting treatment of grants.

General Provident Fund/Contributory Provident Fund Accounts:

- Most autonomous organisations manage the General Provident Fund/Contributory Provident Fund accounts departmentally and have not created separate trusts.
- As the balance sheet of the organisation reflects what it "owns" and "owes" and as the GPF/CPF are owned and owed by the members of the fund, it would not be correct to merge the Provident Fund accounts with the final accounts of the organisation. It would be more appropriate to prepare at the end of each year a receipts and payments account, an income and expenditure account on accrual basis and a balance sheet for the GPF/CPF. As the organisation is morally responsible to ensure that the PF money is managed in the best interest of the members, copies of the annual accounts of the PFs may be attached to the accounts of the organisation as an appendix, with a disclosure in the notes to accounts.

It would be more appropriate to prepare at the end of each year a receipts and payments account, an income and expenditure account on accrual basis and a balance sheet for the GPF/CPF. As the organisation is morally responsible to ensure that the PF money is managed in the best interest of the members, copies of the annual accounts of the PFs may be attached to the accounts of the organisation as an appendix, with a disclosure in the notes to accounts.

Agriculture Industry and IFRS: Application Review of IAS 41–Agriculture (The Fair Value…)

Inconsistency in the accounting of agriculture and biological assets in particularly India is because this sector is not organised here and, therefore, driven by less qualified people. Considering the global economy, it becomes a challenge for accounting. IAS 41-Agriculture introduced fair-value accounting for standing timber and agricultural activities, as it did for all biological assets. The objective of the IAS 41 is to establish standards of accounting for agricultural activity – the management of the biological transformation of biological assets. This paved the way for major changes from established accounting practices. Seven years have passed with IAS 41. Like the IFRS, the use of the IAS 41 is globally known. The author explores the issues surrounding the question how this *Standard* is being applied to forest assets.

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Introduction

Agriculture, biological assets accounting around the globe in general and particularly in India is not systematic and consistent. Perhaps, this is because this sector is unorganised and driven by less qualified people in India. This creates a big challenge for accounting considering in global context. In order to establish position in global economy and to unlock the value associated with this sector, appropriate accounting is an alarm bell.

IAS 41-Agriculture, effective for periods beginning on or after January 1, 2003, introduced fair-value accounting for standing timber and agricultural activities, as it did for all biological assets. This entailed a major change from established accounting practices. The application of fair value to standing timber requires considerable judgment. Seven years have now passed with the IAS 41. Its use is now widespread globally, as is the use of the IFRS. Nevertheless, amongst preparers, there are major questions about how the standard is being applied to forest assets. Fair value implies a market-based value and whilst there are markets around the world for the harvested products of forest, markets for standing timber are limited in comparison with the total volume of standing forest.

IAS 41 (IFRS) and India

Clear guidelines or equivalent standards in accounting for the sectors in agriculture and biological assets are lacking. The concept of prudence of 'cost' is shifting to that of 'fair value' under the IAS 41. Transition from the Indian Generally Accepted Accounting Practices (GAAP) to the IFRS further gained momentum with the set-up of a core group under the chairmanship of the Secretary, Ministry of Corporate Affairs (MCA), with a participation from the Reserve Bank of India (RBI), the Security and Exchange Board of India (SEBI), the Insurance Regulatory and Development Authority (IRDA), The Institute of Chartered Accountant of India (ICAI), the National Advisory Committee on Accounting Standards (NACAS) and representatives from industries.

The MCA has announced recently the approach and timeline for achieving convergence with the IFRS in phases. First phase is effective from April 1, 2011, for certain category of company.

IAS 41 gives the accounting treatment, the financial statement presentation, and the disclosures related to agricultural activity. Agricultural activity covers a wide range of operations, e.g. raising of livestock, forestry, cultivating orchards and plantations, and aquaculture. Historically, accounting for agriculture activity received little attention from the accounting governing bodies. However, this oversight was addressed by issuing the IAS 41.

What is the Importance?

The application of the IAS 41 and the valuation of forest assets are of increasing importance to preparers and investors throughout the world:

- Preparers and investors have expressed their interest in the manner in which the IAS 41 has been implemented.
- The forthcoming implementation of the IFRS in various regions with major commercial forestry activities, such as the US, Canada and Brazil, also calls for this study.
- Institutional investors are becoming increasingly attracted to forestland as an asset class seeing such assets as offering an alternative and sustainable long-term investment strategy.
- Forestry is attracting new strategic investor interest as wood-based biomass is seen as a vital renewable energy resource.

Given this interest, we attempt to shed light on the fair valuation of standing timber for financial reporting purposes, and closely related valuation issues, by reviewing the disclosures in the IFRS-based financial reports for forest owners.

Objective

IAS 41 gives the accounting treatment, the financial statement presentation, and the disclosures related to agricultural activity. Agricultural activity covers a wide range of operations, e.g. raising of livestock, forestry, cultivating orchards and plantations, and aquaculture.

Background

Historically, accounting for agriculture activity received little attention from the accounting governing bodies. However, this oversight was addressed by issuing the IAS 41.

IAS 41 will have important implications for agriculture enterprises where the income-producing biological assets are expected to have economic lives that continue beyond one accounting period. This will be the case for biological assets such as trees that will be cut many years ahead, and for bearer biological assets, e.g. grapevines that bear fruit but themselves do not become agriculture produce. In contrast, no big difficulties arise for annual crops of wheat, e.g. where the cultivated plants would typically have a useful life that does not extend beyond the next balance sheet date. The use of fair-value accounting for these biological assets should not cause great difficulty, provided its fair value can be accurately measured from the prices in an active market.

IAS 41 does not apply to the following activities:

- Agriculture produce after it is harvested
- The land on which the biological assets grow
- Any intangible assets associated with agriculture activity
- Agriculture, which is not, managed, e.g. ocean or lake-fishing
- Mining activities

Example 1: Treatment of consumable biological assets after harvesting

Company ABC raises cattle, slaughters them at its abattoirs and sells the carcasses to the local meat market. The cattle are biological assets, while they are living animals. When they are slaughtered, biological transformation ceases and the carcasses meet the definition of agricultural produce. Hence, company A should account for the cattle in accordance with the IAS 41 and the carcasses as inventory in accordance with the IAS 2.

Example 2: Treatment of agricultural produce and bearer biological assets after harvesting

Company XYZ is involved in planting vines, harvesting grapes and producing wine. Grapevines are biological assets that continually generate additional biological assets, that is, crops of grapes. When the entity harvests the grapes, their biological transformation ceases and they become agricultural produce. Grapevines continue to be living plants and should be recognised as biological assets. Hence, company XYZ should account for the grapevines in accordance with the IAS 41 and the harvested grapes as inventory in accordance with the IAS 2.

Summary of IAS 41

- IAS 41 gives the accounting treatment, financial statement presentation, and disclosures related to agricultural activities.
- A biological asset should be measured on initial recognition and at each balance sheet date at its fair value less estimated point-of-sale costs.
- Agricultural produce harvested from an enterprise's biological asset should be measured at its fair value less estimated point-of-sale costs at the point of harvest.
- IAS 41 does not deal with the processing of agricultural produce after harvest, e.g. processing grapes into wine and wool into yarn.
- There is a presumption that fair value can be measured reliably for biological asset.
- When fair value cannot be measured accurately, IAS 41 requires that an enterprise measures biological asset at cost less any accumulated depreciation and any accumulated impairment losses.
- Requirement that a change in fair value less estimated point-of-sale costs of a biological asset, or a gain or loss on initial recognition at fair value of a biological asset, is included in net profit or loss for the period in which it arises.
- A gain or loss on initial recognition of agriculture produce at fair value less estimated point-of-sale costs should be included in net profit or loss for the period in which it arises.
- An unconditional government grant for a biological asset is recognised as income when, and only when, the government grant becomes receivable.
- Government grant which is conditional upon a certain event occurring should only be recognised as income, when the conditions attaching to the grant are met.

Required disclosures include but are not limited to the following:

- An enterprise should show the carrying amount of biological assets in the balance sheet.
- An enterprise should show gains or losses from changes in fair value of biological assets and for both biological assets and agriculture produce, the gain or loss arising on initial recognition.
- Description of each group of biological assets.
- Methods and assumptions used to value biological assets and agriculture produce at a point of harvest.
- Disclose the fair value less estimated point-of-sale costs of agriculture produce harvested during the period determined at the point of harvest.
- Reconciliation of changes in the carrying amount of biological assets between the start and end of the current period.
- Nature and extent of government grants recognised in the financial statements.
- Unfilled conditions and other contingencies attaching to government grants.

- Large decreases expected in the amount of government grants.

Scope of IAS 41

IAS 41 should be applied to account for the following items when they relate to agricultural activity:

- Biological assets;
- Agricultural produce at the point of harvest; and
- Government grants for agricultures activities.

IAS 41 does not apply to:

- Land related to agricultural activity (refer to the IAS 16 Property Plant and Equipment, and the IAS 40 Investment Property)
- Intangible assets related to agricultural activity (refer to the IAS 38 Intangible Assets)

The table below provides examples of biological assets, agricultural produce and products that are results of the processing after harvest:

Biological assets	Agricultural produce	Products that are the result of processing after harvest
Sheep	Wool	Yarn, carpet
Trees in a plantation forest	Logs	Lumber
Plants	Cotton	Thread, clothing
Plants	Harvested cane	Sugar
Dairy cattle	Milk	Cheese
Pigs	Carcass	Sausages, cured hams
Bushes	Leaf	Tea, cured tobacco
Vines	Grapes	Wine
Fruit trees	Picked fruit	Processed fruit
Fruit trees	Picked fruit	Processed fruit

Definitions

The following definitions have been used in the IAS 41:

- *Agricultural activity* is the management by an enterprise of the biological transformation of biological assets for sale, into agricultural produce, or into additional biological assets.
- *Agricultural produce* is the harvested product of the enterprise's biological assets.
- A *biological asset* is a living animal or plant.
- *Biological transformation* comprises the processes of growth, degeneration, production, and procreation that cause qualitative or quantitative changes in a biological asset.
- A *group of biological assets* is an aggregation of similar living animals or plants.
- *Harvest* is the detachment of produce from a biological asset or the cessation of a biological asset´s life processes.
- An *active market* is a market where all the following conditions exist:
  - The items traded within the market are homogeneous.
  - Willing buyers and sellers can normally be found at any time.
  - Prices are available to the public.
- *Carrying amount* is the amount at which an asset is recognised in the balance sheet.
- *Fair value* is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

Explanation of IAS 41

One of the most important aspects of the IAS 41 is that biological assets are to be measured on initial recognition and at each balance sheet date at their fair values less estimated point-of-sale costs, and not at historical cost which is the frequently used method under the various GAAPs including the Indian GAAP. The fair-value method is used instead of the historical cost basis, because it can show more accurately the results of the agriculture activity being undertaken.

However, the above basis of measurement is not used for biological assets when the fair value cannot be measured reliably (market-determined prices or values are not available and for which alternative estimates of fair value are determined to be clearly unreliable). Agriculture produce harvested from an enterprise's biological assets should be measured at its fair value less estimated point-of-sale costs at the point of harvest. Such measurement is the cost at that date when applying the IAS 2 Inventories or another applicable IAS Standard.

RECOGNITION OF BIOLOGICAL ASSETS AND AGRICULTURE PRODUCE

An enterprise should recognise a biological asset or agricultural produce, when and only when:

- the enterprise controls the asset as a result of past events;
- it is probable that future economic benefits associated with the asset will flow to the enterprise; and
- the fair value or cost of the asset can be measured reliably.

In agricultural activity, control may be evidenced by, e.g. legal ownership of the cattle and branding of the cattle on acquisition. The future benefits are normally assessed by measuring the significant physical attributes of an asset.

MEASUREMENT OF BIOLOGICAL ASSETS AND AGRICULTURAL PRODUCE

A biological asset should be measured on initial recognition and at each balance sheet date at its fair value less estimated point-of-sale costs, except where the fair value cannot be measured reliably. Agricultural produce harvested from an enterprise's biological assets should be measured at its fair value less estimated point-of-sale costs at the point of harvest. Such measurement is the cost at that date when applying the IAS 2 Inventories or another applicable IAS.

The point-of-sale costs which are deducted from the fair value include commissions payable to brokers and dealers, levies, transfer taxes, and duties. Transport costs and other costs necessary to get the produce to market are not included. The calculation of fair value of biological assets or agricultural produce may be facilitated by grouping biological assets or agricultural produces according to significant features, e.g. by age or quality. An enterprise selects the attributes corresponding to the features used in the market as a basis for pricing.

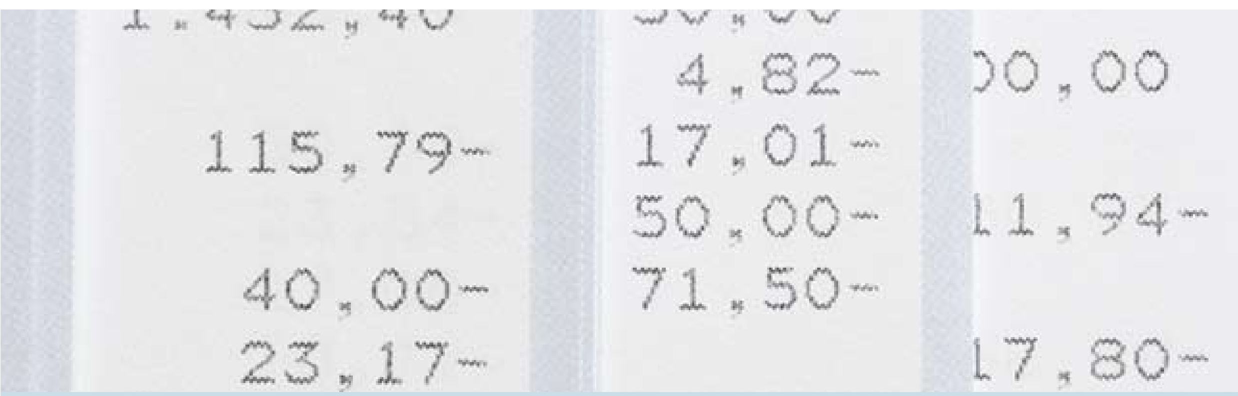
The fair value for biological assets or agricultural produces is obtained from the quoted price in an active market for the particular items being valued. However, if an active market for the assets does not exist, an enterprise will use one or more of the following to calculate the fair value:

- Most recent market transaction price, provided price is still valid at the balance sheet date;
- Market prices for similar assets with adjustment to reflect differences; and
- Sector benchmarks such as value of an orchard expressed per export tray, hectare and value of cattle expressed per kilogram of meat.

Example: Producer has access to more than one market

An entity is in the business of growing and harvesting sugar cane. Along with other growers, it sells the harvested cane to the local mill. There are other mills located throughout the country. However, it is uneconomical to transport the sugar cane to other mills, although they often pay higher prices for the cane. Which market price should the entity use to establish fair value? As there is an active market with various alternatives available, the entity should use the market value in accordance with the hierarchy above. The entity should use the local market price as fair value, as it is uneconomic to transport sugar cane to other mills even if the prices may be higher.

Another important issue is that biological assets are often attached to land, e.g. trees growing in a plantation forest. However, there may be no separate market for the trees attached to the plantation land, but there may be distinct and separate markets for the land and for the trees. These values can be readily obtained. In this situation, an enterprise



One of the most important aspects of the IAS 41 is that biological assets are to be measured on initial recognition and at each balance sheet date at their fair values less estimated point-of-sale costs, and not at historical cost which is the frequently used method under the various GAAPs including the Indian GAAP. The fair-value method is used instead of the historical cost basis, because it can show more accurately the results of the agriculture activity being undertaken.

may use the separate market information for the land and for the trees to determine the fair value for the trees. In the case of a biological asset reproduced from another biological asset, e.g. new-born lamb, the cost on initial recognition is very small, but the fair value would be established by reference to the market in young lambs, e.g. recent auction prices.

Although fair value gain will technically arise on initial recognition in a practical sense, fair value does not need to be established immediately; it may instead be established:

- Before the balance sheet date at the point of harvest when the lamb is sent to the meat factory
- At the balance sheet date for those lambs retained in which case fair value is established by reference to the recent auction price for lambs of similar age and grade.

TREATMENT OF GAINS AND LOSSES

Gains or losses arising on recognition of the biological assets at fair value less point-of-sale costs, and from changes in fair value less estimated point-of-sale cost, should be included in the net profit or loss for the period in which it arises. Gains or losses arising on recognition of agricultural produce at fair value less estimated point-of-sale costs should be included in the net profit or loss for the period in which it arises.

INABILITY TO MEASURE FAIR VALUE RELIABLY

There is a presumption that fair value can be measured reliably for biological assets. However, the presumption can be rebutted only on the initial recognition for a biological asset for which market determined prices or values are not available and for which other estimates of determining fair value are unreliable. In such cases, biological assets should be measured at its cost less any accumulated depreciation and any accumulated impairment losses. Once the fair value of such a biological asset becomes reliably measurable, an enterprise should measure the biological asset at its fair value less the estimated point-of-sale costs.

The difficulty in establishing the fair value of a biological asset increases when the asset is a bearer asset (used to propagate other biological assets), e.g. grapevines can live for about 100 years and can go on producing grapes for another 100 years. In such cases, fair value is difficult to establish. In this situation, the enterprise can measure the vines at cost less accumulated depreciation and any accumulated impairment losses.

RECOGNITION OF GOVERNMENT GRANTS

Unconditional government grants related to a biological asset should be recognised as income when, and only when, the government grant becomes receivable. Government grants related to a biological asset that are conditional, e.g. where a government grant requires an enterprise not to engage in specified agricultural activity, the government grant is only recognised as income when, and only when, the conditions attaching to the government grant are met.

REQUIRED DISCLOSURES

The required disclosures are summarised below:

- An enterprise should present the carrying amount of its biological assets separately in its balance sheet.
- An enterprise should disclose the aggregate gain or loss arising in the current period on initial recognition of biological assets and agricultural

The point-of-sale costs which are deducted from the fair value include commissions payable to brokers and dealers, levies, transfer taxes, and duties. Transport costs and other costs necessary to get the produce to market are not included. The calculation of fair value of biological assets or agricultural produce may be facilitated by grouping biological assets or agricultural produces according to significant features, e.g. by age or quality.

produce and from the change in fair value less estimated point-of-sale costs of biological assets.

Because of difficulties reporting gains or losses according to their distinct causes, IAS 41 does not insist on reporting these gains or losses according to this methodology described above:

- If not shown elsewhere, an enterprise should show:
- The nature of its activities involving each group of biological asset.
- Non-financial measures or estimates of the physical quantities of:
  - Each group of the enterprise's biological assets at the end of the period
  - Output of the agricultural produce during the period.
- An enterprise should show the methods and main assumptions used in calculating fair value of each group of agriculture produce at the point of harvest and each group of biological assets.
- An enterprise should disclose the fair value less estimated point-of-sale costs of agriculture produce harvested during the period.
- An enterprise should also show biological assets whose title is restricted and biological assets pledged as security. Commitments for developing or acquiring biological assets, financial risk management strategies.
- An enterprise should show a reconciliation of changes in the carrying amount of biological assets between the start and the end of the current period.

There are additional disclosure requirements for biological assets where fair value cannot be measured reliably. If an enterprise measures biological assets at their cost less accumulated depreciation and any impairment loss, the enterprise should show:

- A description of the biological asset
- An explanation of the reasons why the fair value cannot be measured reliably
- If possible the range of estimates within which the fair value is likely to be
- The depreciation method used
- The useful lives or the depreciation rates used
- The gross-carrying amount and the accumulated depreciation at the start and the end of the period

There is extensive disclosure requirement for gains or losses arising on disposal of biological assets measured at cost.

DISCLOSURE FOR GOVERNMENT GRANTS

An enterprise should show the following:

- The nature and extent of government grants recognised in the financial statements;
- Unfilled conditions and other contingencies attached to government grants; and
- Large decreases expected in the amount of government grants.

TRANSITION

A change in accounting policy to adopt the IAS 41 may be accounted for in accordance with either of the treatments for changes in accounting policies allowed in the IAS 8, Net Profit or Loss for the Period, Fundamental Errors and Changes in Accounting Policies. The choices are:

- Benchmark treatment: restatement
- Allowed alternative treatment: cumulative effect in earnings in the period of change, with pro forma disclosures as if restated.

Financial Instruments: Recognition & Measurement Under the IFRS Framework

The portfolio of financial instruments held by entities has undergone a massive change in composition from merely traditional instruments, such as cash, trade debtors, long-term debt, investments, etc., to derivatives and complex combinations of instruments in order to facilitate risk mitigation. In the traditional accounting framework, recognition of a financial transaction was contingent upon transfer of risk and rewards. Thus, using the same, it was not possible to deal with situations where risk and rewards associated with a particular asset or liability were divided and allocated to different parties. Again, since some financial instruments have no or little initial cost, e.g. options, they would not be adequately accounted for under the historical cost-based systems. Thus, under the IFRS framework, a need was felt for accounting stipulations to be more comprehensively spelt out by a new standard so as to ensure consistency in the accounting practices being followed by various entities.

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IAS 39 - Financial Instruments: Recognition and Measurement, first issued in December 1998, establishes the principles to be applied by entities for recognising and measuring all types of financial instruments, namely financial assets, financial liabilities and some contracts to buy or sell non-financial items.

A financial instrument is a contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. This wide definition includes cash, deposits in other entities, trade receivables, loans to other entities, investments in debt instruments, investments in shares and other equity instruments. Examples of financial liabilities are trade payables, loans from other entities, and debt instruments issued by an entity.

Financial instruments are broadly categorised as:

- *Primary instruments*, e.g. receivables, payables and equity securities; and
- *Derivatives* that are derived from some other asset, index, event, value or condition known as the underlying asset: These allow risk as regards the price of the underlying asset to be transferred from one party to another, e.g. call options, put options, forwards, futures, swap, etc.

Definitions

Financial Asset

- Cash
- An equity instrument of another entity
- A contractual right to receive either cash or a financial asset from a third party, or, to exchange financial assets/liabilities with a third party under conditions that are potentially favourable, such as a swap with a positive fair value

Financial Liability

- A contractual obligation to deliver either cash or another financial asset to another entity
- A contractual obligation to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity, such as a swap with a negative fair value

Physical assets such as prepaid expenses, liabilities such as taxes/duties payable to regulatory authorities which are not contractual in nature, operating leases and contractual rights and obligations which pertain to non-financial assets not settled like financial instruments, are not covered in the above definition.

Whether a financial asset or financial liability is measured at any of the above depends on its classification as to whether the fair value can be reliably determined, increase/decrease in the value of financial assets and liabilities is to be taken to the profit & loss or to equity depending on the class in which they are recognised.

Accounting Steps Involved

Initial Recognition

The moment an entity enters into an agreement with regard to the instrument, it needs to immediately recognise the financial assets/liabilities in its balance sheet.

Classification

Financial assets are to be classified into one of the four categories, while financial liabilities are to be classified into one of the two categories.

Initial Measurement

Initial measurement of financial assets and liabilities is to be done at fair value. What we generally understand by fair value is that it is a rational and unbiased estimate of the potential market price of a particular good, service, or, an asset.

IAS 39 establishes rules for determining fair value. The existence of a published price quoted in an active market is the best evidence of fair value. For assets or liabilities that are not quoted in an active market, fair value is determined using valuation techniques, such as discounted cash-flow models or option-pricing models such as the Black Scholes Model.

Subsequent Measurement

Subsequent to initial recognition, financial assets and financial liabilities are measured using one of the following methods:

- Cost
- Amortised cost (cost of an asset or liability adjusted to achieve a constant effective interest rate over the life of the asset or liability): An entity must apply the effective interest rate method in the measurement of amortised cost. The effective interest rate method also determines how much interest income or interest expense should be reported in profit and loss
- Fair value

Whether a financial asset or financial liability is measured at any of the above depends on its classification as to whether the fair value can be reliably determined, increase/decrease in the value of financial assets and liabilities is to be taken to the profit & loss account or to equity depending on the class in which they are recognised.

Classification of Financial Assets

Financial assets are essentially classified into any of the following four categories:

1. Financial Assets at Fair Value through Profit & Loss

A financial asset is classified in this category where it has been primarily acquired for selling in the short-term and for which there is evidence of a recent actual pattern of short-term profit taking. However, once an asset has been voluntarily recognized in this class, it cannot be moved to another class during its life. So, an entity is not allowed to reclassify a financial instrument into or out of the fair value through profit or loss category at a later point of time. It is imperative that the entity exercises due caution at the point of taking this initial decision.

2. Held-to-Maturity (HTM) Investments

A financial asset is classified as an HTM Investment if fulfils the following twin conditions:

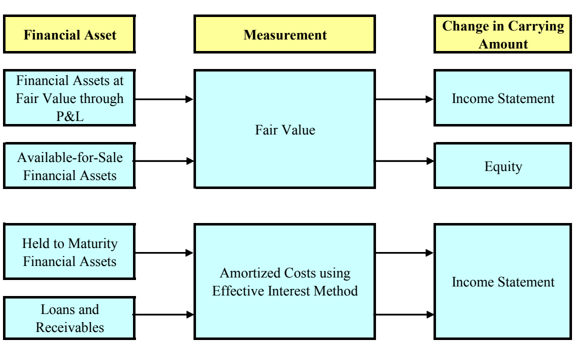
- Non-derivative financial asset with a fixed maturity date, fixed or determinable payments, where amount and dates of interest and principal payments are mutually decided
- The entity has a positive intention and ability to hold the instrument to maturity. The intention to hold the investment is determined when the financial asset is first purchased and is then re-assessed at the end of each financial year

3. Loans & Receivables

A financial asset is classified in the 'Loans & Receivables' category, if it is non-derivative with fixed or determinable payments and is not quoted in an active market. This category doesn't include instruments that are slated to be sold off in the short term.

4. Available-for-Sale Financial Assets

A financial asset is classified as an available-for-sale financial asset, where it has been designated as available for sale, or, where the asset has not been classified in any other of the three categories. The classification and accounting treatment is summarized diagrammatically:



Illustration

<u>Financial assets at fair value through profit and loss</u>

On December 31, 2006, an entity acquires for cash 1000 shares at Rs. 10 per share and can designate them as at fair value through profit or loss. At the year end December 31, 2007, the quoted price increases to Rs. 16. The entity sells the shares Rs. 16,400 on January 31, 2008.

<u>Initial recognition</u>

Dr Financial assets at fair value through profit and loss	Rs. 10,000
Cr Cash	Rs. 10,000

<u>31 December 2006</u>

Dr Financial assets at fair value through profit and loss	Rs. 6,000
Cr Income statement	Rs. 6,000

<u>31 January 2007</u>

Dr Cash	Rs. 16,400
Cr Financial assets at fair value through profit and loss	Rs. 16,000
Cr Income statement	Rs. 400

<u>Available-for-sale financial assets</u>

If the entity had classified the shares as available for sale, the entries would be as follows:

<u>Initial recognition</u>

Dr Available-for-sale financial assets	Rs. 10,000
Cr Cash	Rs. 10,000

<u>Year end</u>

Dr Available-for-sale financial assets	Rs. 6,000
Cr Reserves	Rs. 6,000

<u>After year end</u>

Dr Cash	Rs. 16,400
Dr Reserves	Rs. 6,000
Cr Available-for-sale financial assets	Rs. 16,000
Cr Income statement	Rs. 6,400

Thus, one would appreciate the fact that in the latter treatment under AFS category, the profit & loss account is insulated from the volatility in prices between the purchase and sale of the instruments.

<u>HTM Investments and Loans & Receivables</u>

They are measured at amortised cost, i.e. the cost of an asset or liability adjusted to achieve a constant effective interest rate over the life of the asset or liability.

Consider a situation where an entity purchases bonds with face value Rs. 1,000 at a discount of Rs. 100. The bond has a coupon rate of 10 per cent and it redeemable on maturity at par. Thus, it effectively has YTM (yield to maturity) of 12.83 per cent.

The entity adopts the following computation:

Year	Opening Amortised Cost [A]	Interest Earned [A*12.83%]	Interest Cash Inflow [C= Rs 1000*10%]	Cl. Amortised Cost [A+B-C]
1	900.0	115.5	100.0	915.5
2	915.5	117.5	100.0	933.0
3	933.0	119.7	100.0	952.7
4	952.7	122.2	100.0	974.9
5	974.9	125.1	100.0	1000.0

Initially the purchase of the instrument at Rs. 900 is recorded as:
Dr Loans and receivables 900
Cr Cash 900

At the end of year 1, entity makes the following entry:
Dr Cash 100
Dr Loans and receivables 15.5
Cr Interest income 115.5

And so forth till the point that at the end of year 5, the debt security is carried at Rs. 1,000, the value at which the instrument is redeemed:
Dr Cash 1000
Cr Loans and receivables 1000

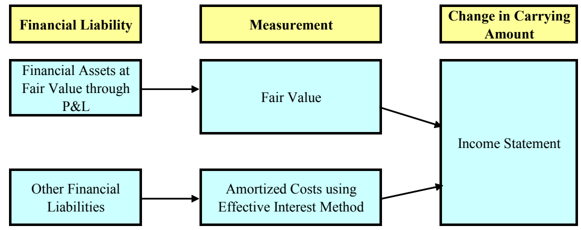
Classification of Financial Liabilities

There are two categories of financial liabilities:

- At fair value through profit or loss
- Other financial liabilities.

1. *Financial Liabilities at Fair Value through Profit and Loss:* The conditions to be met in order to designate a financial liability at fair value through profit or loss are the same as for financial assets. Like financial assets, once a financial liability has been voluntarily recognized in this class, it cannot be moved to another class during its life.

2. *Other Financial Liabilities:* A financial liability is classified under *'other financial liabilities'*, when it does not fall within *'financial liabilities at fair value through profit and loss'* as mentioned above. An example in this category would be a financial liability incurred with the intention to hold it to maturity.



Derivatives

Derivatives are contracts such as options, forwards, futures, and swaps. A derivative is a financial instrument which has the following characteristics:

- Its value changes in response to the change in a specified interest rate, financial instrument price, commodity price, foreign exchange rate, index of prices or rates, credit rating, credit index, or, other variable.
- It requires no initial net investment or small investment.
- It is to be settled at a future date.

They are often entered into at no or very little cost and, therefore, prior to the IAS 39, they were often not recognised in financial statements. IAS 39 requires derivatives to be measured at fair value with changes in the fair value recognised either in profit or loss, or, in reserves depending on whether the company uses hedging. Where the derivative is used to offset risk and certain hedging conditions are met, changes in fair value can be recognised separately in reserves.

Hedge Accounting

Hedging is a risk-management technique designed to offset changes in fair value or cash flows. If certain conditions are met, as discussed later, companies are permitted to apply hedge accounting that differs from the normal accounting methods in IAS 39. There will be a hedging instrument, e.g. a derivative or a non-derivative financial asset, or, non-derivative financial liability, and a hedged item, e.g. an asset, liability, firm commitment, net investment in a foreign operation, etc. This hedged item exposes the company to risks of changes in fair value or future cash flows.
There are three types of hedging positions in IAS 39:

- Fair-value hedges
- Cash-flow hedges
- Hedges of a net investment in a foreign operation.

Fair-Value Hedge

In this case, the entity endeavors to protect itself from the adverse impact of changes in fair value of assets/ liabilities arising from market price movements because its price/cash flows are fixed, e.g. interest rate swap where an entity enters into a contract to pay floating and receive fixed in order to hedge a fixed rate liability.

Cash-Flow Hedge

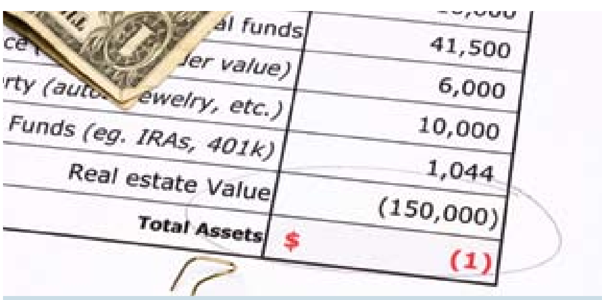
This position is taken for mitigating cash flows risk with a recognised asset/liability or a highly probable forecast transaction. In a situation where a company expects to purchase a piece of machinery for $ 100,000 in a years' time, say December 31, 2010. In order to offset the risk of increases in the INR/US$ rate, the company enters into a forward contract to purchase US$ 100,000 in one year for a fixed amount (INR 4,800,000). The forward contract is designated as a cash flow hedge and has an initial fair value of zero.

At the year end, 31 October 2008, the dollar has appreciated and the value of US$ 100,000 is INR 5,000,000. The machine will still cost Rs. 48,00,000 so the company concludes that the hedge is 100 per cent effective and insulates it from the impact of forex fluctuations.

Thus the entry will be:

Thus the entire change in the fair value of the hedging instrument is recognised directly in reserves.

Dr Forward contract	200,000
Cr Reserves	200,000



The conditions to be met in order to designate a financial liability at fair value through profit or loss are the same as for financial assets. Like financial assets, once a financial liability has been voluntarily recognized in this class, it cannot be moved to another class during its life.

In the same breadth, the entity would use an interest rate swap to pay fixed, say 5 per cent, and receive floating interest (Libor + 3 per cent) to mitigate the risks associated with its cash flows.

Hedge of a Net Investment in a Foreign Operation

The accounting treatment for this type of hedge, as defined in the IAS 21, is same as that for a cash-flow hedge.

Accounting Treatment

Under fair value hedges, changes in fair value of the hedged item are recognised in the current period to offset the recognition of changes in the fair value of the hedging instrument. Under cash flow hedges and hedges of a net investment in a foreign entity, changes in fair value of the hedging instrument are deferred in reserves, i.e. hedging reserve account, to the extent the hedge is effective and released to profit or loss in the time periods in which the hedged item impacts profit or loss.

Conditions for Hedge Accounting

IAS 39 limits the use of hedge accounting to situations where certain conditions are met

- The hedging relationship is effective:
  a. The hedge is expected to be highly effective in achieving offsetting changes in fair value or cash flows attributable to the hedged risk
  b. The effectiveness of the hedge can be reliably measured.
  c. The hedge is assessed on an ongoing basis and determined to have been highly effective throughout the financial reporting periods for which the hedge was designated
- Formal designation and documentation of the hedging relationship and the company's risk management objective and strategy for undertaking the hedge. Hedge accounting is only permitted from the date such designation and documentation is in place.
- For cash flow hedges of forecast transactions, the hedged transaction must be highly probable and must present an exposure to variations in cash flows that could ultimately affect profit or loss.

Hedge Effectiveness

Hedge effectiveness is the degree to which changes in fair value or cash flows of the hedged item that are attributable to a hedged risk, are offset by changes in the fair value or cash flows of the hedging instrument.

For example, a company has a foreign currency borrowing and has hedged the foreign exchange risk by entering into a forward currency contract. If, in a particular reporting period, the fair value of the liability decreases by US$ 100,000 because of exchange movements, and the fair value of the currency contract increases by US$ 100,000, the hedge is 100 per cent efficient. If the fair value of the currency contract increases by only US$ 90,000, the hedge effectiveness is 90 per cent.

Hedge accounting is only permitted under IAS 39 in certain tightly-defined circumstances, provided that the hedging relationship is measurable, clearly defined and effective. Hedge ineffectiveness, however, is immediately recognised in the income statement along with all other fair value changes in the derivatives that do not function as hedges.

The exercise would then ensure that the timing of recognition of profit or loss on the derivative matches with the item being hedged.

De-Recognition

The term, *de-recognition*, is used when an entity removes an asset or liability from the balance sheet. In many cases it is not difficult to assess whether or not a financial asset should be derecognised. For example, once a company receives a payment from a customer for goods supplied earlier, it no longer has any right to further cash flows from the receivable and should remove it from the balance sheet.

Where a company sells a portfolio of trade receivables or mortgages in order to receive finance, however, it is less obvious whether those financial assets should be derecognised. Examples of such arrangements are debt factoring and securitisation schemes.

A financial asset or part of a financial asset is derecognized under the following situations:

- The rights to the cash flows from the asset expire.
- The rights to the cash flows from the asset and substantially all risks and rewards of ownership of the asset are transferred.
- An obligation to transfer the cash flows from the asset is assumed and substantially all risks and rewards are transferred.
- Substantially all the risks and rewards are neither transferred nor retained but control of the asset is transferred.

If the entity retains control of the asset but doesn't retain or transfer substantially all risks and rewards, the asset is recognised to the extent of the entity's continuing involvement.

Under cash-flow hedges and hedges of a net investment in a foreign entity, changes in fair value of the hedging instrument are deferred in reserves, i.e. hedging reserve account, to the extent the hedge is effective and released to profit or loss in the time periods in which the hedged item impacts profit or loss.

Illustration

In the event, a company sells an investment in shares, but retains the right to repurchase the shares at any time at a price equal to their current fair value, it should derecognize the asset.

However, consider a scenario where it sells an investment in shares and enters into an agreement whereby the buyer will return any increases in value to the company, and the company will pay the buyer interest plus compensation for any decrease in the value of the investment. In this case, the company should not derecognize the investment as it has retained substantially all the risks and rewards.

The de-recognition criteria for financial liabilities are different from those for financial assets. There is no requirement to assess the extent to which a company has retained risks and rewards in order to derecognize a financial liability. A financial liability is removed from the balance sheet only when it is extinguished, i.e. when the obligation specified in the contract is discharged or cancelled, or expires.

Prescribed Disclosures

"IAS 32 - Financial Instruments: Presentation" and "IFRS 7- Financial Instruments: Disclosures" are standards which intertwine with the IAS 39 and mandate the necessary disclosures of the frameur. The intention is to enhance understanding of the significance of financial instruments to an entity's financial position, performance and cash flows, and to assist in assessing future cash flows associated with those instruments. Transactions in financial instruments may result in the assumption or transfer of one or more financial risks. The information disclosed should help users of financial statements to assess the extent to which the entity is exposed to financial risk as a result of those transactions, and accordingly make informed decisions.

Section 206AA of Income-tax Act, 1961 – Whether a Nightmare for Non-Residents?

Finance (No.2) Act, 2009 introduces eye-catching provisions of the Section 206AA which casts an obligation on the payer to deduct the tax at higher rate, if payee does not furnish PAN. The Section is applicable to all the assessees including non-residents. This article analyses certain issues connected with applicability of the Section 206AA in respect of non-resident payees including foreign companies.

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

Background

Currently, tax department is issuing more than 7.5 million permanent account numbers (PANs) in a year through NSDL and, nowadays, PAN is being allotted in less than a week time. With increased modernisation of the Tax Department and electronic processing of tax returns non- quoting of PANs by deductees is creating serious problems in processing of tax returns and in granting credit for tax deducted at source. In order to strengthen the PAN mechanism, Hon'ble Finance Minister has introduced the provisions of the Section 206AA with effect from April 1, 2010, which mandates furnishing of PAN to the payer.

Legal Provisions

Provisions of the Section 206AA(1) prescribe following:

- The recipient entitled to receive any sum or income or amount on which tax is deductible under the Chapter XVII–B is expected to furnish her/his PAN to the payer.
- Absence of PAN requires payer to withhold tax at the higher of the following rates:
  - Rate specified in the relevant provision of the Act, e.g. 2 per cent under the Section 194C, 10 per cent under the Section 194H/194J, etc.
  - Rate or rates in force as defined in the Section 2(37A), e.g. rates specified in the Schedule to the Finance Act; rates specified in the tax treaties.
  - 20 per cent
- Higher of the above rates will also apply where PAN is found to be invalid or false.
- Declaration in Form 15G/H by a recipient for NIL withholding is not valid unless PAN is furnished in such a declaration.

As per the provisions of the Section 90(2) of the Act, in case of a non-resident eligible for tax treaty, provisions of the Section 90(2) of the Act or provisions of the tax treaty whichever is beneficial to the assessee are applicable. However, the Section 206AA mandates furnishing of PAN by the recipient of income to the deductor. There is no special exclusion carved out for a non-resident recipient even if the non-resident is not otherwise obliged to apply for and obtain PAN.

- Certificate for withholding at lower or NIL rate under the Section 197 including in case of non-resident will not be granted by Tax authority unless the application contains PAN of the applicant/income recipient.
- The provision will apply, even if a recipient is not under an obligation to obtain PAN under the Section 139A or is a non-resident.
- The provision applies to all payers including non-resident payers.
- Payer and recipient will need to indicate PAN of recipient in all correspondence, bills, vouchers and other documents exchanged between them.

This article analyses certain issues which non-resident tax payers may face while complying with the provisions of the Section 206AA.

Issue One:

Whether provisions of tax treaty will override the provisions of the Section 206AA?

Section 206AA is a non-obstante clause since it begins with *'notwithstanding anything contained in any other provisions of this Act'*. On the plain reading of the Section, it appears that provisions of the Section 206AA would be applicable on failure to furnish PAN and tax at the highest of three specified rates would be deducted from payment.

As per the provisions of the Section 90(2) of the Act, in case of a non-resident eligible for tax treaty, provisions of the Section 90(2) of the Act or provisions of the tax treaty whichever is beneficial to the assessee are applicable. However, the Section 206AA mandates furnishing of PAN by the recipient of income to the deductor. There is no special exclusion carved out for a non-resident recipient, even if the non-resident is not otherwise obliged to apply for and obtain PAN.

Accordingly, in case of non-residents covered by tax treaty, there could be two views on applicability of the Section 206AA to the extent it requires tax withholding at rate higher than the tax treaty prescribed rate.

The two possible views are:

View 1: The provisions of the Section 206AA cannot operate to override treaty rates which are lower than 20 per cent.

View 2: The provisions of the Section 206AA should cover payments to non-residents who have tax treaty shelter.

View 1: *The provisions of the Section 206AA cannot operate to override treaty rates which are lower than 20 per cent.*

- Section 90(2) of the Act provides that the assessee can opt to be governed by the provision of the relevant tax treaty or the provisions of the Act whichever is more beneficial to him.
- The avowed object behind insertion of the Section 206AA as stated in the Explanatory Memorandum is that *'non quoting of PANs by deductees is creating problems in the processing of returns of income and in granting credit for tax deducted at source leading to delays in issue of refunds'*. The object behind insertion nowhere talks of facilitating verification of treaty residency.
- The tax treaty is self contained code and is a mini legislation as accepted by the Hon'ble Supreme Court in the case of *UOI vs. Azadi Bachao Andolan (263 ITR 706)*. The procedure of tax collection and recovery, therefore, has to be as aligned to such treaty provisions. If, as per the tax treaty, there is an upper limit on the tax that can be charged in the source jurisdiction, technically, the payer making payment should withhold no more than the treaty specified limit.
- The UN Model Commentary (as well as some of our tax treaties) contains a provision in the Article 10-12 stating that the Competent Authorities of the contracting States shall settle and mutually agree to the mode of tax collection for these articles. Application of the 20 per cent rate can be viewed as a unilateral act of India which is not in conformity with this provision where the States had agreed to do so mutually.
- Reference has to be drawn to the Central Board of Direct Taxes ('CBDT') Circular No 333 dated April 2, 1982, which reads:

"Where a DTAA provides for a particular mode of computation of income, the same should be followed, irrespective, of the provisions in the Income-tax Act. Where there is no specific provision in the agreement, it is the basic law, i.e., the Income-tax Act that will govern the taxation of income."

Section 206AA is a non-obstante clause since it begins with 'notwithstanding anything contained in any other provisions of this Act'. Accordingly, it can be argued that the provisions of the Section 206AA of the Act override provisions of the Section 90(2) of the Act. Section 90(2) is in relation to any relief of tax, whereas the Section 206AA stipulates for higher withholding of tax on non furnishing of PAN. It does not in any way alter the final tax liability or computation of the non-resident because the non-resident always has an option to file his return and claim the refund of excess taxes withheld.

Based on the above, it can be argued that the Section 206AA will not have overriding effect over the provisions of DTAA. Therefore, if treaty rates provides for lower rate than 20 per cent (under the Section 206AA), treaty rates would be applicable.

View 2: *The provisions of the Section 206AA should cover payments to non residents who have tax treaty shelter*

Section 206AA is a non-obstante clause, since it begins with *'notwithstanding anything contained in any other provisions of this Act'*. Accordingly, it can be argued that the provisions of the Section 206AA of the Act override provisions of the Section 90(2) of the Act.

- Section 90(2) is in relation to any relief of tax, whereas the Section 206AA stipulates for higher withholding of tax on non furnishing of PAN. It does not in any way alter the final tax liability or computation of the non-resident because the non-resident always has an option to file his return and claim the refund of excess taxes withheld.
- Support can also be drawn from the Para 26.2 on the Article 1 of OECD Model Commentary which provides as follows:

"A number of Articles of the Convention limit the right of a State to tax income derived from its territory. As noted in paragraph 19 of the Commentary on Article 10 as concerns the taxation of dividends, the Convention does not settle procedural questions and each State is free to use the procedure provided in its domestic law in order to apply the limits provided by the Convention. A State can therefore automatically limit the tax that it levies in accordance with the relevant provisions of the Convention, subject to possible prior verification of treaty entitlement, or it can impose the tax provided for under its domestic law and subsequently refund the part of that tax that exceeds the amount that it can levy under the provisions of the Convention."

Hence, provision of the Section 206AA of the Act will, at best, operate as *'retain and refund'* system. The recipient of income can obtain suitable refund along with interest by filing the return of income.

- Similar clarification is provided by the OECD Model Commentary on the Articles 10 and 11 which provide for concessional rate in respect of taxation of interest and dividend in source country. To illustrate, the Para 12 of Model Commentary on the Article 11 provides that:

"The paragraph lays down nothing about the mode of taxation in the State of source. It therefore leaves that State free to apply its own laws and, in particular, to levy the tax either by deduction at source or by individual assessment. Procedural questions are not dealt with in this Article. Each State should be able to apply to procedure provided in its own law."

- The following extracts from the 1998 IFA report on "practical issues in application of double taxation conventions" do also support that for protecting interest of revenue, the nations favour adoption of system of requiring taxpayer to obtain identification numbers.

"There is a clear trend toward the national adoption of taxpayer identification numbers (TINs), and the reliance by the tax authorities on those numbers.

……………..

Other countries have specific tax file numbers, and some one claiming resident status will be required to register for a number. In some cases non residents must also register if they wish to make a DTC claim."

- Provisions are similar to the provisions in the US-IRS regulations wherein it is mandatory to obtain taxpayer identification number (TIN) for claiming tax treaty benefits.

Based on the above, it can be argued that provisions of the Section 206AA of the Act will prevail over the Section 90(2) of the Act and hence non-resident will not be entitled to avail lower rates of tax withholding in accordance with the relevant tax treaty in absence of PAN.

In view of the above discussions, it appears that both the views have equal force.

Issue Two:

Whether provisions of the Section 206AA are applicable in absence of liability of tax withholding?

As per provisions of the Section 206AA of the Act, PAN is required to be furnished by the recipient when any income or any sum or amount on which tax is deductible under the Chapter XVII-B. The relevant text of section is reproduced below:

"Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under the Chapter XVIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax ……." (emphasis supplied)

Thus, chargeability of income to tax and tax withholding thereon is an essential condition to trigger the Section 206AA of the Act. In case the transaction is not at all chargeable to tax *(whether as per provisions of the Act or in view of the applicability of provisions of DTAA)* in India for instance import of goods/capital equipments etc the same will not be subject to provisions of the Section 206AA of the Act.

Section 195 vs. Section 206AA – implications of Samsung Ruling

Tax withholding in respect of non-resident payees are governed by provisions of the Section 195 of the Act which uses the phrase – ***"any other sum chargeable under the provisions of this Act".*** Recently, the Karnataka High Court in the case of *Samsung Electronics and Others (227 CTR 335),* has held that any payments in the nature of income per se to non-resident taxpayers would require tax withholding in accordance with provisions of the Section 195(1) of the Act unless a certificate has been obtained for lower or nil withholding of tax.

Whether Samsung ruling suggests that all the payments made to non-residents are covered within the ambit of provisions of the Section 195 and consequently all the income recipients has to obtain PAN or face the consequences of the Section 206AA?

Reference can be drawn from following judicial precedents wherein a view has been taken that provisions the Section 195 should have application only, when transaction is chargeable to tax in India and not on all the transactions.

- *ABC Limited (2006) 289 ITR 438* – AAR
- *CIT vs. State Bank of India 13 DTR 294* – Rajasthan HC
- *Mahindra and Mahindra Limited 313 ITR (AT) 263* – Mum Trib. Special Bench.
- *CIT vs. M/s Illinois Institute of Technology (India) Private Limited (321 ITR 95)* – Karnataka HC

It is pertinent to draw the attention to the recent decision of the Delhi High Court in the case of *Van Oord ACZ India (P) Limited – ITA No 439 of 2008,* wherein it is held that taxes under the Section 195 of the Act are required to be deducted only when the income is chargeable to tax in India. Hon'ble High Court has observed that *"The obligation to deduct the tax at source arises only when the payment is chargeable under the provisions of the Income Tax."* While delivering the judgement, High Court also observed that *"even otherwise, because of our analysis of what (239 ITR 587) decides, we, with due respect, are not in agreement with some of the observations made in the aforesaid judgment of the Karnataka High Court."*

Recently, Special Bench of Chennai ITAT in the case of *ITO vs. Prasad Production (ITA No663/ MDS/2003)* held that provisions of the Section 195 of the Act are not applicable when no part of payment made to non-resident is chargeable to tax in India.

Support can also be drawn from recently-nserted provisions of the Section 195(6) of the Act read with circular no. 4 of 2009, which allows payer to remit the funds based on a certificate obtained from a chartered accountant and without obtaining no objection certificate from the tax officer.

In view of the above discussions, a possible view is emerging that taxability of the transaction is the primary condition for the application of provisions of the Section 195 of the Act. Hence, in the cases when the provisions of the Section 195 are not applicable a view can be adopted that there is no need to obtain a PAN and consequently provisions of the Section 206AA is not applicable.

Issue Three:

If higher taxes are deducted in accordance with provisions of the Section 206AA of the Act whether the same will be creditable in the relevant overseas country?

In order to avoid double taxation of income, generally the tax treaties contain elimination of double taxation clause wherein the recipient country provide credit for specified taxes paid on income in the source country. The taxes eligible for credit are defined in the respective treaties.

Chargeability of income to tax and tax withholding thereon is an essential condition to trigger the Section 206AA of the Act. In case the transaction is not at all chargeable to tax (whether as per provisions of the Act or in view of the applicability of provisions of DTAA) in India for instance import of goods/capital equipments etc the same will not be subject to provisions of the Section 206AA of the Act.

Most of the treaties prescribe that tax credit is available in respect of taxes payable in accordance with the provisions of the convention i.e. relevant tax treaty. By way of example, relevant provisions of tax treaty between India and United Kingdom and India and USA are reproduced hereunder:

Tax treaty between India and UK	Tax treaty between India and USA
Article 24 – Elimination of double taxation	*Article 25 - Relief from double taxation*
1. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):	*1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income—*
(a) Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within India (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Indian tax is computed.	*(a) the income-tax paid to India by or on behalf of such citizen or resident ; and* *(b) in the case of a United States company owning at least 10 per cent of the voting stock of a company which is a resident of India and from which the United States company receives dividends, the income-tax paid to India by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.* *For the purposes of this paragraph, the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered as income taxes*

Tax treaty between India and the UK use the wordings *"Indian tax payable under the laws of India and in accordance with the provisions of this convention"* while treaty between India and the USA uses the words *"income-tax paid to India by or on behalf of such resident..".* Thus, literal interpretation of the both the treaties may result in non-allowance of higher taxes deducted in case of the UK and allowance of the same in the USA. However, the same is subject to conditions, if any, provided under the domestic law of relevant country.

Provisions similar to India-UK treaty exists in number of the treaties entered into by India, e.g treaties with Germany, France, Australia, etc.

Thus, when taxes are not paid/deducted in accordance with the provisions of tax treaties but at higher rate than rate prescribed in tax treaty, there is a possibility of denial of tax credit in the home country. For instance:

A UK company, not having obtained PAN in India, renders technical services to an Indian company. As per the provisions of the Section 206AA, the Indian company would be required to deduct tax at the rate of 15 per cent as specified under the DTAA or at the rate of 20 per cent whichever is higher. The Indian company, therefore, would deduct tax at the rate of 20 per cent. However, as the rate specified under the India-UK DTAA is 15 per cent, the tax authorities in UK may limit the grant of credit of tax deducted in India to only 15 per cent as against the tax deducted at the rate of 20 per cent. This would result into a loss for the foreign company to the tune of 5 per cent of its gross receipts from India.

It is pertinent to draw the attention to the recent decision of the Delhi High Court in the case of *Van Oord ACZ India (P) Limited* – ITA No 439 of 2008 wherein it is held that taxes under the Section 195 of the Act are required to be deducted only when the income is chargeable to tax in India. Hon'ble High Court has observed that *"The obligation to deduct the tax at source arises only when the payment is chargeable under the provisions of the Income Tax."* While delivering the judgement, High Court also observed that *"even otherwise, because of our analysis of what (239 ITR 587) decides, we, with due respect, are not in agreement with some of the observations made in the aforesaid judgment of the Karnataka High Court."*

In view of above, availability of credit has to be analysed on the basis of provisions of the specific tax treaty in question or as per the domestic laws of the relevant overseas countries.

It is pertinent to note that it is possible to claim refund for the excess tax deducted in accordance with provisions of the Section 206AA of the Act by filing a return of income in India. For example, in case of FTS transaction, tax is required to be deducted @ 10 per cent in accordance with provisions of the Section115A or relevant tax treaty, and if tax is actually deducted @ 20 per cent in view of provisions of the Section 206AA of the Act, it is possible for non-resident to claim refund of excess tax deducted in India by filing return in India.

Concerns

- It is apprehended that provisions of the Section 206AA will not be welcomed by numerous overseas companies or non-residents who do not have regular or recurring transactions with Indian entities. If the non-residents are having one-of transaction with India, it is likely that they will force Indian company/payer to enter into tax protected contract to avoid hassles of obtaining PAN, tax compliances, etc and in turn the same may increase the cost of services for

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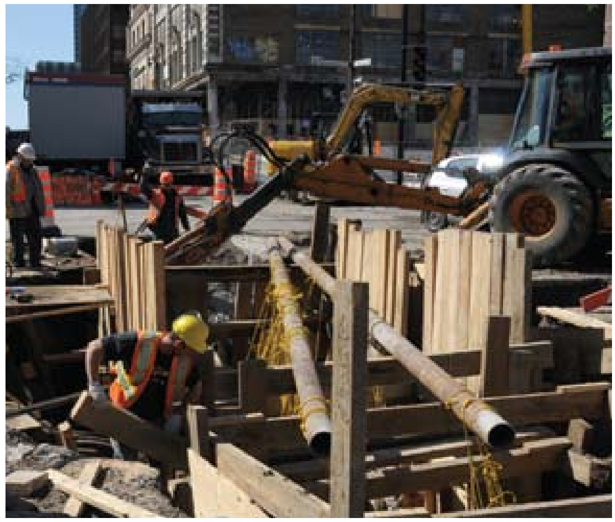
Indian companies.

- Non-residents are hesitant in obtaining tax registration fearing probing by Indian tax department in other global transactions which is not connected with India.

Key Takeaways

- Indian companies making payments to the overseas service providers should explain and convince non-resident payees to apply for PAN, as the same has now become necessity.
- Advisable to scrutinize taxability of each and every transaction minutely before concluding on the tax withholding position based on judicial precedents to avoid consequences of disallowance, interest or penalty.
- Indian companies should factor in the additional cost, if any, in case of tax-protected contracts while negotiating with the non-residents.
- Revenue authorities will be able to track the non-compliance in respect of filing of tax returns in India by non-residents.

Depreciation for Infrastructure Companies



Depreciation is an important component for Profit After Tax (PAT), especially in capital intensive industry. Infrastructure development is one of the top priorities in developing countries and India is no exception. It is important to understand the role of depreciation in PAT under government support which is explained in this article through a case study of Indian infrastructure companies. The government has been giving monetary and non-monetary support to infrastructure projects and encouraging private participation in such projects. The government has declared income tax holiday for ten years for the infrastructure companies. To take advantage of the tax holiday, the companies have to make profits. The infrastructure that the companies create is long lasting and the expenditure for developing the infrastructure is capital outgo. The classification of this expenditure and the treatment of depreciation for the same are critical for allowable rate of depreciation under Income-tax Act, 1961. This article gives an overview of the stance adopted by the Income Tax department and Income Tax Appellate Tribunal in this regard. The article also deals with the available options for depreciation treatment and its effects on the infrastructure companies.

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The Government of India and state governments have launched a series of programmes particularly in surface transport for development of roads, bridges, culverts and related facilities. The Government of India has constituted the National Highway Authority of India (NHAI) to facilitate development of infrastructure. For this purpose, tenders are floated mostly for global competition. The contracts also envisage and encourage public private participation. The terms of contract vary depending on the type of project. Generally, all the contracts require the contractor to transfer the entire infrastructure to the government or the NHAI at the end of contract period. The contract or lease period varies generally between to 15 to 30 years with provision for government to reduce or increase the period of agreement.

The contract work requires the contracting party to take over existing roads and extend the same by widening or rerouting part of road, constructing new bridges, culverts and strengthening existing facilities. Entire expenditure is incurred by the contractor initially. The contractor

Currently, there is no clarity with regards to the treatment of the depreciation on the facilities created. In certain cases, the depreciation on the facility created is allowed as an intangible asset, and, in certain cases, it is treated as revenue expenditure, but no allowance is given for deduction on the grounds of ownership of the facility, and in another case it is treated as an intangible asset. In any case the expenditure is huge. The treatment of depreciation by the Income Tax department determines the profitability of the companies. The ad hoc treatment by the department due to lack of uniform policy is creating confusion on the matter.

is compensated during the tenure of contract by different methodologies. On completion of work new modern facilities and infrastructure is created. The infrastructure created is required to be maintained by the contractor for period of concession/franchise/lease on completion of contract period which is generally 15 to 30 years. The developmental expenditure is incurred by contractor and infrastructure is transferred free of cost to the government/NHAI. Thereafter, responsibility of contractor ceases. For carrying out the infrastructure work and maintenance thereof there are different methods. The projects are generally on build operate transfer (BOT) and build own operate transfer (BOOT) basis. This gives the entire responsibility of maintaining the infrastructure that is developed upon the contractor. For this, the contractor is paid license fee or is given right to collect toll from the users of the infrastructure, right to give space for advertising, facilities for travellers like malls, petrol pumps, motels, restaurants and give concession for the same. This forms the revenues for the contractor.

To give a boost to private participation, incentives in form of income tax holidays are given to the infrastructure companies falling under the category of enterprises engaged in infrastructure development. The contractors are generally consortium of companies, joint ventures promoting special purpose vehicles (SPV) or individual companies. Most of the companies engaged in the above projects are eligible for tax holidays as per the provisions under the Section 80IA of the Income-tax Act, 1961.

Currently, there is no clarity with regards to the treatment of the depreciation on the facilities created. In certain cases, the depreciation on the facility created is allowed as an intangible asset, and, in certain cases, it is treated as revenue expenditure, but no allowance is given for deduction on the grounds of ownership of the facility, and in another case it is treated as an intangible asset. In any case the expenditure is huge. The treatment of depreciation by the Income Tax department determines the profitability of the companies. The ad hoc treatment by the department due to lack of uniform policy is creating confusion on the matter.

Revenue Patterns of Infrastructurte Companies

It is found that in the initial phase the infrastructure companies have a lot of expenditure and relatively no or negligible income. If the construction cost of the infrastructure is treated as revenue expenditure, the infrastructure companies have losses in the initial years which are to be carried forward and adjusted against the profit of following years for the carry forward period of not more than six years as per the current rules. The gestation period of the infrastructure companies is very large, making this carry forward unfeasible. For this reason, the expenditure is to be classified differently.

Broadly, the compensation for the work is found to be of the following types:

A) Annuity payable for the work.

B) Contractor to collect the toll for the contract work for the period of lease or determined in accordance with the contract.

C) Subsidy paid to carry out the construction work plus contractor to levy toll for the period contract.

Present Stance by the Income Tax Department

Currently, there is no clear policy of the Income Tax department for allowing deduction of depreciation charged. It is found that the interpretation of the statute is done on case-to-case basis because of lack of uniform guidelines, which is affecting the uniformity of treatment by the department. Broadly, the expenditure is allowed by the department under following categories:

1. Revenue Expenditure
2. Capital Expenditure
3. Real Asset
4. Intangible Asset

The treatment of expenditure given under the

Income-tax Act, 1961, for all the four categories above is different.

Interpretations and Treatment under Different Categories

Taxation of infrastructure companies is governed by Income-tax Act, 1961. The issue for consideration is basically the treatment under tax laws for recoupment of developmental expenditure. The issues could deal with depreciation of assets or as franchise (being depreciation for intangible property) being lease agreement for use of facilities or as capital gain on transfer of assets. For convenience the issues are classified as:

A) Revenue Expenditure
B) Capital Gains
C) Depreciation on Real Assets
D) Depreciation on Intangible Assets

(A) Revenue Expenditure:

The contractor enters into contract for development and construction of roads, bridges, culverts, etc. If contractor's interest is mere lease of property, then expenditure incurred on leased property can be considered as revenue expenditure as the contractor does not have any ownership of the property. The period of lease will not be material consideration for this purpose. Hence, contractor may write off entire amount as revenue expenditure.

(B) Capital Gains:

i) Where property has been developed by the contractor and he is to receive fixed annuity per annum, there is a scope to treat it as transaction of transfer of immovable property. In this case, contractor gets the possession of existing road, bridge, culvert, etc., from the the government/NHAI. Generally, the cost of transfer of existing-facilities is nil, except incidental expenses for taking possession and some out of pocket expenses, legal charges, etc. These may be considered as cost of acquisition of property. The expenditure on development and construction will fall under category of cost of improvement. The cost of acquisition and cost of improvement will qualify for computation of Indexed Cost of Acquisition.

ii) When contractor receives annuity for the works, the contract receipt over the period is fixed. The total consideration for the work is received in annual instalments. Each instalment of annuity can be considered as consideration for transfer of property received in advance. On transfer of property, the long-term capital gain will held to be computed based on total consideration (being total of annuity received) less indexed cost of acquisition. The difference being long-term capital gain. In this case consideration is certain and is to be paid by the government/NHAI. Hence, there is no uncertainty on terms of contract.

iii) The expenditure incurred on the maintenance or interest on capital borrowed will be normal revenue expenditure and will not qualify as cost of improvement.

(C) Depreciation on Real Assets:

The contractors create new assets and/or makes improvements which are of enduring nature for roads, bridges, culverts, etc. These are physical and real assets. The issue is the ownership of these assets. The existing facilities are transferred to the contractor for lease period. The roads, bridges, culverts are created and owned by contractor and are to be transferred to the government/NHAI at end of lease period which is generally 15 to 30 years. The law permits depreciation assets even if those are owned by two or more persons. Hence, it will be in order to claim and allow depreciation at prescribed in the rules.

(D) Depreciation as Intangible Assets:

If one considers that contractor has only lease or franchise and no right in the facilities developed then the contractor's right will become intangible right to collect toll. The development expenditure will be cost of franchise or lease and will be eligible for depreciation as intangible asset under Section 32 of Income-tax Act, 1961. The contractor can write off entire expenditure in instalments.

Interpretation on Type of Property and Ownership of Infrastructure

1. Huge expenditure to create infrastructure is applied to create immovable property for public domain, i.e. for utilisation by public at large on payment of a fee. The expenditure should not be considered as revenue expenditure. The infrastructure companies cannot claim the expenditure twice, i.e. depreciation as well as revenue expenditure. Recoupment of expenditure to create infrastructure is sought to be done by claiming depreciation applicable to immovable property and not as revenue expenditure.
2. With above it is clear that when the licensee has not claimed the cost of infrastructure as revenue expenditure, there are two acceptable alternatives for treating infrastructure as

With above, it is clear that when the licensee has not claimed the cost of infrastructure as revenue expenditure, there are two acceptable alternatives for treating infrastructure as tangible asset or intangible asset and claim depreciation. The difference is that the assessee can claim depreciation as tangible asset only if he owns the infrastructure and depreciation rate will be 10 per cent. However, for intangible assets, the criteria is not of the ownership of infrastructure, but mere commercial interest in the infrastructure will be adequate to claim depreciation. In such a case depreciation will be at 25 per cent.

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The infrastructure development can be divided into three stages and the effects on the parties to the process can be illustrated by following table:

Stage	Public	Government	Licensee
Pre-license period	1. Full access 2. No cost	1. Right to regulate traffic 2. Full cost of maintenance	1. No Rights 2. No Duties
License period prior to commissioning	1. Full access 2. No cost	1. Right to regulate traffic 2. Full cost of maintenance	1. Incurs capital expenditure to create infrastructure facilities (very large expenditure)
Post commissioning period	1. Full access 2. Pays toll	1. Full rights to regulate traffic	1. Incurs maintenance cost 2. Revenue received as toll

The infrastructure is constructed over an existing road or partly totally new road. Prior to construction of infrastructure by companies, the road is for use by public at large. Public has free access to road for commutation and transport. Road is a sovereign property regulated and maintained by the government. Hence, road may be considered as owned by the government, and made available to public at large at no cost.

During construction, government regulates traffic while giving access to the licensee for construction of infrastructure. Public has access without any cost.

After licensee creates infrastructure and gets the commercial right of collecting toll, a position emerges as under:

1. *Public:* Has full access at toll/fee charged as agreed by government with licensee
2. *Government:* Regulates the traffic in public interest
3. *Licensee:* Collects the toll, maintains the road/ infrastructure during the license period.

Thus, in effect, the change for public and government is that:

a. *Public:* Pays toll to licensee during licence period.
b. *Government:* Does not maintain the road during license period.

Interpretation of Ownership and Immovable Property

The term "owned" or "ownership" has not been defined under Income-tax Act, 1961. Since the word 'own' has not been defined, the meaning needs to be ascertained with help of commonly acceptable meaning.

The word "own" in dictionary has meaning as "owned, possessed" when used within a possessive to emphasise that someone or something belongs or relates to the person mentioned, done or produced by and for person specified, particular to person or thing mentioned; individual. "Acknowledge paternity, authorship or possession of." A verb "own" used with object – means; "have something as ones own. Example: His father owns a restaurant." When used with no object; "Admit or acknowledge that something is the case or one feels certain way. Example: She owned a feeling of profound jealousy." [*The New Oxford Dictionary of English*, 4e. 1994. India. (p. 1326).]

Infrastructure created by the assessee is certainly immovable property. The word "immovable property" has not been defined under the Income-tax Act, 1961. Analogous helpful provisions are, however, under the Section 80(IA)4(i)C of the Income-tax Act, 1961, which define infrastructure facility as "(a) road including toll road, a bridge or rail system. (b) Highway project including housing or other activities being integral part of highway

Huge amount of expenditure has been incurred for development of infrastructure. The works are generally awarded by inviting global tenders. There are many foreign collaborations entered into by various companies for infrastructure contracts. Considering that contracts are with the government/NHAI which is a central government organisation, it is imperative that uniform, certain tax policy and procedure is adopted. This will make the bidding process transparent.

project……. (d) A port ……. Under Section 14". Similarly, "Capital Asset means property of any kind held by the assessee."

The General Clauses Act, 1897, defines "Immovable Property" as follows: "In this Act and in all Central Acts and Regulations made after commencement of this Act, unless there is anything repugnant in the subject or context" and thereafter in the Section 3(26) the definition goes as "Immovable Property shall include land, benefits to arise out of land and things attached to earth or permanently fastened to anything attached to the earth". The provisions and particularly definitions in General Clauses Act, 1897, apply to all central acts, as per the Section 3 definitions which begins as "In this Act unless there is repugnant in the subject or to context". Hence the definition of immovable property in General Clauses Act is easily adoptable to the Income-tax Act, 1961.

The definition of immovable property may also be referred to in the Section 2(6) of the Registration Act, 1908, which reads as follows: "Immovable Property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops or grass". Both the definitions consider benefits to arise out of land as immovable property. Hence, there is a strong case to hold that concession in infrastructure is immovable property.

To give proper interpretation, we need to give proper interpretation to the word 'own' and 'immovable property' together. It should be acceptable proposition that infrastructure is immovable property. The assessee derives benefit from the immovable property. The word 'own' also means something belonging to the person. The right to construct, operate, collect rent/toll and maintain infrastructure belongs to the contractor. On regarding both together it should be concluded that the contractor has part ownership of the infrastructure. Then depreciation entitlement will be at 10 per cent for buildings at present applicable rates.

In view of the above, it can be concluded that the concession of infrastructure is only commercial right and the assessee will be considered to have intangible asset of concession. Consequently, depreciation admissible should be 25 per cent at current rates.

Judicial Views

There are two orders of Income Tax Appellate Tribunal (ITAT). In case of *Ashoka Info (P) Ltd. Vs Asstt CIT Pune (2009) 22 DTR (Pune) Trib 60*, the assessee (contractor) was in business of development, operation and maintenance of infrastructure facility. In the present case, it was a road project with state on BOT basis. In this, the tribunal held that the assessee had a licence to collect toll which is intangible asset and assessee will be entitled to depreciation at 25 per cent as admissible on intangible asset.

In other case of *Tamil Nadu Road Development Company ltd. vs. ACIT (2009) 24 DTR (Chennai) (Trib) 618*, ITAT Chennai held that when project was taken up for widening, strengthening of existing road with option of developing side amenities, the assessee (contractor) company could collect the toll and the assessee (contractor) was entitled to depreciation as applicable to building that is 10 per cent at current applicable rates.

Inferences

i) Huge amount of expenditure has been incurred for development of infrastructure. The works are generally awarded by inviting global tenders. There are many foreign collaborations entered into by various companies for infrastructure contracts. Considering that contracts are with the government/NHAI which is a central government organisation, it is imperative that uniform, certain tax policy and procedure is adopted. This will make the bidding process transparent. By reducing the uncertainty in taxation it is likely that lower prices may be quoted by tenders. Thus, generally, it will be in public interest to have a uniform and certain tax policy in place.

ii) Regarding treating annuity as advance payment for transfer and expenditure on development as cost of improvement, the matter will not stand to reason. The contractor had quoted for the project. The contractor is in infrastructure business. He had undertaken the activity as a commercial activity. The annuity is being generally treated as revenue receipt. One purchases annuity by incurring capital expenditure. Since company is in business of development the payment of annuity is to be considered as revenue receipt and not capital receipt. Naturally, the business income will need to be computed.

iii) Depreciation is allowed even in case of joint ownership (Income-tax Act, 1961, Section 32). Hence, the issue of ownership needs to be considered without getting into possibility of the government/NHAI having joint ownership of the assets. Every contract provides for transfer of all the infrastructure to the government/NHAI at the end of the contract period. The transfer will be naturally of immovable property. The development will create immovable property which is a real asset and not intangible asset. Hence, the contractor will be entitled to depreciation as rates applicable to roads, bridges, culverts, etc., which is currently at 10 per cent.

iv) If a view is taken that the development expenditure does not create ownership for the contractor, we need to consider contractor's rights in the property. Then, we will need to ascertain the type of right the contractor has in property under consideration. The rights could fall under the category of lease or franchise. If the right falls under head lease or franchise it will be intangible property. As intangible property the contractor will get depreciation at the rate of 25 per cent as applicable to intangible assets (Income-tax Act, 1961, Section 32) and the developmental expenditure will be amortised over years and written off.

v) Revenue Expenditure: Once right has been created in the property developed it is commercial right. The contractor can collect toll or get annuity for long period. Any right in immovable property constitutes immovable property.

Considering the overall position, balance of convenience affirming the policy of taxation of real income, agreeing with position of the Transfer of Property Act, it will be only appropriate to allow depreciation at prescribed rate under head buildings for development expenditure under infrastructure contracts.

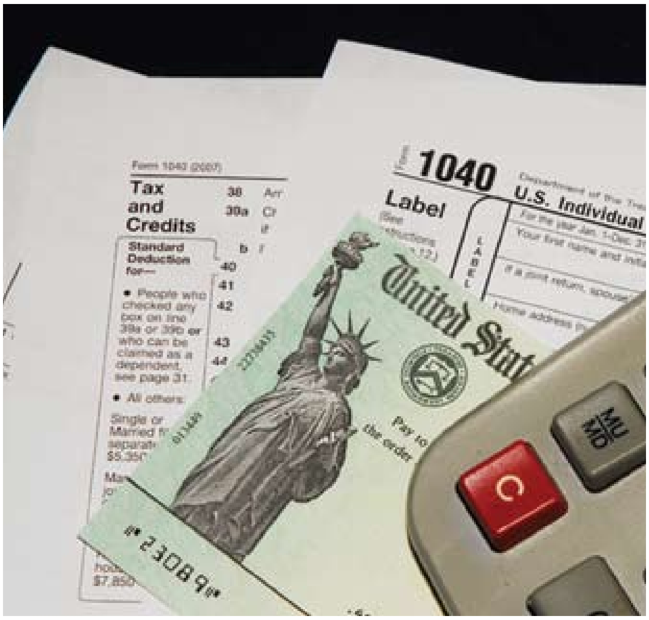
The order of ITAT Chennai is more appropriate and should be applied when infrastructure is not claimed as revenue expenditure. The depreciation should be allowed as applicable to building which is at present 10 per cent. Having guidelines from the Central Board of Direct Taxes on these lines will bring in certainty on the government stand and policy which will give certainty to the tax treatment of for the infrastructure companies.

With reference to the Registration Act, 1908, Section 2(6) and definition under the Transfer of Property Act that defines immovable property as "immovable property" dose not include standing timber, growing crops or grass, we can say that the facilities and development done by contractor constitutes immovable property and hence, long-term lease expenditure may not be allowed as revenue expenditure.

vi) Considering the overall position, balance of convenience affirming the policy of taxation of real income, agreeing with position of the Transfer of Property Act, it will be only appropriate to allow depreciation at prescribed rate under head buildings for development expenditure under infrastructure contracts.

Conclusion

In view of the above, it can be said that the order of ITAT Chennai is more appropriate and should be applied when infrastructure is not claimed as revenue expenditure. The depreciation should be allowed as applicable to building which is at present 10 per cent. Having guidelines from the Central Board of Direct Taxes on these lines will bring in certainty on the government stand and policy which will give certainty to the tax treatment of for the infrastructure companies. The certainty will help in rationalising the basis of quotations for the infrastructure projects and better private participation in projects which will help reduce the cost of infrastructure and in turn reduced burden on the exchequer.



Can Government Retain MAT Credit after Expiry of Period Laid Down in Section 115JAA of Income-tax Act, 1961?

Section 115JAA provides for tax credit in respect of tax paid on deemed income in terms of the Sections 115JA and 115JB. However, it provides for certain period during which the tax-credit adjustment will be allowed and, therefore, will not be permissible after the specified period. This amounts to retention by the government of the unadjusted tax credit in respect of the MAT paid. Provision needs be made to reset the effect of MAT on deemed total income to a final stage of tax being collected on the normal basis, not on deemed income basis, of calculation of total income under the provision of Income-tax Act and tax thereon.

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Section 115JA was introduced with effect from the assessment year commencing on or after 1st April 1997 providing for 30 per cent of the book profit to be deemed as total income and this continued till 31st March 2001. Section 115JB was introduced with effect from the assessment year commencing on or after 1st April 2001 providing that the book profit shall be deemed to be the total income. This position continues till date.

Section 115JA was introduced with effect from the assessment year commencing on or after 1st April 1997 providing for 30 per cent of the book profit to be deemed as total income and this continued till 31st March 2001. Section 115JB was introduced with effect from the assessment year commencing on or after 1st April 2001 providing that the book profit shall be deemed to be the total income. This position continues till date.

Section 115JAA, brought in by the Finance Act, 1997, provides for tax credit in respect of the tax paid on deemed income in terms of the Sections 115JA and 115JB. However, it provides for certain period during which the

Thus, the Parliament has exclusive power to make laws with respect to any of the matters enumerated in the List I, referred to as Union List in this Constitution, in the Seventh Schedule.

tax-credit adjustment will be allowed. Therefore, tax-credit adjustment will not be permissible after the specified period. This amounts to retention by the government of the unadjusted tax credit in respect of the MAT paid. The rationale for allowing credit in respect of taxes paid under MAT is that a company should always pay a minimum tax. The method for adjustment of tax credit will ensure that the company will always pay a minimum tax even while offsetting the MAT credit against regular tax. In case of capital gain, which is exempt due to STT payment, tax on the basis of book profit has to be paid as per provision in the Section 10 (38) which specifically provides for considering such capital gain for the purpose of computing the deemed total income.

We will attempt to analyse the following questions:

1. Can the Government retain such unadjusted portion of the MAT credit?
2. Further, what is the rationale of the non-payment of interest on the tax credit?

Article 246 from the Constitution of India is reproduced below:

*"246. **Subject-matter of laws made by Parliament and by the Legislatures of States.***
(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").
(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List"').
(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

Thus, the Parliament has exclusive power to make laws with respect to any of the matters enumerated in the List I, referred to as *Union List* in this Constitution, in the Seventh Schedule. List I so far as it relates to taxes on income is reproduced below:

"SEVENTH SCHEDULE
(Article 246)
List I—Union List

82. Taxes on income other than agricultural income."
Further, the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List"'). List II so far as it relates to taxes on agricultural income is reproduced below:-

"List II—State List

46. Taxes on agricultural income."
Relevant definitions also need be considered as reproduced below:

*"**366. Definitions.—**In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—*
(1) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;
(6) "corporation tax" means, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:—
(a) that it is not chargeable in respect of agricultural income;
(b) that no deduction in respect of the any tax on income tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;
(c) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;
(29) "tax on income" includes a tax in the nature of an excess profits tax;"

It may be observed that the Entry 82 of the List I of the Seventh Schedule authorizes the Parliament to impose taxes on income. Corporation tax is defined being a tax payable by the companies and tax on income of the companies is thus covered by the Entry 82 referred above.

MAT is levied and collected in terms of the Sections 115JA and 115JB, as the case may be, in an event that total income calculated as per normal provisions of the Income-tax Act, 1961 and tax thereon is lower than tax amount as per the provisions under the Section 115JA or 115JB, as the case may be. And for the purpose of calculating the MAT, deemed total income is based on the book profit as calculated under the Section 115JA or 115JB, as the case may be. Thus, the MAT collected by the government is actually on fiction of deemed income in order to assist the government to collect tax even from zero tax paying companies or companies paying lower amount of tax due to the reasons that companies get benefit of exemptions/concessions/reliefs as provided under the Income-tax Act, 1961. The budget speeches also confirm this intention. Exemptions/concessions/reliefs are provided by the government for certain specific purpose to give promotion to industries, development of certain backward area and to generate employment, and for other purposes. For giving such kind of exemptions/concessions/reliefs, the government does not require any authority under the Constitution of India. The Constitution has given authority to impose and collect taxes on income.

The word "income" has been defined as inclusive definition by the Act and the scope of this word is very wide to include many kinds of receipts and accruals. Having said so, a question arises: Why has the government provided for tax credit of the MAT paid and its adjustment during certain number of years? One of the reasons could be that tax is not leviable on fictional basis of deemed income. Thus, attempt has been made by the Section 115JAA to restore the exemptions/concessions/reliefs to corporate assessees. But the issue is that when corporate assessees are in a position to pay normal tax calculated as per the provisions in the Act other than provisions of the MAT, why there is generosity when there is no need to give relief of adjustment of credit of the MAT paid in the earlier year.

Reasons and rationales squarely appear to be that the government is aware of not being authorised under the Constitution of India to levy and collect tax on the basis of fiction of deemed income when the Entry 82, the List I in the Seventh Schedule, gives authority to collect taxes on income.

It appears that the collection of tax as the MAT on the book profit as the basis of deemed total income even may appear constitutional for the purposes and intent as stated in the budget speeches, but in no case, forfeiting the unadjusted-tax credit of the the MAT paid in the earlier year be said to be constitutional. Rather, to that extent it is ultra virus the Constitution and thus, is refundable to the assessees with interest.

To support above, we may assume that a company has paid the MAT and in course of time before the expiry of the credit adjustment period, the company has made severe losses and has been referred to the BIFR being a sick company and the company is ultimately wound up as found to be unviable for revival in a reasonable period of time and concluded for winding up. In this scenario, what the government has done is that it has collected tax on deemed income which, otherwise, is not collectible and the company would have been charged tax based on the normal provisions of the Income-tax Act for calculating total income and charging tax thereon. If that be so, then disallowing the adjustment of tax-credit to the extent of unadjusted balance of tax-credit of the MAT paid is unconstitutional. Further, the action of disallowing amounts to unjust enrichment in the hands of the government, which principle is applicable to the assessees under various revenue laws, be it central excise or custom duty. Again, the government cannot retain a tax collected by it without the force of law and, therefore, it becomes refundable with interest to the assessees who paid the MAT.

Ultimately, provision needs to be made to reset the effect of the MAT on the deemed total income to a final stage of tax being collected on normal basis, not on deemed income basis, of calculation of total income under the provision of the Income-tax Act and tax thereon.

Thus, the MAT collected by the government is actually on fiction of deemed income in order to assist the government to collect tax even from zero tax paying companies or companies paying lower amount of tax due to the reasons that companies get benefit of exemptions/concessions/reliefs as provided under the Income-tax Act, 1961.

Taxation of Services Received from Outside India: Import of Services

Prior to the introduction of the Finance Act, 2006, explanation to Section 65(105) of the Finance Act, 1994 was inserted vide the Finance Act, 2005, levied service tax on taxable services rendered by a service provider residing outside India to a person based in India. Under the Finance Act, 2006 a new Section 66A has been introduced. This Section provides for levy of service tax on the services rendered by a service provider residing outside India to a person based in India. The author discusses issues surrounding this Section and its reverberations on the Taxation of Services Rules in this article.

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Legislative History (Prior to Finance Act, 2006)

Explanation to Section 65(105)

The Finance Act, 2005 had inserted the following explanation to the Section 65(105) w.e.f. 16.06.2005:

Explanation – For the removal of doubts, it is hereby declared that where any service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India and such service is received or to be received by a person who has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India such service shall be deemed to be taxable service for the purposes of this clause.

Thus, any taxable service, provided from outside India by a non-Indian became a taxable service in India in the hands of a service receiver, as a destination-based consumption tax. The following two conditions were to be satisfied:

1. Service should be provided by a person having a place of residence or place of business outside India and

Currently, there is no clarity with regards to the treatment of the depreciation on the prior to 16.6.2005, when an explanation was added to the Section 105 creating deeming provision of taxable service in relation to services provided by person from outside India, there was no provision in the Chapter V of the Finance Act, 1994 which provided for taxability of services provided by foreign service provider to service receiver in India. An explanation, as per the settled law, has only a prospective effect.

2. Service should be received by a person having a place of residence or place of business within India.

The services rendered by a person outside India to a person who has a place of residence or business in India would be taxable. This would mean that if a service provided by a foreign service provider entirely outside India, the mere fact that the service recipient has a presence in India would make this service liable to tax.

Explanation to Section 65(105)

Explanation to the Section 65 (105) was added by the Finance Act, 2005. Supreme Court held in *Union of India v. Martin Lottery Agencies Ltd. (2009) 14 STR 593(SC); (2009) 20 STT 201 (SC)* that if by reason of an explanation, the taxing net has been widened, it cannot be held to be retrospective in operation. No doubt, the explanation begins with the words, 'for the removal of doubts'. It does not mean that it is conclusive in notice. In law, it is not.

Bombay High Court in *Indian National Ship Owners Association v. Union of India (2009) 13 STR 235; (2009) 18 STT 212 (Bombay)* held that by explanation to the Section 65(105) services provided by a nonresident Indian to a resident Indian has been declared to be a taxable service. Therefore, though the services provided to the members of the petitioner's association outside India becomes taxable service, the charge of the tax continues to be on the provider of service as per the scheme of the Act, and because of the explanation also the revenue do not get authority of law to levy service tax in relation to the services rendered to the vessels and ships of the members of the petitioners association outside India.

The court observed that it appeared that a similar provision in the rules was made applicable by the Government in relation to the clearing agents by making customers of the clearing agent liable for levy of the service tax. That question had been decided by the Supreme Court in *Laghu Udyog Bharati v. Union of India [2006] 4 STT 322* and it had clearly laid down that the imposition of the service tax is on the persons rendering the services and by making a provision in the rules, levy of tax cannot be shifted to the recipients of the services, and the rule framed which brought about this situation has been declared by the Supreme Court to be invalid. The law laid down by the Supreme Court in its judgment in *Laghu Udyog Bharati*'s case (supra) was squarely applicable to the Rule 2(1)(d)(iv), which was relied on in the instant case. It appeared that it was first time when the Act was amended and the Section 66A was inserted by the Finance Act, 2006 with effect from 18-4-2006, the revenue got legal authority to levy service tax on the recipients of the taxable service.

Liability in Import, Prior to 1.1.2005

Service tax was held not liable to be paid by the recipient for import of services prior to 1.1.2005 who did not have any office in India, in following decided cases:

- *Hindustan Zinc Ltd v. CCE (2008) 11 STR 338; (2008) 18 STT 67; 2008-TIOL-1149 (Cestat, Delhi-LB)*
- *CC & CE, Indore v. Nicholas Piramal India Ltd (2009) 13 STR 383; .(2009) 19 STT 105 (Cestat, New Delhi)*
- *Rane TRW Steering Systems Ltd v. CCE (ST), Trichy (2009) 19 STT 369 ; (2009) 16 STJ 296(Cestat, Chennai)*
- *Secure Meters Ltd (Unit I & II) v. CCE, Chandigarh (2009) 17 STJ 332; (2009) 20 STT 252 (Cestat, New Delhi)*
- *Lohia Starlinger Ltd v. CCE, Kanpur (2009) 17 STJ 360 (Cestat, New Delhi)*
- *Foster Wheeler Energy Ltd v. CCE & C, Vadodara –II*

(2007) 7 STR 443 (Cestat, Ahamdabad)

- *Nahar Spinning Mills v. CCE, Bhopal (2009) 16 STJ 126; (2009) 13 STR 255 (Cestat, New Delhi),*
- *Eimco Elecon (India) Ltd v. CCE & C, Vadodara (2009) 16 STJ 168; (2009) 19 STT 51 (Cestat , Ahmadabad)*
- *CCE, Chennai v. BHEL (2009) 14 STR 807; 19 STT 302 (Cestat, Chennai)*
- *Bharat Heavy Electricals Ltd v. CCE, Meerut –I (2009) 17 STJ 471;(2009) 14 STR 140; (2009) 20 STT 50 1(Cestat, New Delhi)*
- *Shri Dinesh Mills Ltd v. CCE, Vadodara (2009) 17 STJ 32 (Cestat, Ahmedabad)*
- *Gujarat Narmada Valley Fertilizers Co Ltd v. CCE, Vadodara (2009) 17 STJ 35; (2009) 14 STR 313 (Cestat, Ahmedabad)*
- *Aditya Cement v. CCE (2007) 7 STR 153(Cestat , New Delhi)*
- *Ispat Industries Ltd v. CCE (2007) 8 STR 282; (2007) 9 STT 291 (Cestat, Mumbai)*
- *Ausmelt Ltd v. CCE, Jaipur-II (2009) 14 STR 393 (Cestat, New Delhi)*
- *CCE, Indore v. FCL Technologies (2009) 14 STR 283 ((Cestat, New Delhi)*
- *Alstom Projects (India) Ltd v. CCE, Delhi (2009) 15 STR 63; (2009) 20 STT 199 (Cestat, New Delhi)*
- *Bhoruka Aluminum Ltd v. CCE (2008) 115 STR 163 (Cestat)*
- *Active international v. CCE, Jalanahar (2009) 14 STR 541; (2009) 20 STT 150, (2009) 17 STJ 360 (Cestat, New Delhi)*
- *Molex (India) Ltd v. CCE (Appeals), Bangalore (2009) 14 STR 616 (Cestat, Bangalore- LB)*
- *Transpek-Silox Industries Ltd v. CCE, Vadodara (2009) 14 STR 729 (Cestat, Ahmedabad)*
- *Samcor Glass Ltd v. CCE, Jaipur (2009) 14 STR 14 ; (2009) 18 STT 561 (Cestat, New Delhi)*
- *Nestle India Ltd v. CST (2009) 18 STT 254 ((Cestat,New Delhi)*
- *CCE v. Naha Exports Ltd (2009) 18 STT 344 (Cestat, New Delhi)*
- *Larsen & Toubro Ltd v. CCE, Vadodara-II (2009) 19 STT 99 (Cestat, Ahmedabad)*
- *Johnson Matthey India Pvt Ltd v. CST, New Delhi (2009) 19 STT 101 (Cestat, New Delhi)*
- *CCE, Indore v. Mahle Migma Pvt Ltd (2009) 19 STT 102 (Cestat, New Delhi)*
- *Alembic Ltd v. CCE & C, Vadodara-I 92009) 19 STT 47 (Cestat, Ahmedabad)*
- *CCE, Raipur (CG) v. Lafarge India Ltd (2009) 19 STT 52(Cestat,Mumbai)*
- *CST, Ahmedabad v. Ashima Ltd. (2010) 17 STR 257 (Cestat, Ahmedabad)*
- *Bharat Heavy Electricals Ltd v. CCE, Meerut I (2010) 17 STR 387 (Cestat, New Delhi).*
- *Bharat Explosives Ltd v. CCE, Kanpur (2010) 17 STR 417 (Cestat, New Delhi).*

Liability in Import, Prior to 18.4.2006

It may not be out of place to mention here that the subject explanation was omitted when the Section 66A was inserted with effect from 18.04.2006 in the Finance Act, 1994. Thus, it was a sort of temporary provision intended to make service provided from outside India as a taxable service.

Prior to 16.6.2005, when an explanation was added to the Section 105 creating deeming provision of taxable service in relation to services provided by person from outside India, there was no provision in the Chapter V of the Finance Act, 1994 which provided for taxability of services provided by foreign service provider to service receiver in India. An explanation, as per the settled law, has only a prospective effect. The explanation added in 2005 was omitted with effect from 1.5.2006 with introduction of the Section 66A with effect from 18.4.2006. Offshore services shall be therefore, taxable with effect from 18.4.2006 as per the Section 66A of the Finance Act, 1994.

Service tax was held to be not payable prior to 18.4.2006 in the following cases:

- *CCE Chandigarh v. Nahar Exporst Ltd & Cheema Spintex Ltd (2009) 16 STJ 417 (Cestat, New Delhi).*
- *Rubfila International Ltd v. CCE, Calicut (2009) 17 STJ 10 (Cestat, Bangalore)*
- *Prabhat K Tyagi v. CCE, Bangalore (2008) TIOL 678 (Cetatt, Bangalore)*
- *FAG Bearing Ltd v. CCE & C, Vadodara- II (2009) 14 STR 392 (Cestat, Ahmedabad)*
- *Anant Spining Mills v. CCE, Bhopal (2009) 14 STR 184; (2009) 19 STT 31 (Cestat, New Delhi)*
- *SKM Egg Products Exports (1) Ltd v. CCE (ST), Salem (2009) 14 STR 80 (Cestat, Chennai)*
- *Pashupati Spg & Wvg Mills Ltd v. CCE, Chandigarh (2009) 20 STT 222 (Cestat, New Delhi)*
- *Bathija International v. CCE, Salem (2009) 20 STT 506 (Cetsat , Chennai)*
- *Bharat Explosives Ltd v. CCE, Kanpur (2010) 17 STR 417 (Cestat, New Delhi).*
- *Gujarat Petroleum Corporation Ltd v. CCE, Ahmedabad-II (2010) 17 STR 447 (Cestat, Ahmedabad)*
- *ABB Ltd v. CST, Bangalore (2010) 17 STR 131 (Cestat, Bangalore)*
- *A.C. Nielsen ORG- MARG Pvt. Ltd. v. CST, Mumbai (2010) 17 STR 195 (Cestat, Mumbai).*

Section 66A shall not be applicable to individuals receiving the service otherwise than for use in any business or commerce. All provisions of the Chapter V shall apply on such recipient of service. Notes to the Clauses to the Finance Bill, 2006 stated that the Section 66A is being inserted with a view to levy service tax on taxable services provided or to be provided from outside India and received in India.

Service Tax Rules

Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 had been amended in view of the above explanation vide notification No. 23/2005-Service Tax, dated June 7, 2005.

Charging service tax from the recipient when the service is provided by a nonresident is a well accepted international practice. This was enunciated in the Rule 2(1)(d)(iv). For removal of doubts, suitable explanation was made in the Section 65(105) by the Finance Act, 2005.

In *Hindustan Zinc Ltd. v. CCE (2009) 18 STT 67; (2009) 18 STT 67;(2009) 11 STR 631 (CESTAT, New Delhi- LB)*, it was held that where taxable service is provided by a nonresident or from outside India, who does not have any office in India, recipient of such service could not be held liable for paying service tax prior to 01.01.2005 notwithstanding amendment in the Rule 2(1)(d) of the Service Tax Rules, 1994. It was also held that –

"notwithstanding the fact that consulting engineer service was already a 'taxable service', the mere prescription of recipient of such service as the person liable to pay service tax under the notification No. 12/2002 was not sufficient. Notification No. 12/2002 inserted another sub-Clause in the Clause (d) of the Rule 2 which is the definition clause of the Rules. The definition clause cannot be read as a substantive provision creating liability much less in a tax statute. The notification/amendment simply enlarged the definition of 'person liable to pay service tax' in relation to 'any taxable service provided by a person who is a non¬resident or from outside India and, does not have any office in India' making the recipient of such service liable to pay service tax. It did not specify, and possibly could not have, the particular service or services in relation to which recipient would be liable to pay service tax. This was done by the notification No. 36/2004 which was issued under the Section 68(2) specifying the taxable services for the purposes of the said sub-Section, i.e., sub-Section (2) of the Section 68.

Four services were initially specified in Part A of the notification No. 36/2004, dated 31-12-2004. The service specified in Part B was omnibus, namely, 'any taxable service' meaning thereby all types of taxable services provided by a person who is a nonresident or is from outside India and does not have any office in India. In other words, apart from the four services specifically mentioned as items (i), (ii), (iii) and (iv) in Part A, where 'any' taxable service is provided from outside India, by a nonresident who does not have any office in India, the recipient became liable for paying the service tax. It is clear that besides the services specified in Part A for which there may be specific reasons, so far as the service provided from abroad is concerned, the service provider could not be made liable to pay the service tax and brought under the net of service tax in the absence of the apparent mechanism to collect and recover tax from them. A different provision therefore, had to be made.

It would appear that the phraseology of the Rule-2(1)(d)(iv) and Part B of the notification No. 36/2004 is the same except that after referring to the taxable service, Rule 2(1)(d)(iv) also mentions the person, i.e., the recipient liable to pay service tax. But it is to be kept in mind that similarity was inevitable because both pertain to the same taxable service.

The 'taxable service' referred to in Part B of the notification No. 36/2004 is part of the 'taxable service' referred to in various sub-Clauses of the Clause (48) [now Clause (105) of the Section 65]. It needs hardly any explanation that a number of 'taxable services' can be provided inside India as well as from abroad. For example, 'consulting engineer' service itself can be provided both inside and from outside India. Where the service is provided from outside India or by a non¬resident who does not have office in India, it is clear that the provider of the service cannot be fastened with the liability and, therefore, a different provision has to be made with respect to such services. It is to be kept in mind that the levy is on rendering of the taxable service and not on the person. No sooner than the taxable event takes place, tax must be collected and, therefore, provision has to be made to fasten the liability to pay tax. The person liable to pay tax is a component of the tax scheme. Since the liability to pay service tax generally is on the provider of service, where liability is to be fastened on any other person, the service(s) in relation to which liability is to be so fastened, has also to be identified and specified. The services had been specified in the erstwhile sub¬-Section (1A) of the Section 68 itself, corresponding to present sub-Section (2), in which it has now been left to the Central Government to do so by a notification. Corresponding amendments were made inserting sub-Clauses (vi) and (vii) in the Rule 2(1)(d) with effect from 1-4-2005 and 1-5-2006 which reflect the understanding of the Central Government that making amendment in the Rules or the list of the services under the Section 68(2) alone is not sufficient, and amendments have to be made in the Rules to make the 'person' liable to pay service tax as well as in the list of taxable services to specify the taxable service(s) in relation to which such person is made liable to pay service tax. A combined reading of the notification No. 12/2002 and the notification No. 36/2004 would show that while the former makes the 'person: i.e., the recipient of taxable service in India provided by a non-resident or from outside India liable to pay service tax - without specifying the taxable service, as such, in relation to which he is so made liable, the latter does not specify the person liable to pay service tax; it merely specifies the taxable services for the purpose of the Section 68(2). Both the notifications, therefore, have to be read as complimentary or supplemental to each other and in the absence of either of them, service tax cannot be collected or recovered (in respect of the specified services)."

A proviso provides that where the taxable services in the Clauses (zzg), (zzh) and (zzi) of the Section 65(105) are provided remotely through internet or an electronic network including a computer network or any other means in relation to any goods or material or any immovable property, situated in India at the time of provision of service, then, such taxable services, whether or not partly performed outside India shall be treated as performed in India and leviable to service tax under reverse charge method.

The verdict in *Hindustan Zinc*'s case was challenged by the Central Government in the Apex Court that dismissed the Government's appeal [2009- TIOL 87 SC-ST]. But this dismissal must not be construed as the confirmation of service tax being applicable on import of services with effect from 1.1.2005 and not from 18.4.2006 as was held by Bombay High Court in *Indian National Shipowner's Association* case (supra). While dismissing the appeal, the Apex Court has not held that tax is payable from 1.1.2005 but only dismissed the appeal against CESTAT order which held that service tax was not payable prior to 1.1.2005. Not only this, the Government's review petition in the apex court in the *Hindustan Zinc* case was also dismissed by the Supreme Court, there being no merit in the prayer [2009- TIOL-117-SC-ST].

CBEC clarified on Section 66A vide Circular No. B1/4/2006-TRU dated 19-4-2006 as follows:

Internationally, services provided by a foreign supplier to a domestic customer are subjected to VAT/GST under reverse charge or tax shift mechanism. Under the reverse charge method, a legal fiction is created treating as if the recipient had himself provided the services domestically and accordingly, the recipient of services is treated as deemed service provider.

Charging of service tax at the hands of the recipient of service where the taxable service is provided from outside the country is required to prevent distortion of competition. Explanation occurring at the end of the Clause (105) of the Section 65 of the Finance Act, 1994 and Rule 2(1)(d)(iv) of the Service Tax Rules, 1994 enabled charging of service tax in such cases.

In the Budget for 2006-07, Explanation to the Clause (105) of the Section 65 providing for charging of service tax on taxable services received from outside India has been omitted and for this purpose a new Section 66A has been incorporated in the Finance Act, 1994. Section 66A is to be read with the Taxation of Services (provided from outside India and received in India) Rules, 2006. It may be noted that only services received in India are taxable under these provisions.

All taxable services are chargeable to service tax under this section. The service provider should be outside India and the recipient of service should be in India. However, taxable services received by an individual from outside the country other than for the purpose of use in business or commerce, are not chargeable to service tax. In other words, taxable services received by individuals from outside the country for non-business purposes are not leviable to service tax.

Provision of service by a permanent establishment outside India to another permanent establishment of the same person in India is treated, for the purpose of charging service tax, as provision of service by one person to another person. In other words, permanent establishment in India and the permanent establishment outside India are treated as two separate legal persons for taxation purposes.

Section 66A imposes two conditions which needs to be satisfied for taxation of service tax on such imported services:

1. Service must be received by a person in India
2. Service provider must be situated outside India

If both the above conditions are fulfilled, then only the question of levy of service tax arises. Import of services not meant for commercial use or business use shall not be taxable. Under the Section 66A, country of origin is not of much relevance. The documentary evidence should reveal that the service has been provided from a country other than India and the recipient of service is in India. Thus, services of personal nature such as photography, videography, beauty parlour, health club, etc., may not get covered under this Section.

Section 66A levies service tax on taxable services provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and received by a person who has his place of business, fixed establishment, permanent address or usual place of residence, in India such service shall, for the purposes of this section, be a taxable service. If the service provider has establishment both in India and abroad, they are treated as separate entities even when they belong to same company. In such cases, one unit or office providing service to other office would fall under the Section 66(2).

Section 66A shall not be applicable to individuals receiving the service otherwise than for use in any business or commerce. All provisions of the Chapter V shall apply on such recipient of service. Notes to the Clauses to Finance Bill, 2006 stated that the Section 66A is being inserted with a view to levy service tax on taxable services provided or to be provided from outside India and received in India. The title of the section also indicates receipt of service from outside India.

In *Orient Crafts Ltd. v. Union of India & Another (2006) 7 STJ 31 (Delhi High Court); (2006) 4 STR 81,* the Court scrutinized the constitutional validity of Taxation of Services (provided from outside India and received in India) Rules, 2006 and held that the said Rules notified under the Section 66A of the Finance Act, 1994, as amended by the Finance Act, 2006, are constitutionally valid and only services provided from outside India and received in India are taxable. In the instant writ petition, where the constitutional validity was challenged by a exporter who had availed services of a foreign commission agent for procuring export orders on the ground that any service that was obtained by a person having fixed place of business/fixed establishment/ permanent address in India was liable to service tax for services availed by him in a foreign country, the high court found the argument unconvincing. It held that the rules are absolutely clear that taxable service provided from outside India and received in India is liable to service tax. While the court found nothing unconstitutional, it held that it was open to petitioner to contend that he did not received the services of commission agent in India but this will have to be decided by assessing officer or the appellate authority.

Bombay High Court in the case of *Indian National Ship Owners Association v. Union of India (2009) 18 STT 212 (2009) 13 STR 235 (Bombay)* **had held that levy of service tax on a person who is resident of India but receives services from outside India prior to insertion of the Section 66A is not sustainable. In view of the Section 66A, offshore services cannot be subjected to service tax prior to 18.04.2006. Before enactment of the Section 66A, there was no authority vested by law in revenue to levy service tax on a person who was resident in India and received services outside India.**

Thus, the levy of service tax under reverse charge method in case of import or deemed import of services is there to stay. It is an international practice being followed in many countries. The charging of service tax under reverse charge method from recipient of service where the service is rendered by a person situated in a country other than that of service receiver is an accepted international practice. What needed in such cases is that the revenue should carefully examine the facts of each case and apply the rules on merits. Contrast to goods, it may not be that easy for the revenue to decide upon delivery, usage and receipt of such services in India.

In *Hindustan Sanitary ware & Industries Ltd. v. CC,CE & ST, Hyderabad III (2009) 16 STJ 384 (Cestat, Bangalore),* it was held that imposition of service tax on commission paid to agent residing abroad who helped in marketing of product attained clarity with insertion of the Section 66 A in the Finance Act, 1994.

In *Malwa Cotton Spinning Mills v. CCE (2009) 44 Taxcom 327 (Cestat, New Delhi),* it was held that services rendered by nonresident from outside India is not a taxable service for the period prior to insertion of the Section 66A with effect from 18.4.2006. As per the Section 66A, the conditions for taxability of import of services, are:

1. The service falls under any of the services under the Section 65(105); and
2. The service provider in a country other than India has:
   - (i) established a business; or,
   - (ii) a fixed establishment from which the service is provided or is to be provided; or,
   - (iii) his permanent address or usual place of residence.

When the above conditions are fulfilled the recipients of taxable service themselves are treated as providers of taxable service and the services are taxed in the hands of the recipients.

Categories of Import of Services

Rule 3 of the Import of Service Rules categorizes three segments:

1. Services provided in relation to immovable property situated in India
2. Services involving physical performance
3. Services in relation to business or commerce.

It may be noted that —

1. Service provider has a business, fixed establishment, permanent address or usual place of residence outside India. Service receiver must have a place of business, fixed establishment, permanent address or usual place of residence in India.
2. The provisions do not state that the services should be received or consumed in India.
3. Any service other than in the nature of Business or Commerce is exempt. In other words, services received by an Individual otherwise than for the purposes of business or commerce is exempt. This is as per the Section 66A(1) proviso.
4. The deemed service provider, service receiver in India as said above, is not entitled to take the CENVAT Credit as per the CENVAT Credit Rules.
5. All the services will be treated as taxable services
6. Service receiver will be treated as a service provider under the reverse charge mechanism.
7. The services provided from outside India and received in India are only taxable.
8. Taxability of services is categorized on the similar lines of the "Export of Service Rules, 2005".
   a. *Property-centric* services like architect, interior decorator, real estate agent, construction services, site formation and clearance, dredging, survey, mapmaking, etc., are taxable if the immovable property is situated in India.
   b. *Performance-based* services like CA/CS/CWA, event management, business exhibition, credit rating, photography, security agency, management, maintenance or repairs, etc., are taxable if performed in India, be it fully or partly (CA/CS/CWA services have been shifted to residuary category with effect from 27.2.2010, vide the notification No. 6/2010-ST dated 27.2.2010)
   c. The *residual, recipient-based services* such as telephone, management consultant, advertising, sponsorship, business auxiliary services, etc., are taxable if they are received by a recipient for use in relation to business in India.
9. Services received by an Individual for non-business purposes are not liable to be taxed as per the present rules.
10. In case of multiple establishments of the service provider, the permanent establishment from where the service is provided will be considered for the taxability provisions.
11. Permanent establishment in India and permanent establishment outside India of a same person will be treated as service by one person to another person for the purpose of taxation.
12. Services in relation to management, maintenance or repairs, technical testing and analysis and technical inspection and certification shall be deemed to performed in India if provided in relation goods, material or any immovable property situated in India at the time of service through internet, electronic network, computer network or any other means (Notification No, 6/2008-ST, dated 1-3-2008).

In *Indian National Ship Owners Association* case (supra), it was further held that because of the enactment of the Section 66A, a person who is resident in India or business in India becomes liable to be levied service tax when he receives service

Vide notification No. 1/2002-ST dated 01.03.2002, the provision of the Chapter V of the Finance Act, 1994 (which governs the levy and collection of service tax were extended to the designated areas in the Continental Shelf of India (CSI) and the Exclusive Economic Zone (EEZ) of India, as declared by the Ministry of External Affairs Notification Nos. S.O. 429(E) dated 18.07.1986 and S.O. 643 (E) dated 09.09.1996. Notification No. 1/2002-ST has been amended to extend the provision of the Chapter V of the Finance Act, 1994 to installations, structures and vessels in the entire CSI and EEZ of India.

outside India from a person who is nonresident or is from outside India. Before the enactment of the Section 66A, it was apparent that there was no authority vested by law in the revenue to levy service tax on a person who is resident in India, but who receives services outside India. In that case till the Section 66 was enacted a person liable was the one who rendered the services. In other words, it is only after enactment of the Section 66A that taxable services received from abroad by a person belonging to India are taxed in the hands of the Indian residents. In such cases, the Indian recipient of the taxable services is deemed to be a service provider. Before enactment of the Section 66A, there was no such provision in the Act and, therefore, the revenue had no authority to levy service tax on the members of the ship owner's association.

Bombay High Court in the case of *Indian National Ship Owners Association v. Union of India (2009) 18 STT 212 (2009) 13 STR 235 (Bombay)* had held that levy of service tax on a person who is resident of India but receives services from outside India prior to insertion of the Section 66A is not sustainable. In view of the Section 66A, offshore services cannot be subjected to service tax prior to 18.04.2006. Before enactment of the Section 66A, there was no authority vested by law in revenue to levy service tax on a person who was resident in India and received services outside India.

The Government of India also filed a special leave petition in the Supreme Court against Mumbai High Court's judgement in the *Indian Shipowner*'s case which has since been dismissed by the apex court in last week of March, 2010 (not yet reported).

Outcome of Judicial Pronouncements

Section 66A provides an extra territorial jurisdiction with effect from 18 April, 2006, in the levy of service tax. Relying on CESTAT larger bench decision in case of *Hindustan Zinc*, Rajasthan High Court decision in case of *Aditya Cement* and Bombay High Court decision in case of *Indian National Ship Owners Association* and constitutional validity of the Section 66A being upheld by Delhi High Court, the following position emerges:

Till 31st December, 2004 – reverse charge would not be applicable at all whether services are rendered in India or outside India.

From 1st January, 2005 to 17th April 2006 – reverse charge may be applicable only on taxable services rendered by nonresidents in India.

From 18th April, 2006 – reverse charge would be applicable to taxable service rendered in India as well as outside India subject to the rules related to import of services.

Taxation of Services Rules

The Government has prescribed the Taxation of Services (provided from outside India and received in India) Rules, 2006 for prescribing rules for levy of service tax on taxable services provided from outside India and received in India. Accordingly, these rules define 'India' input, input service and output service and provide for:

1. taxable services provided from outside India and received in India,
2. registration and payment of service tax, and
3. taxable services not to be treated as output services.

Amendments with effect from 1.3.2008

Vide the notification No. 6/2008-ST dated 1.3.2008, a proviso has been added in the Rule 3(ii) of the Taxation of Services (provided from outside India and received in India) Rules, 2006, with effect from 1.3.2008. This proviso provides that where the taxable services in the Clauses (zzg), (zzh) and (zzi) of the Section 65(105) are provided remotely through internet or an electronic network including a computer network or any other means in relation to any goods or material or any immovable property, situated in India at the time of provision of service, then, such taxable services, whether or not partly performed outside India shall be treated as

Vide Notification No. 16/2007-ST dated 27.2.2010, the Import of Service Rules have been amended to amend the definition of 'India' and reclassify certain services for being qualified as import. The service of *mandap* keeper has been shifted from the performance-based services to immovable property-related services. Also, professional services, viz. services of chartered accountants, company secretaries and cost accountants, have been shifted from the category of performance-related services to the residual category of services.

performed in India and leviable to service tax under reverse charge method. These three services are:

1. Management, maintenance or repair services (zzg).
2. Technical testing and analysis services (zzh)
3. Technical inspection and certification services (zzi)

Thus, effective from 1.3.2008, these services shall be deemed to be considered to be performed in India irrespective of the fact whether such services are actually performed in India or not and service tax shall be payable on aforementioned three services under reverse charge basis.

These three services shall be deemed to be performed in India only when provided in relation to goods, material or immovable property situated in India at the time of performing service, and when provided through internet, electronic network, computer network or any other means.

The Ministry of Finance has clarified as follows vide para 12 of the *Letter No. DOF 334/1/2008-TRU dated 29.2.2008:*

"Information technology is used to provide services in relation to tangible goods located distantly. In such cases, the actual place of performance of the service is different from the actual location of the tangible goods (place of consumption of service).

The place of performance and the physical location of the goods are immaterial when both places are within a single taxing jurisdiction, i.e. country of taxation. However, if these two places are in two different taxing jurisdictions, the taxing jurisdiction shall be the place of actual location of the goods at the time of provision of service.

The Rule 3(1)(ii) of the Export of Services Rules, 2005 and the Rule 3(ii) of Taxation of Services (provided from outside India and received in India) Rules, 2006 are being amended (notification Nos.5/2008-ST and 6/2008-ST, both dated 1.3.2008) by inserting a proviso to determine the country of use or consumption of the taxable services provided. The proviso enables to determine the taxing jurisdiction based on the place of actual location of the tangible goods at the time of provision of service in the case of following three services:

(a) management, maintenance or repair,
(b) technical testing and analysis, and
(c) technical inspection and certification,

These services are also provided remotely through internet or any electronic network including a computer network, or any other means. The above change shall come into effect from 1st March 2008."

Amendments with effect from 7.7.2009

Notification No 22/2009-ST dated 7.7.2009 substituted the Clause (e) of the Rule which defined India. 'India' will now include installations, structures and vessels in the continental shelf of India and the exclusive economic zones (EEZ) of India. Thus, services provided to installations, structures and vessels in the continental shelf of India and the exclusive economic zones by persons from outside India shall be treated as import of service and the persons who are receiving the service shall be liable to pay service tax under reverse charge method.

Ministry of Finance (TRU) letter Explaining the Budget changes (letter No DOF No 334/13/2009-TRU dated 6.7.2009) clarifies as under –

"Changes in territorial jurisdiction:

Vide notification No. 1/2002-ST dated 01.03.2002, the provision of the Chapter V of the Finance Act, 1994 (which governs the levy and collection of service tax were extended to the designated areas in the Continental Shelf of India (CSI) and the Exclusive Economic Zone (EEZ) of India, as declared by the Ministry of External Affairs Notification Nos. S.O. 429(E) dated 18.07.1986 and S.O. 643 (E) dated 09.09.1996. Notification No. 1/2002-ST has been amended to extend the provision of the Chapter V of the Finance Act, 1994 to installations, structures and vessels in the entire CSI and EEZ of India. Thus, services provided to or from the CSI and the EEZ of India would be covered within the ambit of the provisions relating to service tax with effect from 07.07.2009 (notification No. 21/2009ST dated 07.07.2009 refers.). Consequential changes have also been made in the Taxation of Services (provided from outside India and received in India) Rule, 2006 (notification No. 22/2009-ST dated 07.07.09 refers)".

Amendments with effect from 27.2.2010

Vide Notification No. 16/2007-ST dated 27.2.2010, the Import of Service Rules have been amended to amend the definition of 'India' and reclassify certain services for being qualified as import. The service of *mandap* keeper has been shifted from the performance-based services to immovable property-related services. Also, professional services, viz. services of chartered accountants, company secretaries and cost accountants, have been shifted from the category of performance-related services to the residual category of services. The scope of 'India' has been expanded to include the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone (EEZ) of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

How will You Will?

Writing a Will and being a propounder, i.e. beneficiary of a Will, are indeed very important events in the life of a person. Just imagine that you have burnt midnights oil and earned a lot and acquired enough properties but when shadows of age dawn upon you, you very much wish, that your assets are bequeathed to the one you fondly wish but if the instrument of such a transfer, i.e. a Will, is not properly drafted your entire plan would get shattered. Will is a technical document and, simultaneously, is a solemn and pious one. So its draft should not suffer from legal flaws. There are enough case laws on the subject which enlighten us and if we take clues from such judicial holdings, we would be avoiding pitfalls on this score. Inconsistencies and factual errors in the Will make it devoid of credibility. It should be drafted and crafted carefully enough so that it withstands judicial scrutiny. The author in this article has dealt with the entire anatomy of the concept of Will in its various facets to enlighten and inform all those who would will a Will.

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When shadows of life grow longer and deeper or even earlier if the circumstances so warrant, one mode of transferring ones assets to near and dear ones or somebody else is done by an instrument which is called "Will". Such an important document naturally needs to be drafted properly with regard to the legal provisions thereon. In drafting a Will, there should be no patent or latent vagueness involved and nothing should be unintelligible to a reader of the Will. Under the Indian Succession Act, Will means the legal declaration of the intention of the testator with respect to his property which he desires to be carried into effect after his death. Section 63 of the Indian Succession Act deals with Will. We shall do well to understand certain basic terms about Will before dealing with its entire chemistry. The person who makes a Will is called a 'testator' and the person in whose favour the benefit is transferred is called a 'legatee'. The transfer of the property under Will is called a 'bequest' and the person

A Will is a document which needs to be signed by the testator in the presence of at least two witnesses who are called Attesting Witnesses. These attesting witnesses are very very important to prove the genuineness of a Will. The Will must always be dated and every page of the Will should be numbered so that replacement or addition of any page can be prevented.

to whom execution of the Will is entrusted by the testator is called the 'executor'. Similarly, a person who dies without making a Will is said to have died 'intestated'. Then, there is grant of 'probate' by a court of competent jurisdiction. The probate has been defined under the Section 2(f) of the Indian Succession Act, 1925, and it means the copy of a Will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator. The probate may not be mandatory, but without this you can not establish your right as a legatee.

As we all know, a Will which operates after the death of a testator is capable of making enough sound and fury. It may spring surprises and create confusion in the family. This is what exactly happened in the Will left behind by a widow, Priyambada Birla of the Birla family. Now, again, we shall capture certain salient features of a Will and caution against pitfalls. A Will is a document which needs to be signed by the testator in the presence of at least two witnesses, who are called attesting witnesses. These attesting witnesses are very important, as they prove the genuineness of a Will. The Will must always be dated and every page of the Will should be numbered so that replacement or addition of any page can be prevented. As has been mentioned above, the language of the Will should be simple, precise, clear and unambiguous, so as to avoid a misinterpretation or a misconception. In the event of changes in certain clauses, additional pages should be submitted and finally assets and estate should be fully defined and detailed in the Will. With the aforesaid preliminaries, we could now discuss all about a Will. Here, it may be noted that no format for a Will is prescribed.

Any person, who is of sound mind and of any age, i.e. not being a minor, can make a Will of her/his self-acquired property. The provision is contained in the Section 59 of the Indian Succession Act which provides that every person of sound mind may dispose of her/his property by Will. Then, the Section 63 requires that the testator shall sign or affix his mark to the Will. Then again the Sections 67 and 68 of the Evidence Act speak about proving a document. Since no legal format of a Will is prescribed, it is only to be signed and dated in the presence of two attesting witnesses and it must appoint an executor. The Will must describe the property in all details and the perfect identity of the property that is bequeathed. The Will should be kept in the custody of the executor or with some other law professional. The registration of the Will is optional. The disposition of the property in the Will should not be unnatural, improper and unfair and whenever there is any suspicious circumstance, it should be dealt with in proper legal terms. These are the important features of the Will which should be kept in mind.

With the aforementioned descriptive account of the Will, we shall now proceed to deal with the requirement of a valid Will and the mode of proving it. The Supreme Court of India is today the most powerful judicial body in the world; more powerful than the U.S Supreme Court, or, the House of Lords of England, or, the Superior Courts of Australia and Canada. Therefore, the Supreme Court of India's verdict is taken as final on any particular proposition or concept. Recently, it has said enough on the concept of Will.

In the case of *Yumnam Ongbi Tampha Ibema Devi vs. Yumnam Jon Kumar Singh & others (2009) 4 SCC 780*, this Court had an occasion to examine the entire metaphysics of a Will and it handed us a clear conceptual and legal position on the Will citing several case laws. The court had in mind the requirement of the Section 63 of the Indian Succession Act, 1925, and the Section 68 of the Evidence Act, 1872. On due execution of a Will, the Court has held that the testator should sign or affix his mark to the Will, the signature or mark of the testator should be so placed as giving impression that it was intended to give effect to the writing of the Will. It should be attested by two or more

In *Banga Behera vs. Braj Kishore Nanda (2007) 9 SCC 728,* it has been held that the execution of a Will is to be proved like that of gift and mortgaged deed. So the Supreme Court in the aforementioned case in the article ruled that appellant Yumnam Ongbi Tampha Ibema Devi could not prove her case and she could not take any benefit of the subject Will. It is, therefore, suggested that the Will being a pious and solemn documents, should be proved by positive, cogent and satisfactory evidence.

witnesses and the attestation of the Will would not be a mere formality. Each of the said witnesses should have seen the testator signing or affixing his mark to the Will and each of them should sign the Will in the presence of the testator. This much has been held about the identity of the Will although no formal form of the same is prescribed. The court then dealt with the mode of proving a Will. Citing the case of *Surendra Pal vs. Dr. Sarswati Arora (1974) 2 SCC 600*, the Court felt that the propounder had to show that the Will was signed by the testator; that he was at the relevant time in a sound disposing state of mind; that he understood the nature and effect of disposition; that he put his signature to the testament of his own free will and that he had signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other. After these motions have been proved, normally the onus of proving a Will would stand discharged. To be on the safer side, when the testator is of an advanced age, a certificate to the effect, that he is of sound conscience and possesses the presence of mind, should be obtained from a doctor and attached with the Will.

In *H. Venkatachala Iyengar vs. B.N. Thimana Jamma AIR 1959 SC 443,* it was observed that there is a distinguishing feature of Wills from other documents. Unlike other documents, the Will speaks from the death of the testator, and so, when it is propounded before a court, the testator who has already departed the world could not say whether it was his Will or not, and this aspect naturally introduces an element of solemnity in the decision of the question whether the document propounded is proved to be the last Will and testament of the departed testator. In the case of *Gura vs. Atma Singh (1992) 2 SCC 507*, the Supreme Court observed that the law with regard to the proof of a Will is well settled and that the mode of proving a Will would not ordinarily differ from that of proving any other document except as to the special requirement prescribed in the case of a Will by the Section 63 of the Succession Act, 1925. In *Daulat Ram vs. Sudha (2005) 1 SCC 40,* it has been held that the Will being a document was to be proved by primary evidence except when court permits it to be proved by secondary evidence. In the cases of *Meenakshiammal vs. Chandrasekaran (2005) 1 SCC 280* and *Pentakota Satyanarayana vs. Pentakota Seetharatnam (2005) 8 SCC 67,* it has been held that if the propounder took prominent part in the execution of the Will. Then as a beneficiary, he is required to prove the Will by cogent and satisfactory evidence.

In *Banga Behera vs. Braj Kishore Nanda (2007) 9 SCC 728,* it has been held that the execution of a Will is to be proved like that of a gift and mortgaged deed. So the Supreme Court in the aforementioned case ruled that appellant Yumnam Ongbi Tampha Ibema Devi could not prove her case and take any benefit of the subject Will.

It is, therefore, suggested that the Will being a pious and solemn document, should be proved by positive, cogent and satisfactory evidence in the manner discussed herein above. Variances, inconsistencies and contradictions in the evidence would be fatal. The constituents of a Will and mode of its proof are the subject matter of this article, which has been done with reference to the cases of the Apex Court. A testator would naturally wish that his hard-earned money or his self-acquired property is made available to the person named in the Will after his death but his dream would get shattered if the Will as executed by him is found legally deficient and falls flat on legal scrutiny as has happened in the recent Supreme Court case of Yumnam Ongbi Tampha Ibema Devi. So let there be a well-drafted Will to avoid legal complications henceforth. ■

Inspection under Section 209A of Companies Act 1956: Ways to Overcome Perils of Inspection

Section 209A of the Companies Act, 1956, empowers the Registrar of Companies and the officers of the central government to undertake inspection of the books of accounts and other records of companies, to direct special audit, to order investigation into the affairs of a company and to launch prosecution for violation of the Companies Act, 1956. Books of accounts and other documents of the companies are inspected by the officers of the Directorate of Inspection and Investigation authorised for this purpose under the Section 209A of the Companies Act and the Registrars of Companies. This article does not profess to be an academic analytical enunciation of the law on the subject but is intended to serve as a practical guide to deal with the after effects of captioned inspection. It reflects the practical experience derived from handling legal proceedings arising out of such inspections and how to deal with the same with efficacy.

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Every one dealing with corporate matters is aware of the provisions for inspection by the Registrar of Companies or an authorised officer of the central government or the Security and Exchange Board of India (SEBI). The inspection relates to the books of account and other books and papers of a company, and in case of inspection by the Registrar and the authorised officer may be in general spreading across the provisions of the Companies Act relating to the books of account but, in case of inspection by an officer of the SEBI, the scope of the inspection is limited to matters covered under the Section 55(A) of the Act. The inspection is undertaken by the Registrar or an authorised officer concerned as a matter of routine. However, owing to the contemporary developments in corporate world, inspections are undertaken more frequently in large numbers. An inspection may be made even without giving any previous notice to a company.

The outrageous storm created by the Satyam scam has brought about at least twin outcome: gaffe of the Ministry of Corporate Affairs (MCA) became apparent as the sudden exposure of Satyam scam has belied the complacent faith of the MCA in its monitoring of compliances by the corporate world and the MCA has now become more cautious and agile, and topical inspections are carried out with an object to discover any similar scam or to nip any similar possibility in the bud.

It may not be out of place to mention here that the provisions of the Section 633 as enshrined in the Companies Act owe their origin to the earliest English Company Law and the specific section providing for parallel provisions still continues to be a part of the Companies Act,1948, of UK.

In the recent past, there have been more inspections under the Section 209A carried out by the Regional Directors of the Company Law Board or the Registrar. Regional Director issues notice to the company concerned after inspection pointing out errors, omissions and defaults leading to violation of the provisions of the Companies Act and giving rise to offences by the company and its officers. After the clarification or explanation are given by the company and its officers in response to the said notice, the Regional Director then refers the matter to the MCA with regard to the matters which have not been satisfactorily clarified or explained. Show cause notice is then issued declaring that the company and its officers have committed violation of the provisions of the Companies Act and they are liable to be prosecuted. If no cause is shown to the satisfaction of the Regional Director, prosecution is launched on obtaining permission from the MCA.

It is worth noting that notwithstanding anything contained in the Code of Criminal Procedure 1973, none of the offences under the Act are cognizable.

In this background, several litigations have arisen and in order to avoid or get over the prosecution the company and their officers resort to various remedies which are both pre-prosecution and post-prosecution. While some of the companies and their officers targeted by the Regional Director just defend the prosecution, wary and proactive companies take resort to petition under the Section 633(1) or 633(2) of the Companies Act, 1956. In these proceedings, the company and their officers with a glint of admission take the plea that even though they may be liable in respect of negligence, default, breach of duty, misfeasance, or, breach of trust they have acted honestly and reasonably and having regard to all the circumstances including those connected with the appointment the officer ought to be fairly excused. While the Section 633 (1) is available post-prosecution, under the Section 633(2) of the Act such plea can also be taken pre-prosecution by way of abundant caution.

However, in case where it is alleged that criminal proceedings have been initiated before it can be said that any magistrate or court has taken cognizance of an offence, it must be shown that she/he has applied her/his mind to the facts for the purpose of proceeding further in the matter at the instance of the complainant. Even if the magistrate orders an investigation or issues search warrant on the basis of the complaint, it could not be said that she/he has taken cognizance of the complaint.

These petitions are entertained and disposed subject to various factors such as, the facts of an individual case, the judicial precedents on the points in issue and the subjective and individual attitude of the judge of the High Court dealing with the matter. Fortunately, some judges and magistrates do have a lenient attitude in the matter and are inclined to give relief compared to some judges and magistrates who hold dearly a strict view of the matter and are reluctant to grant relief.

As an alternative to the petition under the Section 633 of the Act the other remedy preferred by some of the company and their officers is compounding of the offence under the Section 621(A). The right of relief under the Section 633 of the Act is available only to the officers of a company and not to the company itself whereas under the compounding provision 621(A), both the company and its officers are entitled to apply for compounding on payment of a prescribed sum as compounding fee. The prescribed sum shall not however exceed the maximum amount of the fine imposed for the offence compounded and any additional fee, if paid any, shall be taken into account. The prescribed fee for compounding varies from case to case.

There is, however, a disability attached to the compounding provisions in that the compounding provision shall not be available to an offence committed within a period of three years from the date on which a similar office was compounded. The compounding applications are to be made before the Registrar who forwards the same along with his comments to the central government. The compounding provisions blissfully can be invoked either before or after prosecution. After the compounding takes place no prosecution shall be launched whereas in case the prosecution already has been launched the company or its officers are discharged upon notice of the composition to the court before which the prosecution is pending.

Compounding is not available with regard to offences which are punishable under the Act with imprisonment only or with imprisonment and also with fine. After the offence is compounded it operates as an acquittal and not as a mere discharge. Before plunging for compounding one should always before hand consider the amount of prescribed fee that may have to be paid upon compounding. Another difference in the relief through the Sections 633 and 621(A) is that while in the former case there is no relief from the civil liability which means it can only give relief from criminal liability, i.e. criminal prosecution of the officers of the company, in the latter the relief is on both the fronts, i.e. civil liability and criminal liability, of course, on payment of the prescribed compounding fee.

Besides the provisions of the Sections 633 and 621(A), there is yet another mode of remedy available which has been recently brought into place and that is by way of alternative disputes resolution through the *Lok Adalat*. It is always wise to take the defence of limitation, if available. The courts while dealing with petitions under the Section 633 of the Act are inclined to grant relief in cases of violations which have become barred by limitation under the Section 468 of the Code of Criminal Procedure.

While dealing with the offences discovered or detected during the inspection the Regional Director or the MCA also bear in mind that the need for inspection is to encourage and enforce compliances rather than inflicting punishment for the offences and this calls for exercise of discretion in the fact of the case to restrain oneself from adopting rigid and punitive punishment or penalties.

It may not be out of place to mention here that the provisions of the Section 633 as enshrined in the Companies Act owe their origin to the earliest English Company Law and the specific Section providing for parallel provisions still continues to be a part of the Companies Act, 1948, of UK.

From the following examples of defaults which have been selected out of a variety of inspection cases one can guard against to prevent an error, omission or default taking place and avoid falling into the net of the perilous after effects of inspection:

Nature of alleged default or violation	Relevant Section of the Companies Act, 1956	Relevant Accounting Standard
The notice under the Section 305 of the Companies Act, 1956, not given within 20 days from the date of appointment as director or cessation of office.	305	NA
In the board meeting interested directors participated in the discussion or voted thereat or omission to record nonparticipation.	300	NA
Payment to some group company in which directors were interested was made without Board approval. Register under the Section 305 of the Companies Act, 1956, was not produced before the Board and signature of the Board not taken	301	NA
Non-disclosure in the Directors' Report of the information as to whether there was any technology imported during the last five years, year of import and future plan of action	217(1) (e)	NA
Non-disclosure in the Directors' Report and the B/S and P/L of the details of expenditure on Research & Development.	217(1)(e) & 211(3A)	AS 26/ RULES
Non-Disclosure in the Directors' Report of the information as to activities relating to exports; initiatives taken to increase exports; development of new export markets for the products and services; and export plans.	217(1)(e)	RULES
Non-Disclosure in the Directors' Report of the information as to change in the CFO(both appointment and resignation) and the selling of shares acquired for strategic business purpose	217(1)(a)	NA
Non-disclosure in the Directors' Report of the information as to investment made for strategic business purpose	217(1) (a)	NA
Expenditure incurred on repairs to building and repairs to machinery to be disclosed separately and not combined with expenses on maintenance.	211(2)/Schedule VI - Part II	NA
Disclosure of auditors remuneration in notes to accounts vary with actual auditors remuneration in the books.	211/Schedule VI -Part II	NA
Showing the net of trade discount in the P/L account instead of showing gross sales duly reduced by the amount of trade discount in the P/L account	211(2)/Schedule VI - Part II	NA
Non-disclosure as to the dues to SSI and to others with name of SSI to whom sum of Rs. 1 lakh and above has been due for over 30 days in B/S.	211(1)/Schedule VI - Part I	NA
Non-classification of dividend income as dividend from trade and other investment in the P/L.	211(2)/Schedule VI - Part II	NA
Interest paid and received not shown in debit and credit side of P/L instead netting of the interest and finance charges in the P/L	211(2)/Schedule VI - Part II	NA
Non-disclosure as to diminution in the value of investment in the books of accounts	211/211(3A)/ Schedule VI	AS 13
Recording the transactions in foreign currency at the average rate of exchange prevalent in the month instead of rate of exchange as on the date of the transactions	211(3A)	AS 11

Non-disclosure as to the amount of exchange difference in respect of forward exchange contracts in the B/S & P/L.	211(3A)	AS11
Non-classification of dividend income as dividend from long term or current investment in the B/S.	211(3A)	AS13
Non-disclosure as to the nature of evidence supporting the recognition of deferred tax assets comprising of unabsorbed depreciation in the B/S.	211(3A)	AS13
Non-disclosure of prior period items under a separate heading 'prior period items' in the P/L.	211(3A)	AS5
Non-disclosure of the deviation from AS, the reason thereof and the financial effect arising due to such deviation	211(3B)	NA
It was not mentioned that the monetary assets and liabilities were reported at closing rate	211(3A)	AS-11
Non-disclosure of the method of amortization in respect of "Miscellaneous expenses" (preliminary expenses) in Schedule	211(3A)	NA
Non-disclosure of amortization method in respect of computer software.	211(3A)	NA
Non-inclusion of the product of the company in the Directors' Report.	S217(1)(e)	NA
The advance tax in B/S was reported as net of provisions contrary to Part-I of Schedule -VI to Act	211(1)/Schedule -VI- Part-I	NA
The name plate displaying the name and address of the company has not been displayed at the office of the company.	147(I)(a)	
The company had not filed Form No.23 for the appointment of managing director of the company within the stipulated time of 30 days from the date of such appointment.	192(1) and (4)	
The company has not page numbered the minutes of the meeting of the board of directors as well as shareholders of the company.	193(1)	
As per the balance-sheet the company had balances of Rs. 10 lakh in the current account with non-scheduled bank and the name of such bank and branch and balance with them has not been disclosed separately in the balance-sheet.	211(1)	
The balance-sheet of the company has not given the licensed and installed capacity in respect of turbine generated and blades as the same was variable and subject to change depending upon the product mix and utilization of the manufacturing facilities and not providing the licensed/installed capacity.	211(4)	
While filing the balance-sheet, the documents referred to in the Section 212(1)(a) to (d) have not been enclosed with the balance-sheet and also during inspection the company only furnished the balance-sheet without annexing the documents.	212(1)	
Particulars of conservation of energy and the technology absorption have not been given in the Form Nos. A and B in the directors' report.	217(1)(e) read with Companies (Disclosure of Particulars in the report f Board of Directors) Rules, 1988.	
The names and other particulars of the employees were not furnished/annexed to the Directors' Report.	217(2A)	
There was delay in filing the balance-sheet with the respondent.	220(1)	
The company had entered into some transactions with various parties/companies in which directors are interested and for that no prior approval of the central government was taken.	297(1)	
The company has entered into some transactions in which the directors are directly/ indirectly interested and the same has not been entered in the contract register.	301(1)	
The Register of Director does not include the names of the other companies in which the directorship is held by the directors of the company.	303(1)	
The directors holding shares of the company had not given notice for acquisition/disposal of the shares of the company.	308(2)	
The investments made during the period were shown in form of the list and the same was not page numbered. The register should have been produced for prior and subsequent period also and the said investment register should include the terms and purpose of investments.	372A(5)	

Of the plethora of the case laws which have developed on this matter, some recent examples are given below which will serve as a broad indication of the attitude of the Courts while entertaining and disposing such applications.

Case Laws

(2008) 143 Comp Case 531(Cal)
Bhagawati Food (P) Pvt Ltd. & Ors. Vs. Registrar of Companies, West Bengal

This matter came up for the consideration before the Division Bench of the Calcutta High Court against the order of Ld. Single judge of the Court refusing relief from the liability of contravention of the Sections 211 and 628 of the Act, whereas for all the other violations the petitioners were absolved of their liability. It was held that there was no allegation against the appellants for making false statement or suppression of any material fact and thus there are no ingredients of an offence under the Section 628 of the Act. It can also be inferred that the authorities were satisfied that there was no dishonest intend. It is well settled that the Court might excuse a person from liability under the Section 633(2) of the Act if the time for filing a complaint for the alleged offence as prescribed under the Section 458 of the Code of Criminal Procedure 1953 has become time barred. The Court came to the conclusion that in the facts and circumstances of the case discretion should have been exercised by the trial Court to excuse the appellant from liability and the Ld. Single judge erred in not doing so.

2008 Indlaw Guj 3
Hemal A. Kanuga and Others vs. Registrar of Companies
11 Jan 2008

This Court has ample power to grant ad interim relief and that too, without issuance of notice to the Registrar of Companies in a given case. The Court is not granting any final relief relieving the petitioners from the alleged offences which may be branded as any negligence, default, breach of duty, misfeasance or breach of trust. If notices issued to the Registrar without granting any ad interim relief and on service of the notice to the Registrar, during this interregnum period, the Registrar may file complaint against the petitioners and there may be a possibility of challenge to the very jurisdiction of this Court. To avoid such complexity and multiplicity of litigations and also to sub-serve the real legislative intent behind enacting the Section 633(2) of the Act, the Court thinks it just and proper to grant ad interim relief even without issuance of notice to the Registrar.

No prejudice has been suffered by any person by reason of such alleged default. No pecuniary or other benefit has been obtained by the petitioners by reason of such alleged default. He has further submitted that the petitioners have exercised due diligence in preparing the company's accounts and have also acted with due care and caution. The respondent has sought to take a different view from that taken by the company and the petitioners in a matter of treatment of accounts. The company and the petitioners have been guided by the company's reputed auditors. The petitioners have acted at all material times diligently and to the best of their ability. No person has suffered any loss or prejudice by reason of the acts of the petitioners and no loss has been occasioned to any person on account of the alleged default. None of the shareholders or any other has complained with regard to such alleged violations as mentioned in the show-case notices. There has been no negligence or prejudice of duty or misfeasance or breach of trust by the petitioners. Therefore, the petitioners ought fairly to be excused of any criminal liability in respect of the alleged violations as complained of in the show-cause notices and should be relieved for any penal consequences under the aforesaid provisions of the Act.

Looking to the nature of offences alleged against the petitioners and explanation tendered by them in their replies, the Court is of the prima facie view that

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the petitioners have taken all due care and caution in complying with the provisions of the Act, and even if there may be minor lapses, those are required to be condoned. From such minor lapses and defaults of technical nature to prosecute the company's highest ranking officers is not just and proper. To prosecute a person is of a serious consequence. If there is no basic foundation, the person cannot be compelled to pass through the gamut of such turmoils. If at the initial stage, the court is prima facie satisfied that the prosecution may not ultimately sustain, the court would certainly show its indulgence so as to meet with the ends of justice or to prevent the abuse of the process of law. The court, therefore, restrains the Registrar of Companies from launching prosecution for the alleged offences and further restrains him from proceeding further pursuant to the impugned notices challenged in all these petitions.

The Court is of the view that all the three essential ingredients which the Court should take into consideration while granting interim relief, i.e. prima facie case, balance of convenience and irreparable loss or injury are present in this case and hence, such relief cannot be denied to the petitioners.

2007 Indlaw Cal 20
Chandra Kumar Dhanuka and Others Vs Registrar of Companies, West Bengal.

In any even, the various charges leveled against the petitioners and in respect whereof they apprehend criminal proceedings being launched, are all matters of subjective assessment as to whether the provisions of, primarily, the accounting standards were complied with. The Registrar asserts that the accounting standards had been breached by the petitioners. The petitioners submit that in their considered view, they had complied with the requirements of the accounting standards. None of the charges relate to any glaring omission and each charge, or, the denial thereof, is based on the rival interpretations of the same provisions. Accounting standards are, by very nature, subjective and what is required to be seen is that whether, in the relevant accounts, there was complete disregard by the petitioners to the accounting standards or whether the treatment of the relevant accounts was such as would be permissible on the basis of a possible reading of the accounting standards.

Section 448 of the Companies Act, 1948, of England empowered a Court to relieve an officer of a company in the manner that the Section 633(2) of the Indian Act permits a High Court to relieve such officer. The considerations that ought to weigh with court are found in the following lines:

"Section 448 enables the court to grant relief where three circumstances are shown to exist. First of all, the position must be such that the person to be excused is shown to have acted honestly. Secondly, he must be shown to have acted reasonably. And thirdly, it must be shown that, having regard to all the circumstances of the case, he ought fairly to be excused."

The petitioners are relieved of all liabilities in respect of the 12 show-cause notices being the subject-matter of these proceedings.

2002 INDLAW MAD 199
M. Meyyappan vs. Registrar of Companies

1991 Indlaw SC 370

Rabindra Chamria and Others vs. Registrar of Companies, West Bengal and Others, (Civil Appeal No. 3012 of 1990) with *Benu Gopal Bangur, vs. Registrar of Companies and Others*, (Civil Appeal No. 3117 of 1990) with *Shri Kumar Bangur vs. Registrar of Companies and Others,* (Civil Appeal No. 3118 of 1990) with *Laxmi Niwas Bangur and Others vs. Registrar of Companies and Others,* (Civil Appeal No. 3738 of 1990) with *Mahabir Prasad Poddar and Others vs. Regional Provident Fund Commissioner, West Bengal* (Special Leave Petition (Civil) No. 8081 of 1990).

1980 Indlaw Mum 3870

Tri-Sure India Limited, in Re. and Richard Laurence Parish (Jr.) and Others vs. Registrar of Companies, Maharashtra, and Others

1961 Indlaw PNH 30

Ram Krishan Dalmia and Others vs. Registrar of Companies [2005 (128) CC 883]

54 Company Cases Calcutta page 104, In Re: Hindusthan Wire & Metal Products.

By this judgement upon considering the submissions made by both the parties, i.e. the Registrar of companies as well as the Directors of the company it was held:

In this particular case it is admitted that on 12th June, 1980, a petition under the Section 473 of the Criminal Procedure Code (CrPC) was filed. The complaint against the petitioners was barred, otherwise there was no question of condoning the delay in filing the complaint. It also appears from the order sheet that on 12th June, 1980, the said matter was not taken up and it was put up for hearing on 4th November, 1980. In between, the present petition was filed on 28th June, 1980, and an ad interim order of injunction was obtained against the respondent from commencing or instituting any criminal proceeding for the alleged offence under the Section 495 of the Companies Act on 2nd July, 1980. Thereafter, direction for affidavits was given and the respondent filed an affidavit in this application affirmed by one Sourindra Narayan Guha dated 15th January, 1981. In the Para. 19 of the said affidavit-in-opposition, it is mentioned about the application under the Section 473 of the CrPC for condoning the delay, which was filed on 12th June, 1980 and the delay was condoned by the order dated 4th November, 1980, and the offence was taken cognizance of by the chief metropolitan magistrate and the case was transferred to the metropolitan magistrate, 17th Court. It is strange that in the said affidavit, it is not mentioned that the order condoning the delay and taking cognizance of the alleged offence was passed on 4th November, 1980, and not on 12th June, 1980, as would appear from the photocopy of the order sheet. Again in the Para. 22 of the said affidavit, it is repeated that the present petition was moved by the petitioners on or about 2nd July, 1980, whereas the criminal case was initiated on 12th June, 1980, before the learned chief metropolitan magistrate, and as such this court has no jurisdiction to stay the criminal proceeding and has no power to grant any relief to the petitioners and the present petition is misconceived and not maintainable in law. It appears the said affidavit is not only misleading but incorrect facts are stated, which is clear from the photocopy of the order sheet and the records of the present application as the delay was not condoned under the Section 473 of the CrPC on 12th June, 1980, but the same was ordered on 4th November, 1980, when also the petition of complaint was filed after the condonation of the delay by the chief metropolitan magistrate and cognizance was taken by the chief metropolitan magistrate. Meanwhile, on 28th June, 1980, the present application was filed and on 2nd July, 1980, an ad interim order of injunction was issued against the respondent from commencing any proceeding against the petitioners in terms of the notice dated 12th May, 1980, or any similar notice for the alleged violation of the provisions of the Section 495 of the Companies Act, 1956. But the whole question turns round the fact whether the offence was taken cognizance of before the present application was made and an ad interim order of injunction was issued.

Section 448 of the Companies Act, 1948, of England empowered a Court to relieve an officer of a company in the manner that the Section 633(2) of the Indian Act permits a High Court to relieve such officer.

Mr. Mukherjee, after drawing my attention to the said Sections of the CrPC, submitted that on the admitted facts the violation of the Section 295 was known to the respondent from the balance sheet of the company. As the filing of the complaint was barred, the respondent made an application for condonation of the delay under the Section 473 of the CrPC and filed the same on 12th June, 1980, but no order was made condoning the delay as there was congestion in the diary and the same was put up on 4th November, 1980. Therefore, on 12th June, 1980, it cannot be said that cognizance of the said offence was taken of or any proceeding was initiated against the accused in respect of the alleged offence under the Section 295 of the Companies Act, as, unless the bar of limitation was lifted by condonation of delay by an order of the magistrate made under the Section 473 of the CrPC, there cannot be any question of taking cognizance of the offence or filing of the complaint against the accused. Before that could be done, on 4th November, 1980, the present petition was filed in this Court on 28th June, 1980, and an ad interim order of injunction was obtained against the respondent from filing any complaint in respect of the offence pursuant to the letter dated 12th May, 1980, against the petitioners. Therefore, admittedly, the said petition of complaint was filed during the period when the injunction order against the respondent, Registrar of Companies, West Bengal, was in force and operative as issued by this court in this petition which was filed on 28th June, 1980, and an ad interim injunction was passed on 2nd July, 1980. Therefore, the said petition of complaint was filed in violation of the injunction order and cognizance of the offence was taken by the magistrate during the period when the injunction was in force and operative against the respondent. Therefore, the said proceeding is bad and a nullity according to the well-known principle that anything done in violation of the injunction order is of no effect and non est. ■

Intellectual Property League: Importance of IP in Indian Premiere League

The cricketing world has witnessed something very extra ordinary with the coming up of the Indian Premier League. The IPL, as it is popularly known in the cricketing world, has been created by the Board of Control for Cricket in India. The popularity of the IPL has opened up a lot of business opportunities for the franchises that own the teams of the competition. This has caused the brand managers of the franchises to take notice of the importance of protecting their intellectual property and seek IP protection for both existing trademarks/products like team apparels, team symbols and those which are still under consideration but not made public. The IPL has become so popular and that too in its second season, makes it even more necessary for the franchises to protect their trademarks and other forms of IP. This article deals with the aspects of protecting IP in the IPL.

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IPL T20: New Buzz in Cricket

The cricketing world has witnessed something very extra ordinary with the coming up of the Indian Premier League. The IPL, as it is popularly known in the cricketing world, has been created by the Board of Control for Cricket in India (BCCI). The first season of the IPL commenced last year ended successfully with a lot of fanfare. This year, it is being played in the South Africa due to security concerns in India. Though, the IPL is in its second year, it is already worth US $ 2 billion and counting, says a UK-based brand valuation consultancy, and the IPL brand in itself is worth US $ 330 million. Many people compare the Indian Premiere League with the English Premier League which generates millions of dollars every year.

The popularity of the IPL has opened up a lot of business opportunities for the franchises which own the teams of the competition. This has caused the brand

Ambush marketing or guerrilla marketing…has been defined by *Edward Vassallo, Kristin Blemaster & Patricia Werner* as an attempt by a company to cash in on the goodwill or popularity of a particular event by creating an association between itself and the event without permission from the relevant organisation and without paying the fees to become an official sponsor.

managers of the franchises to take notice of the importance of protecting their intellectual property and seek intellectual property (IP) protection for both existing trademarks/products like team apparels, team symbols and those which are still under consideration but not made public.

It is for the above-mentioned reasons, why protecting IP plays such an important role. This article deals with the aspects of protecting IP in the IPL.

Intellectual Property: Trademarks should be Well-Protected

In order to be safe from all angles, franchises like *Deccan Chargers* has applied for trademarks to merchandise and manufacture numerous products. Besides obvious trademarks for clothing, footwear and sporting articles, it has filed applications for consumable products, e.g. meat, tobacco products, tea, coffee, mineral and aerated water, etc. The categories under which trademarks has been sought include Class 25 (dealing with clothing, footwear, etc.) and Class 28 (games, playthings, etc.). The controller general of patents, designs and trademarks' registry shows trademark applications from *Kolkata Knight Riders*, owned by the actor Shah Rukh Khan, for financial services, insurance, websites, telecom, entertainment and beauty care products. Similarly, *Mumbai Indians* have filed trademark applications for cosmetics, musical instruments and photographic and cinema equipment, among others.

Now if we look at the brand value of the eight teams of the IPL, the *Kolkata Knight Riders* has been ranked as the most valued with a brand value of USD 42.1 million, followed by *Mumbai Indians* (USD 41.6 million), *Rajasthan Royals* (USD 39.5 million), *Chennai Super Kings* (USD 39.4 million), *Delhi Daredevils* (USD 39.2 million), *Royal Challengers Bangalore* (USD 37.4 million), *Kings X1 Punjab* (USD 36.3 million) and *Hyderabad Deccan Chargers* (USD 34.8 million).

It is important for all trademarks of the franchises to be well protected. The brand value of the franchise would increase if its trademarks are well protected. Looking at the figures mentioned above, it becomes necessary for franchises to protect their intangible assets. Since protection of trademark is territorial in nature, franchises should register their trademarks in the domestic country and the countries where they expect their products to sell or where they are popular among the masses. This is done as there might be instances, where people may start using franchise's logos for products and services with which the franchise is no where associated. This creates confusion in the eyes of the common man.

The IPL has become very popular in its second season too, which makes it even more necessary for the franchises to protect their trademarks and other forms of IP. The protection of a successful brand these days is so much vital. If we look at De Beers, a renowned company which engage in the exploration of diamonds, its trademarks are known worldwide. It has created one of the strongest brand values the world has ever seen. Similarly the *James Bond* brand has created immense fervour worldwide with films being made on the 007 agent.

Another reason why it is necessary to protect the trademarks at this point of time is because of the fact that the IPL and its franchises have become popular almost overnight. This is not like the brands which have become popular as time has passed like Coca-Cola, Nike, etc. Therefore immediate protection is the need of the hour.

Ambush Marketing

One of the major problems which franchises and sponsors of the IPL have to fear is from *ambush* marketing, which is practiced by companies that attempt to associate themselves with an event with which they are neither sponsored nor obtained a license. This has a damaging effect on an official sponsor's ability to associate themselves with the games. It also raises doubts in the sponsors mind as to whether the sponsorship route is commercially in their best interest or not.

Ambush marketing or guerrilla marketing is a term used to describe a brand which connects itself to a particular event without paying any sponsorship fees to be an official sponsor. It has been defined by *Edward Vassallo, Kristin Blemaster & Patricia Werner* as an attempt by a company to cash in on the goodwill or popularity of a particular event by creating an association between itself and the event without permission from the relevant organisation and without paying the fees to become an official sponsor. The term *ambush* marketing is used to describe a kind of marketing activity which is relatively common and which has many perfectly legal manifestations. Nevertheless, it is a thorn in the side of those who license the rights to high profile events and to those who control such events and seek to extract the highest possible value from the sale of marketing rights.

Now a question would arise, what the *ambush* marketeers can do to cause trouble to sponsors. They can:

- Use franchise trademarks along with theirs in the newspapers to increase their own brand value.
- Use pictures of players who play in the IPL but who are not associated with the Ambush Marketeer.
- Advertise their own brands in the vicinity of the grounds where the matches are being played.
- Distribute free branded merchandise, free ticket giveaways, or, unofficial programmes.

An official sponsor of an event, such as the Olympic Games, will pay a considerable sum of money by way of sponsorship fees. The success of these events depends upon the huge sums raised from sponsorship, ticketing and official merchandising. These payments fund the event. So when an official sponsor's competitor *ambush* markets the event, the value of being an official sponsor is considerably diminished. The result of an event being ambush marketed is that official sponsors are reluctant to enter into future sponsorship deals. The knock on effect is that future events fail to obtain the revenues generated by way of sponsorship. The result is that the reputation and prestige of something such as the Olympic brand can be irredeemably damaged.

Ambush marketing involves a kind of drafting on the publicity and public interest in high profile events. These have most typically been major sporting events because they tend to have a high and widely dispersed television viewership, thus offering a very broad audience. With these events, sponsorship rights are sold at top-dollar to major corporations who seek to benefit from the high level of media coverage and public interest in the sporting or other activities. Companies without the means to compete for sponsorship rights or those which have competed unsuccessfully for the rights have, over time, developed often quite creative ways to draw attention to their own products or services.

There have been very high profile instances in sports like Olympics, where official sponsors have witnessed *ambush* marketing. A few instances can be cited, one being from the Winter Olympics of 1994 at Lillehammer, Norway: where American Express marketed itself using the slogan, *If you are travelling to Lillehammer, you will need a passport, but you don't need a VISA*, thereby undermining VISA which was the official sponsor of the Winter Olympic Games. Another instance may be noted in the Atlanta Olympic games of 1996, where Nike that had not sponsored the Olympics, advertised on every billboard in the vicinity of the Olympic Stadium and Park in order to associate itself with the festivities. Eventually, Nike won more brand recognition than Reebok which was the official sponsor. At the same Olympics, the well-known British sprinter Linford Christie appeared at a press conference wearing blue contact lenses emblazoned with a white Puma logo.

Other marketing practices labeled as *ambush* may include companies who are not official sponsors

Cybersquatting is a huge problem in the internet today. It is the most crucial type of domain dispute prevalent around the world. It is a practice where individuals buy domain names reflecting the names of existing companies, with an intention to sell the names back to businesses to attain profit when they want to set up their own websites.

In the IT age, domain names play a very important role. They are the virtual addresses of companies, individuals, etc. These addresses enable users to locate websites on the net in an easy manner. Domain names are often termed as 'trademarks in cyberspace'. The Indian courts have affirmed the same degree of protection to domain names as to trademarks. The Indian courts are of the view that domain names should be protected under the laws of passing off since they are not limited territorially and as a result may not be adequately protected by national laws such as the Trademarks Act.

or suppliers selling food or drinks near the venue for the event. By doing so, they create a possible impression that they are somehow associated with the event. This type of activity may be quite irritating to the sponsor who has paid top-dollar for exclusive rights to sell their food or drink inside the venue. Non-sponsors might acquire advertising space on billboards, in shop windows or in other locations in proximity to the venue. They may also legally acquire advertising space during broadcasts of the event. Hot air balloons bearing logos or airplanes trailing banners may fly over open-air stadiums carrying commercial messages.

Ambush Marketing activities have also been seen in the cricketing world. The famous case of *ICC Development International v. Arvee Enterprises & Anr 2003* discusses as to what *ambush* marketing is all about. In this case, it was argued by the plaintiffs that the defendant Phillips were misrepresenting their association with the plaintiff and the World Cup, by advertising in the media including newspapers, television, internet and magazines, and by using said-offending slogans with the intention to unlawfully derive commercial benefit of association with the plaintiff and the World Cup thereby, seeking to piggyback on the reputation of the plaintiff. It was further pleaded by the Plaintiffs (ICC) that the defendant's actions were *mala fide* and dishonest, guided by the sole intent of damaging the reputation of the plaintiff and the sponsors of the Event (which was the World Cup 2003), who were engaged in the same line of business as the defendants were and had been duly authorised by the plaintiff to associate themselves with the World Cup to offer such schemes. It was pleaded that the ticket conditions of the Event prohibited such distribution of tickets, unless authorised by the plaintiff and that the defendants had resorted to *ambush* marketing to take advantage of the World Cup without investing a single rupee towards its success. The plaintiff also contended that the defendants were guilty of passing off indicia, mark and identity of the plaintiff and the World Cup thereby causing irreparable harm and injury to them. It was also pleaded that defendants were also depriving the sponsors of the Event from enjoying the exclusivity of rights granted to them and preventing the plaintiff from performing its contractual obligation. On these averments, the plaintiff had also sought an interim injunction against the defendants.

The judgment, though, was not in favour of the Plaintiffs. The court held:

"So far as plea of "ambush marketing" is concerned, the phrase "ambush marketing" is used by marketing executives only. It is different from passing off. In a passing off action, there is an element of overt or covert deceit whereas the ambush marketing is opportunistic commercial exploitation of an event. The ambush marketeer does not seek to suggest any connection with the event but gives his own brand or other insignia, a larger exposure to the people, attracted to the event, without any authorization of the event organizer. The organizers call it ambush marketing by the defendant, for promoting his brand or product without incurring financial obligation like the official sponsors. The ambush marketing may be inside the stadium like clash between official and personal endorsements or outside the stadium. However, in such cases, there is no deception, therefore, the defendants' conduct cannot be categorised as wrongful or against public interest. It is now well settled that commercial advertisement is form of "commercial speech". It is a part of the freedom of speech and expression guaranteed under Article 19(1)(a). The 'World Cup' or the Event is not protected by any International treaty or domestic law, unlike the word "Olympics" and its logo, which is protected under the Emblems and Names {Prevention of Improper Use} Act, 1950. It is for Legislature to determine how far to curtail legitimate fair competition and freedom of speech. From the material on record, the advertising campaign offering tickets of the Event as prizes without using the logo or the mark of the plaintiff cannot be held to be unlawful."

A decisive factor is whether *ambush* marketing activities signify a serious breach of rights. Statistics show that the number of rights infringements has increased consistently over the last ten years. However, while the number of major cases is falling, smaller cases are becoming more and more common.

Nevertheless, our biggest concern is that the rights of our partners are appropriately protected.

How are the Exclusive Rights of Official Sponsors to be Preserved?

Ambush marketing signifies a serious breach of rights; therefore it is imperative that the rights of the sponsors and franchises are well protected. The most important measures to protect sponsors and franchises from *ambush* marketing are:

- To educate the security and customs authorities in the area where the games are being played;
- To conduct regular information seminars for the public and the local; companies.
- To monitor through the media and organize patrols in every venue.
- To prevent the use of fans as walking advertisements of brands which are not associated with the game

The protection afforded to official sponsors of the IPL 2010 does appear to be far reaching. However, *ambush* marketing by its very nature is often creative, innovative and difficult to police and we are sure to see some very cunning non-official marketing campaigns surrounding the IPL 2010.

IPL is clearly not the only organisation facing the problem of counterfeit products. Generally speaking, use of protected marks is being controlled more and more tightly all around the world due to the socio-economic damage that breaches can cause, whether in sport or other fields. The fashion industry, for example, is especially plagued by forgers and parasites. Governments and national authorities have become very sensitive to the problem, and public awareness is also increasing. France and South Africa are among the first nations to take explicit action by passing anti-*ambush* marketing laws to clamp down on these illicit activities. This will help IPL in the host nation of the 2010 IPL. In South Africa, Article 9 Paragraph d of the Trade Practice Act 1976 and Article 15A of the Merchandise Marks Act Number 17 of 1941 outlaw the misuse of registered marks and unfair competition.

In India there is almost no protection against indirect *ambush* marketing. However, for direct *ambush* marketing there are several laws like the Trade Practices Act, the Trademarks Act, the Copyright Act, the Counterfeit Goods Act and the Merchandise Marks Act, etc.

Given how tight the sponsorship and *ambush*-marketing rules are in the IPL, it's a wonder teams have not trademarked their colour palette preventing any other team, i.e. today any other team and tomorrow any other product, from using their specific combinations.

Intellectual Property: The Internet

1.Cybersquatting

In the IT age, domain names play a very important role. They are the virtual addresses of companies, individuals, etc. These addresses enable users to locate websites on the net in an easy manner. Domain names are often termed as 'trademarks in cyberspace'. The Indian courts have affirmed the same degree of protection to domain names as to trademarks. The Indian courts are of the view that domain names should be protected under the laws of passing off since they are not limited territorially and as a result may not be adequately protected by national laws such as the Trademarks Act.

It is a general practice followed by companies to register all possible domain extensions, be it a top level domain extension like *.com* or a country level domain like *.in*. Franchises like *Kolkata Knight Riders* and *Deccan Chargers* have registered their domain names under various top level domains and country level domains, though the *.in* and the *.co.in* of *Deccan Chargers* are already with cyber-squatters. This may pose a serious threat to the franchise in the future. The definition of 'cybersquatting' can be best summarised in *Manish Vij v. Indra Chugh*, where the court held:

"…an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium".

Protection of a company's online identity, including its domain name and variants, is a critical component of any business strategy in today's online world. A strong defensive program to protect domain names must form an integral part of every business entity which has an internet presence. In other words, domain names have become the virtual real estate of any business entity. In order to protect these virtual assets requires a strong foundation in technical and legal knowledge and also a strong involvement of both technical and legal practitioners.

Protection of domains has become even more important in the last year, as the domain name market has undergone explosive growth. "Domainers" are now profiled in the Wall Street Journal and Forbes. Domains are a hot commodity and, as a result, protection of an online identity is more important and more difficult than ever. The renaissance of the domain name market is driven by "contextual based advertising" programs that create a simple way for domainers to "monetize" their investments. These advertising programs, such as Google's "Ad Sense" program, provide domain owners a source of revenue for their domains. By using their domains to generate ad revenue, domain owners can obtain a meaningful return on what can be a modest investment in cyberspace real estate. Even purely passive sites that contain nothing more than contextual ads are estimated to generate $1 billion in advertising revenues in 2007.

Cybersquatters and typosquatters get a share of this revenue by stealing traffic and misdirecting visitors destined for legitimate websites. By using domain names that contain others' trademarks or misspellings thereof, cybersquatters can capture Internet surfers who are destined for a legitimate site.

The two important cases which can be considered pivotal in the development of cybersquatting case law decisions in the US are *Intermatic v. Toeppen* where the court gave a decision in the favour of the plaintiff which owned a federal trademark registration for Intermatic. The Court observed that the respondent, Mr Toeppen's conduct caused trademark dilution since the registration of the domain name intermatic.com lessened the capacity of Intermatic to identify and distinguish its goods and services on the internet. Another reason given by the court was that the use of Intermatic name on the respondent's web page diluted the value of the mark. The second case was *Panavision v. Toeppen*, where again the court ruled in favour of the plaintiff. In this case, it was Panavision which had filed a case against Toeppen. The respondent Toeppen had registered domain names with names *panavision.com* and *panaflex.com*.

Then there is a case of *Yahoo Inc. V. Aakash Arora & Anr.*, where the defendant launched a website nearly identical to the plaintiff's renowned website and also provided similar services. Here the court ruled in favour of trademark rights of US-based Yahoo Inc. (the Plaintiff) and against the defendant that had registered itself as *YahooIndia.com*. The Court observed:

"…it was an effort to trade on the fame of yahoo's trademark. A domain name registrant does not obtain any legal right to use that particular domain name simply because he has registered the domain name, he could still be liable for trademark infringement."

Under WIPO, cybersquating is when:

- the domain is identical or misleadingly similar to trade or service mark in which the complainant has a rights;
- the holder of the domain name has no right or legitimate interest in respect of the domain name; and

Franchises and IPL should monitor popular video-sharing websites and if in the event any incident of copyright infringement of uploading match videos occurs, a suit should be filed against the website itself. This strategy against video-sharing websites like YouTube has been in practice for some years. As a matter of fact, in 2007, the English Premier League (EPL) or the Barclays Premier League sued Google and YouTube for facilitating the illegal download of matches and related videos EPL.

- the domain name has been registered and is used in bad faith.

Cybersquatting is a huge problem in the internet today. It is the most crucial type of domain dispute prevalent around the world. It is a practice where individuals buy domain names reflecting the names of existing companies, with an intention to sell the names back to businesses to attain profit when they want to set up their own websites.

2. Fan Sites

Another problem which the franchises and the IPL might face is the growing number of fan sites of the various teams. Fan Clubs like <*http://www.thecricfanclub.com/IPL-2009*> offer a platform for cricketing buffs to contribute their thoughts in form of blogs, votes, creating polls, inviting other cricket buffs to join and also sharing photos and videos. These fan sites offer an insight as to what fans are thinking about their favourite players and teams. Franchises should keep an eye on the activities which take place in the fan sites. Fan behaviour is crucial to the brand and there can be instances where some content posted on the website of such fan clubs might be detrimental to the brand. Therefore, it is imperative for the fan sites to be monitored on a regular basis.

Intellectual Property: Copyright

Though trademark protection plays a very important role in any sport, but this is not it. Copyright protection is also necessary in many instances. Misuse of artistic design which include the logo of the franchise, misuse of team jerseys in ambush marketing and surrogate advertising might undermine the brand of the franchise. Team merchandise should also be duly protected through registration since not protecting them would lead to a lot of fake merchandize being floated in the market, which may not be of good quality. This would eventually cause a lot of loss to the franchise in terms of revenue and, more importantly, it would undermine its image in the eyes of the public.

Illegal Web-Casting and Downloading

Care should be taken that visuals of matches being played on the ground are not being uploaded on websites. This would lead to loss of revenue to the official broadcaster of the matches, as people would then watch matches by downloading them from video-sharing websites like *www.youtube.com*. Franchises and IPL should monitor popular video-sharing websites and if in the event any incident of copyright infringement of uploading match videos occurs, a suit should be filed against the website itself. This strategy against video-sharing websites like YouTube has been in practice for some years. As a matter of fact, in 2007, the English Premier League (EPL) or the Barclays Premier League sued Google and YouTube for facilitating the illegal download of matches and related videos EPL. The EPL is arguably the world's leading national football soccer competition. It attracts many of the world's best players and its matches are broadcast in 204 countries to an estimated audience of 2.59 billion. The EPL filed a class action against YouTube and its owner Google inviting other companies which had faced similar problems against YouTube. The basic idea behind filing a class action is to "avoid the repetitious hearing of similar cases, and to make it possible for individuals suffering relatively small yet real disadvantage to obtain legal redress." EPL had gone after YouTube the previous year (2006) and forced it to shut down thousands of user accounts for uploading goal videos.

Brands Infringement

The *Arsenal Football Club PLC v. Reed (2003)* RPC 2 decision is a welcome news for all trademark owners, in particular those involved in the fields of sports

The IPL is the new buzz word among the cricket lovers. It has brought a lot of fame, glory and reward not only to the players involved, but also to the IPL and the franchises. The IPL itself has earned immense reputation and revenue from this event. No doubt, the players in the team are an important asset for a team's success or failure, but they are not the only asset. There is another asset which may not be visible, but it holds a lot of value and that is intellectual property/ intangible asset. It is high time that organizers including franchises of this great spectacular event, which has brought in so much of talent to the cricketing field, take note of the importance of intellectual property and strive hard to protect it from being exploited.

and entertainment merchandising. The decision has defined a new test for trademark infringement in the UK and it appears that the European Court of Justice (ECJ) has moved to harmonize the boundary of trademark infringement to the benefit of trademark owners in most jurisdictions. The ECJ concluded:

"Once it has been found that, in the present case, the use of the sign in question by the third party is liable to affect the guarantee of origin of the goods and that the trademark proprietor must be able to prevent this, it is immaterial that in the context of that use the sign is perceived as badge of support or loyalty or affiliation to the proprietor of the mark."

The Court of Appeal added that the relevant consideration was not whether the use was "trademark use" but whether the use was likely to jeopardize the guarantee of origin function of the mark. In this case, though the trademark upon the goods were considered to be badges of allegiance, it was found that all the evidence suggested that the trademarks also designated origin of the goods to a substantial number of consumers.

Practical Advice for Trademark Owners

Trademark owners should consider whether additional protection through design right or copyright would be applicable to their marks. Brand owners should use their registered trademarks on all labels and tags which are attached to goods and on the packaging in which goods are sold in order to demonstrate that the marks are being used as indicators of origin. Marks may be open to attack, if they are not sufficiently distinctive or if they become generic. For example, the Rugby Football Union recently lost its classic rose trademark in a case against Cotton Traders Limited on the ground that the rose mark was not perceived by members of the public as denoting the manufacturer of the shirt to which it was applied. Owners of trademarks with low distinctiveness, such as shapes, colours and marks that are made up of purely descriptive elements should seek to build the distinctiveness of such marks through enforcement and marketing measures that are tailored to address any perceived weakness in the marks. Owners of trademarks might rely on the fact that an act, left unchecked, might damage the validity of their mark as evidence of infringement.

Corporate Sponsorship

The multimillion dollar IPL with its immense growing popularity is also attracting huge corporate sponsorship. As the IPL and club culture is catching up fast in India, the franchisees are investing heavily on building fan clubs. Recent events of Virendra Sehwag, leading player of the IPL team *Delhi Daredevils*, joining the RIL's corporate team *Reliance 1*, have raised certain issues relating to loyalty towards their sponsors. Parthiv Patel who plays for *Chennai SuperKings* (CSK) in the IPL too represents the *Reliance 1* team. Frequent change of teams by players confuses fans and is detrimental to the brand value of the franchisees, corporate and players. But it is surprising that many IPL franchisees seemed not to care, given the money they have pumped in to pick teams and players and more importantly the value they have already built for the business.

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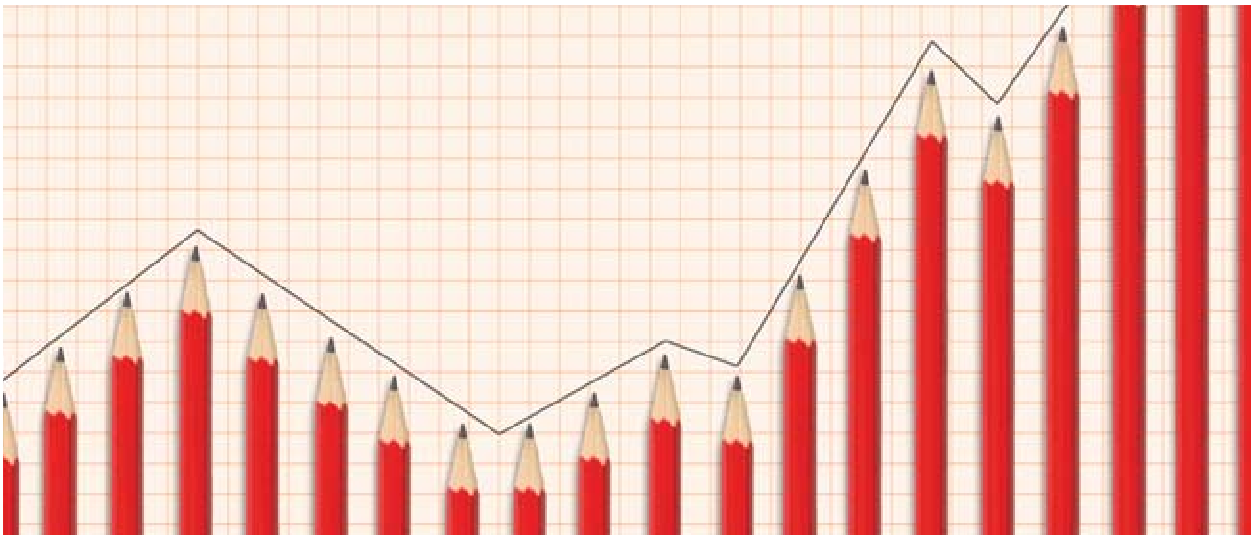
Financial Stability and Development Council



As a part of the wall-fencing against any possible financial crisis in the country, the Union Finance Minister, during his recent budget speech, proposed the setting up of a high-level panel for maintaining the financial stability. The panel, termed as the Financial Stability Development Council (FSDC), is intended to monitor macro-prudential supervision of the economy including the functioning of large financial conglomerates, and address inter-regulatory coordination issues. The article provides an overview of the concept.

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Introduction

As a part of the wall-fencing against any possible financial crisis in the country, the Union Finance Minister, during his recent budget speech, proposed the setting up of a high-level panel for maintaining the financial stability. The panel, termed as the Financial Stability Development Council (FSDC), is intended to monitor macro-prudential supervision of the economy including the functioning of large financial conglomerates, and address inter-regulatory coordination issues.

The government's proposal to set up the FSDC has received mixed reactions from the industry, as there were apprehensions about creating a super regulatory agency over and above the current regulatory institutions for the Indian financial sector.

Against this backdrop, the article discusses the concept of financial stability assessment by tracing its genesis to the roots of the global financial crisis. It reviews the international developments that lead to the relook of the financial stability assessment frameworks across nations. After

In the United States, the Congress has constituted a Financial Stability Oversight Board (FSOB) under the Emergency Economic Stabilization Act of 2008 (EESA) to help oversee the Troubled Assets Relief Program (TARP) and other emergency authorities and facilities granted to the Secretary of the Treasury under the EESA to help restore liquidity and stability to the US financial system post global financial crisis. The Oversight Board meets monthly to consider, review and discuss the significant programmes, policies and financial commitments of the TARP to help restore financial stability and achieve the other important objectives of the EESA.

providing the current scenario in international and Indian context, it evaluates the budget proposal to set up the FSDC.

Global Financial Crisis: Exposure of Information Gaps

The global financial crisis exposed especially the western nations to systemic risk and threatened their financial stability.

Systemic risk is the risk of disruption to financial services: (i) caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for the real economy. **Financial Stability**, in its precise terms, is the ability of the financial system of the country to withstand the systemic risk, as and when it materialises.

Given the experience of the extent of damage as a result of systemic risk during the previous crises, internationally, most of the countries have developed financial soundness indicators, e.g. the capital flows, GDP growth, inflation rate, financial ratios of institutions, etc., which are used to gauge the systemic risk. The recent global financial crisis, however, demonstrated both the difficulty of timely capturing, and the importance of certain other financial soundness indicators like the leverage and the extent of risk taking, within the financial system.

The crisis also exposed, internationally, significant lack of information as well as data gaps on key financial-sector vulnerabilities relevant for financial stability analysis. Some of these gaps affected the dynamics of the crisis, as markets and policy makers were caught unprepared by events in areas poorly covered by existing information sources.

Gaps were also found to be existing in relation to key information inputs for financial stability assessment, such as those relating to exposures taken through complex instruments and off-balance sheet entities, and from the cross-border linkages of financial institutions.

Financial Stability Board

During the subsequent international developments under the aegis of the renamed Financial Stability Board (FSB), erstwhile Financial Stability Forum of the International Monetary Fund, it was felt globally that nations should strive to develop the ability to integrate financial sector linkages into the macro-economic models for better assessment of the financial stability.

FSB recommendations called the nations to improve the communication of official statistics and advance the interaction among the academic, policy and statistical communities, for timely data compilations and releases, which will be useful in monitoring systemic events in a timely manner.

This necessitates action and cooperation from individual institutions, supervisors, industry groups, central banks, statistical agencies, and international institutions to generate, store and analyse the improved data to construct many of these indicators and to make sure they are sufficiently timely and consistent.

Considering the significant work involved in the process, the FSB urges the national authorities to set up and operate frameworks for assessing the systemic importance of financial institutions, markets, and instruments on an ongoing basis.

Financial Stability Assessment Frameworks

In order to assist the nations in developing such frameworks, the FSB had issued a detailed guidance in October 2009, which outlined the conceptual and analytical approaches for the financial stability assessment. The key component of the financial stability assessment framework is the setting up of assessment agencies together with appropriate independence, accountability, resources, roles and responsibilities.

The agencies will conduct assessment of systemic importance covering the entire financial system. This would require the agencies to have means to obtain and analyse information on both regulated and unregulated institutions, markets, and instruments, and make use of the available information, including regulatory reporting and supervisory insights.

Once the information is obtained by the assessment agencies, they are required to conduct analysis using various qualitative and quantitative tools. The results of assessments are also required to be conveyed to relevant domestic regulatory agencies, central bank, Ministry of Finance and deposit insurance and investment/insurance protection agencies to allow these agencies to factor the assessments into their operations consistent with their responsibilities.

In addition to domestic agencies, the information on the assessment is also required to be shared with overseas agencies in respect of cross-border institutions, markets and instruments, insofar as such information may be relevant for the authorities to exercise effective oversight of the entity for which they are responsible. The agencies are also required to publish its assessment methodologies and frameworks applying while taking appropriate caution in publishing the names of specific institutions, markets and instruments to avoid moral hazard.

International Experience

In the United States, the Congress has constituted a Financial Stability Oversight Board (FSOB) under the Emergency Economic Stabilization Act of 2008 (EESA) to help oversee the Troubled Assets Relief Program (TARP) and other emergency authorities and facilities granted to the Secretary of the Treasury under the EESA to help restore liquidity and stability to the US financial system after the global financial crisis. The FSOB meets monthly to consider, review and discuss the significant programs, policies and financial commitments of the TARP to help restore financial stability and achieve the other important objectives of the EESA. Thus, the FSOB is more focused on the TARP-related issues and is yet to evolve a full-fledged financial stability assessment framework as per the guidance issued by the FSB. However, the Senate and the Obama administration in the US are nearing agreement on forming a council of regulators, led by the Treasury secretary, to identify systemic risk to the nation's financial system.

In November 2009, the Financial Services Authority (FSA), UK, came up with an Amendment Bill 2009, to have a council for financial stability consisting of the Chancellor of the Exchequer, the Chair of the FSA and the Governor of the Bank of England. The Council would meet up to keep under review matters affecting the stability of the UK financial system and coordinate any action taken, or, to be taken by the relevant authorities for the purpose of protecting or enhancing the stability of that system.

The European Central Bank has, in February 2010, filled the position for its newly-created Directorate General for Financial Stability (DGFS), a new office that will monitor and assess risks in the financial system. The new office will be responsible for monitoring, identification and assessment of systemic risks in the euro area and the EU financial system, as well as the support of the future European Systemic Risk Board. The initial mandate given to the DGFS echoes the recommendations of FSB for financial stability assessment, but the actual implementation evaluation could be done only in future.

Indian Scenario and Union Budget 2010 Proposal for FSDC

In India, like in Canada, the Reserve Bank of India (RBI) as the Central Banking authority has assumed the responsibility of financial stability monitoring. It has conducted its recent financial stability assessment and released its report in March 2009. One of the tests undertaken by the RBI in this context is to assess how the country's financial institutions would handle shocks. This is done through "stress tests" that show whether the individual institutions and the banking system would remain solvent in the face of interest rate risks or changes in credit quality. Through this assessment, the RBI concluded in March 2009 that

As per the recommendations, the key mandate to the FSDC would involve achieving inter-regulatory exchange of information about the systemic financial institutions in the context of financial stability. However, it has to be understood and appreciated more from the context of financial stability assessment and may not be as an apex agency for regulatory/supervisory coordination. The FSDC also has the objective of financial development in its overall mandate, through which it would achieve financial inclusion and literacy leading to social stability in short run and financial stability in the long run.

India's financial sector is generally sound, resilient and fairly liquid.

However, in order to provide a more focused attention to the financial stability assessment as per the recommendations outlined in the FSB guidance, the Union Budget proposals contained the intention to set up an FSDC in the country.

As per the recommendations, the key mandate to the FSDC would involve achieving inter-regulatory exchange of information about the systemic financial institutions in the context of financial stability. However, it has to be understood and appreciated more from the context of financial stability assessment and may not be as an apex agency for regulatory/supervisory co-ordination.

The apprehensions about the supremacy of the regulators with the advent of the FSDC are, therefore, not justified, since the move towards changes in the regulatory structure is an issue that has to be gradual evolution rather than a mere budget proposal. But where the budget steps in and initiates a new dialogue is to make India's commitment to international community clear in regard to implementation of the FSB recommendations for a focused financial stability assessment framework. This is required because of the recently-acquired status of India as a member of the G-20 nations contributing to the dialogue of shaping up future global financial regulation.

In fact, it must be appreciated that the Indian proposal for stability assessment has taken the FSB mandate a step further. The proposals recognise that stability assessment of the financial sector should also address broader development aspects in the socio-economic context, which affect social stability and have an indirect bearing on financial stability. They, therefore, lay down emphasis on financial inclusion, which is one of the major determinants of economic growth. In order to achieve the objective of growth with equity, it is imperative that infrastructure, to raise the levels of financial literacy, is developed in tandem with financial inclusion, as this would facilitate and enhance credit absorptive capacity. Accordingly, the FSDC also has the objective of financial development in its overall mandate, through which it would achieve financial inclusion and literacy leading to social stability in short run and financial stability in the long run.

Conclusion

The Union Budget proposal is a starting point for a long-drawn process to move towards a FSB compliant nation for a focused macro-level financial stability assessment in order to face the future systemic shocks in a more resilient manner. This requires lot of debates and input from various stakeholders involved, as this is the new initiative hitherto not discussed in the financial services industry in the country.

Seen from this perspective, it's time for the best of the minds in the industry to contribute to the framework in the interest of the nation's financial stability.

Private Equity- An Overview

Private equity (PE) is the money invested in companies that are not publicly traded on a stock exchange or invested as part of the buyouts of publicly-traded companies in order to make them private companies. With Indian economy recording about 6-7 per cent GDP growth, a buoyant capital market, with SENSEX hovering at around 17,000-mark, improvements in industrial growth and rising exports, India has become a leading destination for PE investors. This article provides an overview of PE.

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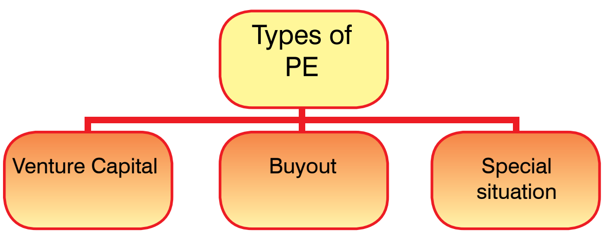
Meaning of Private Equity (PE)

Private equity refers to the manner of raising funds largely by investment in the company's securities, through a negotiated process. Investments are made in private markets as opposed to public markets; such securities usually do not get quoted on any stock market. Private equity is the money invested in companies that are not publicly-traded on a stock exchange or invested as part of the buyouts of publicly-traded companies in order to make them private companies.

Most common investment strategies in private equity include leveraged buyouts (LBO), venture capital, growth capital, distressed investments and mezzanine capital. Many a time, investments are short in nature.

Leveraged buyouts involve a financial sponsor agreeing to an acquisition without itself committing all the capital required for the acquisition. To do this, the financial sponsor will raise acquisition debt which ultimately looks to the cash flows of the acquisition target to make interest and principal payments. Acquisition debt in LBOs is often non-recourse to the financial sponsor and has no claim on other investment managed by the financial sponsor. Therefore, an LBO transaction's financial structure is particularly attractive to a fund's limited partners, allowing them the benefits of leverage but greatly limiting the degree of recourse of that leverage. This kind of financing-structure leverage benefits LBOs' financial sponsor in two ways: (1) investor itself only needs to provide a fraction of the capital for the acquisition, and (2) returns to the investor will be enhanced, as long as returns on assets exceed the cost of debt. As a percentage of the purchase price for an LBO target, the amount of debt used to finance a transaction varies according to the financial condition and history of the acquisition target, market conditions, the willingness of lenders to extend credit (both to the LBOs' financial sponsors and the company to be acquired) as well as the interest costs and the ability of the company to cover those costs. Historically, the debt portion of LBOs will range from 60 per cent to 90 per cent of the purchase price, although during certain periods the debt ratio can be higher or lower than the historical averages.

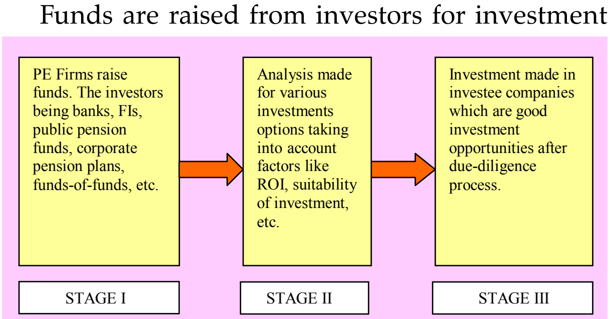
Manner of Raising Private Equity



- **Venture capital** refers to early-stage financing and expanding smaller companies.
- **Buyouts** refer to later-stage financing where a significant stake or majority control is taken in a mature company.
- **Special situation** refers to a onetime investment made to unlock value of a company due to changing industry trends.

Mode of Working of PE Firms

Funds are raised from investors for investment



on long-term basis in potentially high-growth private companies. Majority of investment in PE funds comes from institutional investors. Almost 40 per cent of all commitments made globally come from banks, financial institutions and public pension funds. Other prominent investment groups include insurance companies and corporate pension plans and fund-of-funds, i.e. PE funds investing in other PE funds.

PE Process

PE firms undertake due-diligence of the investee company and delve on areas of quality of management, profitability trends, shareholding pattern, and business model of the company. If the PE firm can't find good investment opportunities, they do not commit the funds.

Criteria for Investment of PE Funds in Investee Companies

- Superior business
- Profitability trends of investee companies
- Entry costs
- Quality of management
- Corporate-governance norms
- Exit from investments made

Return on Investment for PE Firms

- IPO and consequent listing of shares
- Sale or merger of the company under control
- Recapitalisation i.e. issuing bonds and buying stock, making company's capital structure stable and enhancing its stock price

Whether Investment by PE Firm is Suitable for the Company?

- If the board comprises mainly family members, being a family-run business, it would benefit from induction of professionals and independent members, since independent and professional management is always desirable against family run business.
- Selecting right type of PE is imperative for smooth business functioning, investment by PE would lead to dilution in the equity stake of the entrepreneurs considering PE option, which entrepreneurs need to bear in mind.
- PE firms do not get involved in day-to-day management, they generally ask for place on board of directors, whereby they can influence strategic direction of the company.
- Moreover, PEs prefer companies whose entrepreneurs have a global vision, who believe

in change, who have risk-taking ability and who wish to operate on larger scale creating better value for shareholders by means of high growth.

- Also, good corporate-governance practices, transparency in financial disclosures, internal control and fair-accounting practices attract PE investors.
- A company must get the terms recorded in a shareholder's agreement, which is a legal document binding the shareholders. Also, the entrepreneur must engage an external consultant for the purpose of valuation. Legal advice from expert lawyers on drafting shareholder agreement is desirable.

Why PE is Not Considered Favourable by Promoters?

Some reasons for reluctance on the part of promoters could be:

- Fear of losing control over the company
- Promoters do not want outsiders to interfere in their business
- Losing confidential internal information
- Increased financial clout of PE would lead to greater answerability on issues of corporate governance and greater interest of investors in day-to-day operations of the company

Advantages of PE for Investee Companies

- Bring required expertise
- PE firms seek to increase company's value to its owners
- Enhances brand image of the company
- Provide higher valuations in normal stock market conditions
- Provide a stable base for strategic decision-making
- Transparency and good corporate-governance practices

Risks Involved for PE Investors

They require substantial entry costs, as most PE firms require substantial initial investment and further investment too in first few years for investing in the investee companies. Moreover, investment may be made in certain illiquid investments which earn a premium over the traditional securities, viz. shares and bonds. The investments could be in limited partnership interests where investment gets locked-up for as long as a decade and distributions are made only when the investments are converted into cash, i.e. when PE firms exit investee companies by selling the stake through means like IPO, buy-

Private equity first emerged in the early 1980s, with Kohlberg, Kravis and Roberts (KKR) opening the first, and still among the largest LBO firms. The logic for LBO firms, at least initially, was: Publicly-traded companies are forced to focus on extremely short-term (often quarterly or monthly) results, thus making decisions which may not be in line with their long-term goals. Going 'private' or delisting from the exchanges allows them to focus on these goals. The other side of private equity investment comes from the world of venture capital, where small companies that need to grow but are cash-strapped and too small to list on exchanges approach or are approached by VC firms to take a stake in the company, as well as hand-hold them onto a growth path.

back by promoters, etc. Therefore, investors of PE funds need to weigh various pros and cons before committing funds for investment by PE funds.

PE Firms in India

In India, private equity is reasonably young, dating back to the mid-1990s. The environment heated up in the end of the 1990s with the IT boom, with companies investing (and getting their fingers burnt) with their investments. In recent years, there has been a resurgence of these firms with India's stock markets booming and sectors like life sciences, infrastructure and most recently, real estate being growth stories for the future.

- Recently PE major Blackstone group picked up 26 per cent stake in the MTAR Technologies for about US$ 65 million, one of the first PE deals in nuclear science space.
- Also, several movie distribution companies were on look out for investment from PE funds, following the Hollywood studio model where a firm owns the entire value chain of film making.
- In the finance and accounting sector, some worth-noting deals have been made by Philips BPO and Cap Gemini.

Some Private Equity Deals in India During 2007

Purchaser	**Investee**	**Deal size(million $)**
Abu Dhabi Investment Authority	*IL & FS*	*100.0*
Warburg Pincus	*Tire Company Ltd.*	*150.0*
Blackstone Group	*Intelenet Global Services Pvt. Ltd.*	*200.0*
Actis	*Punjab Tractors*	*60.0*
ICICI Venture	*Infomedia*	*2.52*

PE Firms' Situation in India

Closely-held family businesses with a view to arrive at more realistic valuations are increasingly roping in PE firms as strategic partners and, thus, volume of PE-deals in mid-sized businesses is rising sharply. According to a research firm, Four-S Services, in the first two months of 2008, 84 PE-deals of about US$ 4.1 billion have been inked.

According to Four-S Services, India will remain a popular PE destination among the BRIC countries.

About 33 per cent of PE-money went into real-estate during period January to April, 2008. This was followed by power-sector accounting for 17 per cent investment. According to a global firm, Dealogic India is the second biggest destination in Asia after Japan in 2008 for PE investments.

Performance of Companies Backed by PE Firms

The role of PEs in the context of being just financier and stakeholder to an expertise creator, helping the investee companies in forging strategic alliances, assisting in corporate governance and providing management advice plays a vital role in the impact that such PE firms have on the investee company's top-line and bottom-line figures.

According to a Four-S Services study, a positive impact on sales growth of PE-backed companies has been found compared to non-PE backed companies. Between 2002-03 and 2006-07, PE-backed companies witnessed sales growth of 27.5 per cent (4-year CAGR) compared to 18.6 per cent growth for non-PE backed firms.

Exit Routes Considered by PE Firms

Exit Routes	**Meaning**
1. Listing of shares	*This is a preferred route for exit, as it enables free transfer of securities in the open market.*
2. Sale to strategic investors	*This involves sale to any acquirer interested in taking over management of the company.*
3. Auction of shares	*PE investor may sell their stake in open market transaction by way of auction*
4. Merger with listed company	*Merger of any investee company with other listed company, enabling free transfer of shares.*
5. Management Buy-out	*This is when the managers of a company purchase controlling interest in the company*
6. Buy Back by promoters	*Promoters purchase holding of outside investors through buy-back process complying with provisions of Companies Act, 1956.*

PE investors do not expect return in the form of dividends but in terms of share price appreciation. This return is realised at the time of exit. PE investors would favour making investment where a clear exit plan has been formulated.

Conclusion

Investment made by PE firms bring in essential capital for private and small companies who may have potential to expand and who may be doing business in the sun-rise sectors, viz. nuclear science, nanotechnology, incubator business, business media, etc. PE firms have tremendous financial clout and on the strength of their huge strategic investment in companies, they ensure greater transparency in the company's working, compliance procedures and above all uphold Corporate Governance principles while doing sound business. For a capital-scarce country like India which has tremendous potential to join the ranks of global super-powers, PE firms shall act as catalysts to fund the infrastructure and economic development plans of the country. ■

Role of Branding in Business Value Proposition

Brands play an evolving socio-cultural role in business-value creation. Where once a company brand was the focus of the relationship between customer and consumer, it is now beginning to represent not just a particular end product but the business itself. Branded products speak of the personality of a product and, therefore, of the personality and lifestyle of consumers. Brand is a powerful differentiator in a highly competitive market place. It provides a company power to deflect competitive mores. It certainly gives bargaining power to the company with its intermediaries. A strong brand means a higher market share, a high ROI (return on investment), and hence, a higher share-holder value. In this article, the author explores the concept of branding and its process and impact, while presenting the parameters/guidelines of branding.

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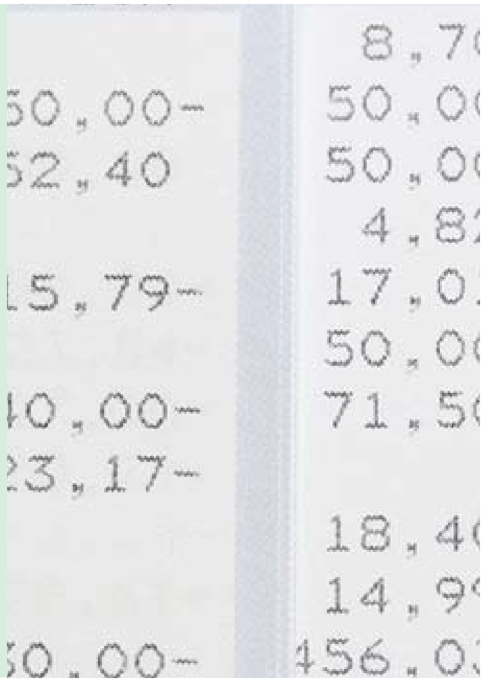
The word *brand* has been derived from old English meaning *business stick*. Brands are used by Americans as a promise on part of a seller to 'make good' on the defective livestock sold to buyers. Craftsman in Europe and Japan used the word 'brand' as production marks. The word 'brand' when used as a noun refers to a company's name, a product name, or, a logo or trademark. Brand sometimes represents intangible qualities which are often difficult to define. Brands no doubt create a perception in the mind of customers that there is no other product or service in the market equal to this product or service. Branding plays bigger role than a mere name, as brand is different from ordinary names. A brand is a symbol, a mark, a name that acts as a means of communication

The governance of brand value is a highly interdisciplinary that bridges the gaps between the corporate and various functional areas involved in corporate management. Accounting statements treat these strategic investments as expenses to be deducted from current profits, rather than considering the future profits which they will reap in future. Such an accounting treatment discourages managers from investing in brands and innovation. Brand has a future potential in increasing the value of the organisation in which shareholders are mostly interested.



which brings about an identity of a given product. It is a product image and is quality of a product. It is value. Branded products speak of the personality of a product and, therefore of, the personality and lifestyle of consumers. Brand is a powerful differentiator in a highly competitive market place. It provides a company power to deflect competitive mores. It certainly gives bargaining power to the company with its intermediaries. A strong brand means a higher market share, a high ROI (return on investment), and, hence, a higher share-holder value.

Definition of Brand

The American Marketing Association defines brand as a "name, term, sign, symbol combination of these intend to identify the goods and services of one seller or group of sellers and to differentiate from those of the competitors"

Impact of Branding

Branding helps build credibility and value of the product with the customer. Each brand conveys a unique message - pride, utility, exclusivity, etc. Once a brand is able to make inroads with its consumers, the latter start associating themselves with the brand and become a part of it.

Branding is beneficial for the following main reasons:

1. **Creates differentiation:** A brand provides a clear ad definitive reason for customers to buy the product. If this reason does not exit, the product is a commodity and only measure of value is price.
2. **Conveys value:** Consumers perceive branded products as those of higher quality and reliability, and of better value than non-branded products. Generally speaking, a number-one brand in a category can command a premium of at least 10 per cent over the price of the second-rung brand and about 40 per cent premium over the price of unbranded products. This price premium is technically known as "brand tax".
3. **Builds loyalty:** Brand loyalty is the recurring stream of profit generated by repeat and referral sales of a specific brand. Repeat sales can be as much as 90 per cent less expensive to a company than the cost of new customer development. Proper branding creates loyalty from customers and employees.
4. **Recognises the internal value:** It is essential that each employee irrespective of his/her position in organisational structure internalises its brand values and carries forward its vision. It may sound complicated but it can be a very interesting and useful exercise in the long run. Involving employees in the brand exercise will give them a sense of belonging as well as a sense of ownership and will prove very beneficial in retaining them.
5. **Enhances competitive spirit:** A good brand not only gives market recognition but also helps in

competition. With globalisation, competition has now acquired wider dimensions and, therefore, branding makes all the more sense. Every corporate has potential competition not only from the national and regional counterparts but also from the international players. Brand strength can alone help the company withstand the pressure of competition, sustain base and grow parallel.

6. **Leads to sustainability:** For a long-term and sustainable business, it's very important to also pay attention to its brand. The brand is what will keep one top-of-mind, so that people will reach out when they have a need.

Process of Branding a Product

- **Brand name:** Choose an appropriate name that is easy to remember and specific to the product. The name should be restricted to three words or less. Anything longer is difficult for customers to recall.
- **Brand slogan:** The selected slogan needs to be within two-three words, catchy and easily remembered. To generate slogan ideas, one must focus on the buyers - Why will they buy the product? What will they like about the brand? How does competition compare? The slogan should take into account of the answers to all these aforesaid questions.
- **Brand logo:** The brand logo can be as simple as a geometric shape or as elaborate as an object. Use the name, slogan and symbol on every piece of correspondence related to the product, e.g. e-mail, invoice, letterhead, business card, advertisement and promotions, etc.

The governance of brand value is a highly interdisciplinary that bridges the gaps between the corporate and various functional areas involved in corporate management. Accounting statements treat these strategic investments as expenses to be deducted from current profits rather than considering the future profits, which they will reap in future. Such an accounting treatment discourages managers from investing in brands and innovation. Brand has a future potential in increasing the value of the organisation in which shareholders are mostly interested. Companies and management are only interested in short-term gains, because they have little or no visibility into directing costs and investments into future value producing activities driven by brands and intangible assets. On the other hand, they treat brand as *nothing-producing* activities and fail to realise it until it is often too late.

Nowadays to meet the challenges of managing brands for value-creation, there is an urgent need to have a dynamic brand value governance. Such a system of governance model will no doubt identify, quantify and manage the complex system for the proper recognition of the brand value in the corporate governance system. Ways through which companies formulate their perception strategies in order to ensure a definite impact on its clients/ customers, both current and prospective, play a vital role in influencing their future-buying decisions. However, experts point out in today's turbulent scenario, the best way to maintain the sustainability of the brand image is allowing employees to serve as brand ambassadors and contribute towards building a successful living employee brand. The employee brand is an image of the organisation presented to an organisation's customers and other relevant stakeholders by its employees. In employee-branding process, employees start talking to the employer brand and become a brand ambassador for the employer. It is an indirect branding process where employees internalise the culture, sprit and values of the organisation, and project it to the outside world through their behaviour, attitude and action. It is a much deeper process than employer branding. It is a measure of the value that employees get during their employment and how they project themselves to the outside world, through interactions with customers, vendors, institutions and other organisations. Managers of such organisations are respected in the market. In this way a strong employee brand is created. By creating employee branding both organisation and employees are benefited and there is value addition from both the sides:

1. Employees having high capability and power of motivation interact with outside world with confidence and integrity.
2. Prospective job seekers look forward to such organisations as a model employer capable of creating champions, which ultimately enhance the power and prestige of the organisation.
3. Employees who quit an organisation and become successful outside indirectly help in increasing the company's brand value. These employees, although they have quit, still remain as brand ambassadors.
4. Employee branding encourages employees to adapt and exhibit the characteristics of the organisation to help the organisation promote its brand. Employee branding advocates a system of communication intended to inspire employees to deliver on brands, promise and

instilling brand values in organisational process. Employees actively involved in the employee branding process are an asset to the company because they are not just employees working for the company, but help in enhancing the value and image of their company from outside.

Steps in Branding

Branding helps the creation of a process-centric enterprise that results while giving importance to the process. Japanese brand management focuses on standardisation and continuous improvement with complete employee involvement.

1. **Involvement at all levels in all business segments:** Branding image starts from the top management level. The top level management must demonstrate its commitment to brand equity, while middle level managers should ensure that the principles, strategies and benefits are communicated to the people, only then branding as a culture will develop throughout the organisation.
2. **HRD management:** This focuses on empowering people and inducing them that they are working in a branded company that has a wide reputation in market. Improvement in business orientation will encourage in the further improvement in branding. Concepts like *kaizen* and *quality circles* (QC) are used to provide a platform to employees to improve innovate and excel in their work.
3. **Manufacturing:** There are various processes and strategies that ensure superior management of the branding process. For instance, *statistical quality control* (SPC) is an effective method of monitoring a process through the use of control charts. By collecting data from samples at various points within the process, variations in the process that may affect the quality of the end product or service can be detected and corrected. *Just-in-time* (JIT) is another strategy that aims to satisfy the market needs and delight customers.
4. **Supplier management:** Suppliers should be treated as partners. Involvement of suppliers at an early stage, like capturing their feedback on customer requirements, helps in improving the quality of outsourced components and revenues are enhanced throughout the chain.
5. **Marketing:** Competition has changed the way a company approaches the market. Today, the mantra is *market-in*, i.e. the company enters into customers, minds and understands their needs, and not *product-out*, i.e. the product is first

Nowadays, branding is a buzz word which is not used at the corporate level or business level. It has now crossed business. Now brand index is used for countries for their recognition. In 2006, 20 parameters were used to find out the future brands in countries, where 45 countries were considered and India's position remained in the top 10 brands.

designed and then sold in the market. Activities like field intelligence and market research helps in understanding the real worth of branding of a particular product.

6. **New product development:** The core of quality management is to develop new products that satisfy market needs and delight customers. Tools like *Failure Mode and Effect Analysis* (FMEA) and *quality function deployment* (QFD) are used to support the new product development process.
7. **Sales and service**: It is said that 20 per cent of people bring in 80 per cent of our sale. Applying QM in sales can improve productivity by 30 to 40 per cent or more. In the post-sales phase, innovative service initiatives need to be taken to serve customers at the point of sales, like dealers, retailers, outlets, etc., to achieve this, a company needs to make its systems busy and train its marketing team to act as business partners.
8. **Standardisation:** It involves setting standards for all processes and adhering to them to achieve improvement. Standards should be documented, published and implemented.
9. **Policy deployment:** Policies are formulated on the basis of the vision, mission and strategies of the organisation. The top management makes policies which flows down through all levels of the organisation, until these are finally translated into specific action plans for the people who actually perform the work. This helps the whole marketing team to act as business partners and helps the organisation to steer in one direction. When all major stakeholders work in one direction and for one mission, it improves the brand image of an organisation.
10. **Cross-functional management:** It is a top man agement approach and it speaks about develop ing systems, communication channels to deploy business priorities, plans across departments, so that projects happen smoothly especially across the boundaries of the departments.

Levels of Branding

Nowadays, branding is a buzz word which is not used at the corporate level or business level. It has now crossed business. Now brand index is used for countries for their recognition. In 2006, 20 parameters were used to find out the future brands in countries, where 45 countries were considered and India's position remained in the top 10 brands. Australia tops the table as the leading country brand; India leads the pack in the authenticity category. Mexico, New Zealand, Thailand, Oman and South Africa were also high on the authentic quotient. The country-brand index draws heavily from global quantitative surveys, expert opinions and external statistics. Over 1500 respondents drawn from a globally-diverse sample participated in a travel survey. These respondents answered questions about behaviour around destination selection, country associations with particular attributes, as well as overall awareness, past visit and willingness to recommend destinations to others.

Table-1
Ranking of Countries using Brand Index-2006

Country wise serial no. of (Overall Rankings)	Country wise ranking of (Authenticity)	Country wise ranking of (History)	Country wise ranking of (Art and Culture)
1-Australia	1-India	1-Egypt	1-Egypt
2-USA	2-New Zealand	2-Italy	2-Italy
3-Italy	3-Egypt	3-Turkey	3-India(9)**
4-France	4-South Africa	4-Greece	4-Greece
5-Greece	5-Thailand	5-India(6)*	5-Japan
6-UK	6-Costarica	6-Israel	6-France
7-Spain	7-Lebanon	7-UK	7-UK
8-New Zealand	8-Italy	8-China	8-China
9-Maldives	9-Peru	9-Japan	9-Czech Republic
10-India	10-France	10-France	10-Turkey

Source: *The Economic Times dated June 5, 2007*

* India's position has risen by 6 ranks over the previous year.

** India's position has risen by 9 ranks over the previous year.

Survey results were aggregated and weighted in proportion to their region's respective volume of travel consumption. Performance on attributes by country was then considered against expert opinions and secondary statistics in order to generate country rankings. Over 35 international travel experts participated in a one-on-one interview regarding their perceptions of countries as brands. Statistics referenced include beach availability, length of coast line, crime per capita, purchase power parity index, foreign direct investment confidence index and related data.

Performance of Companies on Brand Wagon

Evaluation of top 500 companies by market cap was used to arrive at the brand finance top 50. At this stage, it was necessary to eliminate companies with a substantial portfolio of standalone brands, such as Hindustan Unilever, or, sectors in which the brand did not play a substantial role. This was conducted through analysis of broker reports, annual reports and market research. Only public data was used – the data that the brand-owning companies publish about themselves. There was no access to private data or to senior management interviews, as there would be in a formal valuation. The valuation was performed by brand finance using the relief-from-royalty approach. This methodology has been used because of two reasons: first, it is the valuation methodology that is favoured by the fiscal and tax authorities because it calculates brand values by reference to documented, third party transactions; and second, because it can be performed on the basis of publicly available financial and marketing information. Researchers then estimate brand loyalty rates for each of the India's largest industry sectors. Those rates are then adjusted for each company after having understood its brand strength from poring over market surveys consumer research and investor relations material.

Table- 2
Ranking of 50 most valuable brands

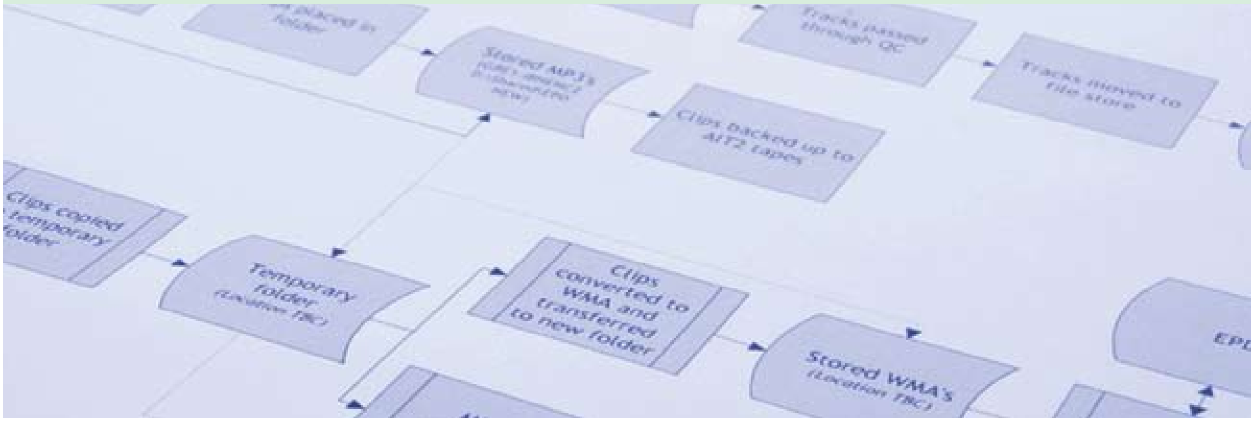
Rank	Brand	Brand Value09 ($)	Brand Value09 Rs@48	Rank 2008	Brand value ($) 2008	Rating 2009
1	RELIANCE INDUSTRIES	7844	37649	1	6807	AA+
2	STATE BANK OF INDIA	5480	26302	4	4215	AA+
3	INDIAN OIL	4807	23075	3	4569	A
4	TCS	4177	20050	2	4976	AA+
5	TATA MOTORS	3100	14878	6	3289	AA+
6	BPCL	2620	12574	9	2386	BBB+
7	BHARTI AIRTEL	2512	12060	8	2489	AAA
8	WIPRO	2370	11377	5	3295	AA+
9	ITC	2348	11271	10	2204	AA
10	ICICI BANK	2277	10928	7	2929	BBB+
11	HPCL	2274	10914	12	2019	BBB-
12	TATA STEEL	2264	10867	14	1825	AAA-
13	LARSON & TOUBRO	1823	8751	15	1757	AAA-
14	INFOSYS	1719	8250	11	2117	AA-
15	UNITED BREWERIES	1718	8248	16	1531	AA
16	RELIANCE COMM.	1436	6892	13	1890	A-
17	MARUTI SUZUKI IND.	1411	6772	17	1328	AAA-
18	M&M	1335	6407	18	1300	AA
19	BAJAJ	1010	4850	20	1001	AA-
20	HERO HONDA MOTORS	859	4125	24	815	AA+
21	HDFC BANK	784	3762	30	556	AAA-
22	SUZLON ENERGY	745	3574	21	962	BBB+
23	TATA TEA	709	3404	25	813	AA-
24	HCL TECHNOLOGY	703	3376	22	952	BB
25	DABUR INDIA	634	3045	28	608	AA+
26	HDFC	623	2990	29	567	BBB+
27	PNB	564	2709	34	513	BBB+
28	RANBAXY LAB.	552	2650	19	1120	A
29	TATA COM.	539	2590	36	494	A-
30	GRASIM INDUSTRIES	531	2549	27	633	BBB+
31	IDEA CELLULAR	513	2462	32	527	BBB-
32	INDIAN HOTELS	480	2304	33	523	A
33	TATA POWER	475	2280	47	258	AA+
34	BANK OF BARODA	466	2239	39	420	BBB+
35	JSW STEEL	447	2146	42	344	AA
36	BANK OF INDIA	442	2121	50	388	BBB-
37	VEDEOCON INDUSTRY	416	1998	35	509	BBB
38	AXIS BANK	404	1938	38	454	BBB+
39	KOTAK MAHINDRA BANK	359	1725	44	296	BBB+
40	PANTALOON RETAILER	353	1692	37	471	BBB
41	JET AIRWAYS	331	1588	26	759	BBB
42	DLF	330	1582	43	335	BB
43	JAIPRAKASH ASSOCIATES	326	1563	46	266	BB
44	DR. REDDY'S LAB.	320	1535	31	547	BBB+
45	ESSAR OIL	318	1528	45	293	BB
46	GMR INFRASTRUCTURE	288	1381	48	204	A
47	RELIANCE INFRA	264	1265	49	203	A-
48	TATA CHEMICALS	262	1258	-	-	BBB
49	ASHOK LEYLAND	259	1245	-	-	BBB+
50	BHARAT FORGE	251	1206	-	-	BB
Total		**67072**	**321946**	**-**	**66760**	**-**

Source: *The Economic Times dated November 21, 2009*
Abbreviations used: AAA - Extremely Strong; AA - Very Strong; A – Strong; BBB – Average; BB - Under Performing

Parameters/Guidelines of Branding

1. **Assessment of the entry barrier created by a company:** The entry barrier should be more *intellectual* in character rather than *physical,* because while it is next to impossible to compete with a strong brand, competitive advantage associated with a piece of land (a physical barrier) disappears, when a competitor acquires one as well. Strong brands, such as *Parle-G,* have enabled their companies to retain the top spot. However, at times there could be exceptions. For instance, the entry barrier associated with *TISCO* would be its large base of iron ore and coal which has created an entry barrier for other competitors.
2. **Entry barrier should be long lasting:** An entry barrier should not only be strong, but also long lasting. Such companies will keep making money because their entry barriers keep working for

If business is about creating value, branding is about giving 'meaning' to that value. It means what the business stands for. The greatest challenge faced when developing and building a brand is creating just the right name, slogan and symbol for the product. It will take a great deal of time and consideration. A detailed thought process and feedback from others will help to get rid of this obstacle.



them. For instance, *Britannia* may not be the best-admired company but its strong brand continuously earns money for it.

3. **Buy into such companies at the earliest:** If an entry barrier has been established very recently, it may not yet be exploited by the business. Accordingly, the market would not have valued it in the company's share price. Holding of major shares in such companies or investing maximum of fund will definitely increase the brand image of a company.
4. **Management should be competent and passionate:** Both the above attributes are important. Competence or passion alone will not work. An individual locally known and having competence has a greater growth prospect than a foreigner having the same level of competence.
5. **Management should have integrity:** Integrity is the most crucial quality that a company's management should have. Such companies not only run their business in an honest manner, but are honest to all their stakeholders whether employees, the government or the shareholders. If honesty is the part of a company's DNA, it will be fair to its smallest stakeholders, i.e. minority retail shareholders. Companies like Tata and Infosys have this quality, which adds to their growth and market brand immensely.
6. **Management should have patience:** One should not expect that the brand value will appreciate over night. One should look its appreciation over a long period. Patience is the mantra that helps to overcome the emotions encountered by the day to day activities of the business. Patience makes the difference between investing and speculation. It's like fertiliser to the investment process.

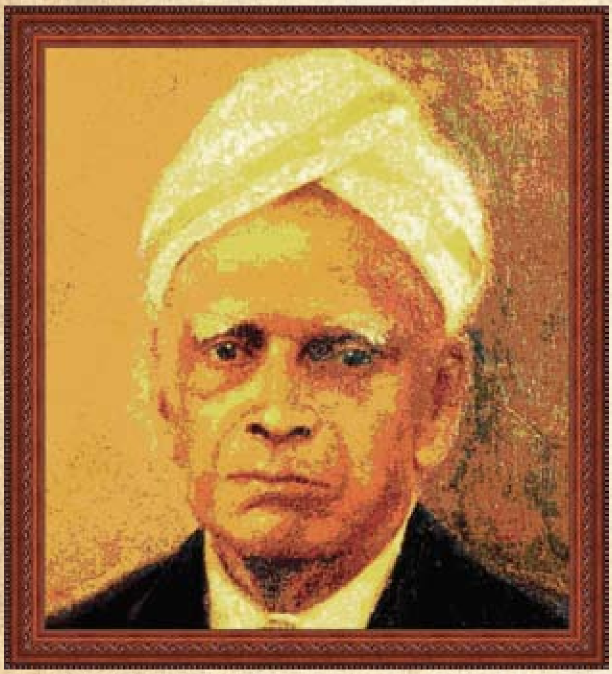
Conclusion

If business is about creating value, branding is about giving meaning to that value. It means what the business stands for. The greatest challenge faced when developing and building a brand is creating just the right name, slogan and symbol for the product. It will take a great deal of time and consideration. A detailed thought process and feedback from others will help to get rid of this obstacle.

Series: Legends in the Accounting Tradition of India

Shri K. S. Aiyar

Shri Kalyan Subramani Aiyar (1859-1940), better known as K. S. Aiyar, was a pioneer of commercial and accounting education in India. He started and established educational courses and institutions dedicated to commerce and accounting. He also served as the headmaster of first commercial School in India started by the Pachiyappa College Charities at Madras from 1886 to 1889.



He got elected as an Associate of the Society of Incorporated Accountants & Auditors (SIAA) of the UK in 1890 and started his public practice. He set up his own firm, in 1900, probably the earliest accountants' firm in India established by an Indian. Starting his practice in Calicut in 1897, he shifted to Bombay in 1900. In fact, it was Sir Byramjee Jeejeebhoy, a 19th century philanthropist and a big landowner, who founded several educational institutions in Bombay, invited Shri Aiyar to Bombay in the first decade of the twentieth century and later appointed him the Principal of the Byramjee Jeejeebhoy Parsee Charitable Institution (B.J.P.C.I), Bombay. Shri Aiyar later converted that Institution into *College of Commerce* in 1900, which aimed at preparing students for the London Chamber of Commerce examinations. Within a couple of months, he also started the first *Night School of Commerce* in Bombay.

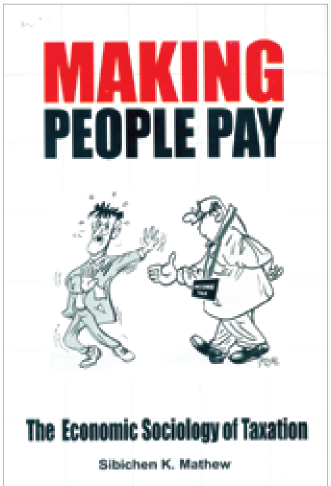
He is credited for procuring the permission in 1905 from the SIAA to train apprentices in India for their London examinations. Shri Sorab S. Engineer was the first Incorporated Accountant to serve his apprenticeship in India under Shri Aiyar in his firm from 1905 to 1908, and then served the same firm for another five years. Shri Engineer has been proclaimed guru of the first President of The Institute of Chartered Accountants of India, Shri G. P. Kapadia. In 1912, Shri Aiyar instituted the first *Bachelor of Commerce* degree in the Bombay University. He established an important education centre of commerce, *Sydenham College of Commerce*, in Bombay in 1913, and acted as its first honorary Principal. Shri Aiyar wrote the scheme of the *Government Diploma in Accountancy* (GDA) for the Government of Bombay on the recommendations of the Accountancy Diploma Board. This *Diploma* empowered the accountants with Unrestricted Certificate to practise accountancy in India. The Accountancy Diploma Board held its first GDA examination in 1918, while the Government of Bombay gave its sanction for the same only in 1919. The Diploma required a three-year articleship under an approved accountant in practice and holders of this diploma were eligible for the award of a permanent *Unrestricted Auditor's Certificate* under the Indian Companies Act, 1913, which entitled the holders to practise throughout the British India. In 1890, he wrote a descriptive textbook on bookkeeping, *The Principles and Practices of Book-Keeping.*

Shri Aiyar was elected as a Fellow and a Senate member of the University of Madras and of the University of Bombay where he served his term for a huge thirty years.

He always regarded his firm as a medium to further the cause of commercial education. For him, his firm was, foremost, an institution dedicated to shaping the young mind for the honoured accountancy profession. His vision, based on principle of service with integrity to stakeholders, should serve as a model for the young chartered accountants. He, writes Shri Kapadia in his acclaimed documented *History of the Accountancy Profession in India*, "is acknowledged on all hands to be a pioneer of Commercial Education in India and his contribution in this field has been significant." Being a dedicated educationist, arguably, Shri Aiyar is worthy of being called the *father of accountancy in* India.

(Contributed by the Journal Section of ICAI)

Making People Pay —
The Economic Sociology of Taxation



Title :
Making People Pay — The Economic Sociology of Taxation

Author :
Sibichen K Mathew

Pages :
305

Price :
INR 750

Publisher :
Global Vision Publishing House

As the author of the book Mr. Sibichen K. Mathew says, 'this book is not for everyone. This is for those who want to live in a civilised state'. The book is for a reader who wants to understand why taxes are needed for a state and why a citizen needs to pay it correctly and regularly.

Tax regulations are so complex that they cannot be discussed in detail in a book like this and, anyway, only a devout masochist (read: a willingness or tendency in a person to subject oneself to trying experiences) would read and deal with them all the way through. Hence, the book tries to deal with the basic topic and fundamental principles. The book focuses primarily on topics of broad general interest with regard to income tax, such as ideologies of taxation, the political context of taxation, visible and invisible taxes and its benefits, what is income tax compliance, is tax evasion an offence, global perspectives with regard to taxation, Indian tax history, tax attitudes and tax behavioral perceptions in a developing country, tax incentives and mobilising revenue in a dynamic economy.

Certain topics like deadweight cost of taxation and optimal tax theory, inability of Laffer Curve to explain tax behavior, the agency models and general equilibrium models with regard to tax compliance are indeed concepts which need at least a basic understanding among professionals, and these have been lucidly dealt with by the author.

The author's study and analysis on various tax attitudes about tax compliance and evasion, tax laws and tax administration fairness, perception of reasons for low tax compliance, strategies of state to increase compliance, attitudes and perception about the state and governance, attitudes and perception about the tax evasion and perceived tax behavior of a select group are indeed instructing and interesting.

The book also deals about the tax enforcement measures in India such as power of search and seizure and various intricacies related to it including analysis of the perception of conduct of search, behavior of the search party, emotional disturbances consequent to the search, health disturbances consequent to the search, etc. A unique attempt has been made to understand tax evasion and tax enforcement through a study of tax evaders and also about persons who perceive that tax laws are full of implicit mandates with huge penalties - in the form of lost deductions - for non-compliance.

Another interesting aspect of the book is the topics on problems relating to tax compliance and tax enforcement. In particular, the portions relating to inter-group comparison and fairness perception, the framing and overflowing, multiple determinants of tax attitudes and resultant, cognitive dissonance, nature of state and tax payer behavioural response makes interesting reading.

The author has used his experience in observing people and their behaviour to understand the patterns that shape their decisions and comprehend/appreciate social science perspectives to an event or a situation and the people behind it.

Another different aspect of the book is the chapter dealing as to whether globalisation is good for the tax systems, tax competition and the need to see beyond tax rates. The author's observation that the tax potentiality lies not in the microscopic minority within but the vast majority outside the system is an interesting but a real conclusion. Theoretical analyses given in the book are aimed to provide an understanding of the subject of tax compliance with a global perspective at the macro level.

By reading the book one gets a feeling that tax payers should feel proud of the fact that even simply breathing in clean air or even eating a good meal is possible because one has paid his/her taxes to make a better future for oneself and for future generations.

The author ends by saying that it would be bliss if one can get rid of all taxes. However, he justifies the need of taxes by concluding that in a world of widespread inequity and inequality, income taxation is an economic-sociological instrument for overall well being of the people.

This book is a good reading for those who believe in Benjamin Franklin's words, "...in this world nothing is certain but death and taxes."

Book reviewed by CA. S Sundarraman, Chennai

CPE
12
Hours

Two Days Programme for Members in Industry

Theme: "IFRS – Unveiling the New Era of Accounting"

Organized by: COMMITTEE FOR MEMBERS IN INDUSTRY OF ICAI
Hosted by: Eastern India Regional Council of ICAI, May 7-8, 2010
Hotel Oberoi Grand, Kolkata

Timing of Sessions	Details	
	Friday-07.05.2010	
9:30 AM – 10:00 AM	Registration	
10:00 AM – 11:00 AM	**Inaugural Session** **Mr. Nirupam Sen,** Hon'ble Minister of Commerce & Industry*, Industrial Reconstruction & Public Undertakings, Govt. of WB **CA. Amarjit Chopra,** President, ICAI **CA. G. Ramaswamy,** Vice President, ICAI **Mr. R. Bandyopadhyay,** Secretary, Ministry of Corporate Affairs	
Technical Session I 11:00 AM – 1:30 PM	**Overview of IFRSs** a. Global scenario b. How and when? c. Impact d. What industry gains? e. What professionals achieve? f. What country and society gains?	**Chairman:** CA. Kaushik Chatterjee*, CFO, Tata Steel **Speaker:** CA. P. R. Ramesh
Technical Session II 2: 15 PM - 4:00 PM	a. Presentation of Financial Statements b. Revenue recognition c. Share Based Payment and Employee Benefits Consolidtion	**Chairman:** CA. A. C. Chakrabortti, Past President, ICAI **Speaker:** CA. Saradindu Dutta
Technical Session III 4:00 PM – 5:45 PM	**Challenges on first time adoption in India** a. Applicability b. Business impact c. Implementation planning	**Chairman:** CA. Abhijit Bandyopadhyay, Council Member, ICAI **Speaker :** CA. Bhaswar Sarkar
	Saturday-08.05.2010	
Technical Session IV 10:00 AM – 1:30 PM	Critical differences between Indian GAAPs and IFRSs with special focus on Fair-Value Accounting, business combinations and financial instruments Limited Liability Partnership	**Chairman:** CA. R. K. Agrawal, Former Council Member, ICAI **Speaker:** CA. Vinod Kothari **Speaker:** Mr. Debashis Bandyopadhyay
Technical Session V 2:15 PM – 3:45 PM	Intangible Assets, Accounting transaction in foreign currency segments, Income Tax	**Chairman:** CA. Dipankar Chatterji, Former Council Member, ICAI **Speaker:** Dr. Ashish K. Bhattacharyya
Technical Session VI 3:45 PM – 5:15 PM	**Convergence Process in an organisation** a. Roadmap b. Problems likely to be faced and answers thereof c. Areas that may have significant impact	**Chairman:** CA. K. P. Khandelwal, Former Council Member, ICAI **Speaker:** CA. Kumar Dasgupta

** Confirmation Awaited*

Participation Fees	Rs. 2,500/- The cheque should be drawn in favour of `**The Institute of Chartered Accountants of India, EIRC**' payable at Kolkata and cheque should be sent to EIRC of ICAI, ICAI Bhawan, 7, Anandilal Poddar Sarani (Russell Street), Kolkata – 700 071. **Limited Seats, Registration on First Come First Serve Basis. No spot registration. Advance confirmation of registration is required.**	
Contact Details		
Programme Chairman CA. Subodh Kumar Agrawal Chairman Committee for Members in Industry of ICAI ☎ +91-9830022848 ✉ subodhka@yahoo.com	Programme Director CA. Sumantra Guha Council Member ICAI ☎ +91-9831015331 ✉ oisuad@vsnl.net	Programme Coordinator CA. Krishanu Bhattacharyya Chairman EIRC of ICAI ☎ +91-9831208273 ✉ krishanu_b@rediffmail.com
Official Coordinators	Shri Shaleen Suneja, Secretary, Committee for Members in Industry, ☎ 011-30110555/491 ✉ cmii@icai.in	
	Shri Abhijit Basu, Deputy Secretary, EIRC of ICAI ☎ 033-30211132 ✉ eircchairman@icai.in	
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	

CPE 6 Hours

National Seminar on Capacity Building For CA Firms

Organised by: Committee for Capacity Building of CA Firms and Small & Medium Practitioners

Hosted by: Eastern India Regional Council of ICAI

Theme

With the advent of globalization and the challenges posed by the liberalization process taking place worldwide, a need was felt for strengthening competence of CA firms and practitioners. ICAI's initiative is to enlarge visibility of CA profession and to rejuvenate practice portfolio of Small and Medium Practitioners and to achieve that purpose it has formed a Committee for facilitating consolidation through Networking, Mergers, setting up Management Consultancy Services, etc., by popularizing effective union of CA firms. The focus is on enriching SMPs through Capacity Building with world class competency and brand image equivalent to multinational CA firms prevailing in India. This national seminar will focus on issues and impediments related to capacity building as well as matters for professional interest.

Date & Time:

29th May, 2010
Saturday at 9.30 am - 5.30 pm

Venue:

R Singhi Hall, EIRC of ICAI
7, Anandilal Poddar Sarani, Kolkata-700 071

Fee: Rs. 500/-

DISCUSSION SESSIONS

- Networking of CA Firms, Merger, Acquisition & Corporate form of practice.
- Limited Liability Partnership (LLP) & the impact on the Accounting Profession.
- Strategies for Wealth Creation, Wealth Maximization and Wealth Management.
- Practice Management.
- Roadmap to Service Tax & GST.
- Application of IFRS for SMEs.

CONTACT DETAILS

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CA. Krishanu Bhattacharya
Chairman, EIRC, Kolkata
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EIRC: (033)30211128

CA Sanjeev Maheshwari
Chairman, CCBCAF & SMP, ICAI
Mobile No : 9821119043
Off: (022)26840145
Email: casanjeevmaheswari@gmail.com

CPE
21
Hours

RESIDENTIAL PROGRAMME ON IFRSs at GANGTOK

Organized by: COMMITTEE FOR MEMBERS IN INDUSTRY OF ICAI
Hosted by: EIRC OF ICAI & SILIGURI BRANCH OF EIRC
5 days and 4 nights (June 8-12, 2010)

Timing of Sessions	Details
Monday-07.06.2010	
Evening - Overnight Journey to NJP (Siliguri)	
Tuesday-08.06.2010	
Arrival in the morning at Siliguri Departure from Siliguri to Gangtok after Breakfast Arrival at Gangtok at 12 noon Seminar from 2:30 pm to 9:30 pm	
Inaugural Session 2:30 pm to 3:30 pm	* Mr. Pawan Chamling, Hon'ble CM of Sikkim * Hon'ble Education Minister of Sikkim & * Hon'ble Industry Minister of Sikkim
Technical Sessions 3:30 pm to 9:30 pm	• IFRS 1 - First Time Adoption • IAS 1 - Presentation of Financial Statements • IAS 18 - Revenue • IAS 11 - Construction Contract
Wednesday-09.06.2010	
Visit to Tsango Lake and Babadham after Breakfast and return at 2:00 pm Seminar from 3:00 pm to 9:00 pm	
Technical Session 3:00 pm to 9:00 pm	• IAS 32 Financial Instruments • IAS 39 Presentation • IFRS 7 Recognition & Measurement of Disclosure • IFRS 9 Overview of Financial Instrument
Thursday-10.06.2010	
Local Sightseeing after Breakfast and return at 2:00 pm Seminar from 3:00 pm to 9:00 pm	
Technical Session 3:00 pm to 9:00 pm	• IAS 16 - Property, Plant & Equipments • IAS 23 - Borrowing Cost • IAS 36 - Impairment of Assets • IAS 37 - Provision & Contingent Assets & Contingent Liabilities • IAS 38 - Intangibles
Friday-11.06.2010	
Departure after Breakfast to Pelling and arrival at 2:00 pm Seminar from 6:00 pm to 9:00 pm	
Technical Session 6:00 pm to 9:00 pm	• IAS 19 - Employee Benefits • IAS 24 - Related Parties
Saturday-12.06.2010	
Sightseeing at Pelling Departure from Pelling to Siliguri from 2:00 pm Departure from Siliguri to Kolkata (overnight)	

Sunday-13.06.2010			
Arrival at Kolkata (Morning)			
Participation Fees	All cost are ex-Kolkata - Rs. 12000/- (Members), Rs. 11000/- (Spouse), Rs. 5000/- (Children from 3-15 yrs), Rs. 6000/- Participants from Gangtok (only for Resident Members of Gangtok). **Limited Seats, Registration on First Come First Serve Basis.** **No spot registration, Advance confirmation of registration is required.** **Registration closes on 20th May 2010**		
Contact Details			
Programme Chairman CA. Subodh Kumar Agrawal Chairman Committee for Members in Industry of ICAI ☎ +91-9830022848 ✉ subodhka@yahoo.com	**Programme Director** CA. Sumantra Guha Central Council Member ICAI ☎ +91-9831015331 ✉ oisuad@vsnl.net	**Programme Coordinators** CA. Krishanu Bhattacharyya Chairman EIRC of ICAI ☎ +91-9831208273 ✉ krishanu_b@rediffmail.com	CA. Alok Roy Chairman Siliguri Branch of ☎ +91-9932808565 ✉ lahotiroy@gmail.com
Official Coordinators	Shri Shaleen Suneja, Secretary, Committee for Members in Industry ☎ 011-30110555/491 ✉ cmii@icai.in		
	Shri Abhijit Basu, Deputy Secretary, EIRC of ICAI ☎ 033-30211132 ✉ eircchairman@icai.in		
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		

CPE
12
Hours

Two Days National Conference for Members in Industry on International Financial Reporting Standards (IFRSs)

Organized by: COMMITTEE FOR MEMBERS IN INDUSTRY OF ICAI

Hosted by: Bangalore Branch of SIRC of ICAI, June 18-19, 2010

Hotel Le Meridian, Bangalore

Timing of Sessions	Details
Friday-18.06.2010	
9:00 AM – 9:30 AM	Registration
9:30 AM – 10:00 AM	Inaugural Session
Technical Session I 10:00 AM – 11:30 AM	**Overview of IFRSs** a. Global scenario b. How and when? c. Impact
Technical Session II 11:45 AM – 1:15 PM	a. Presentation of Financial Statements, b. Revenue recognition, c. Income Tax
Technical Session III 2:00 PM – 3:30 PM	Disclosure of Accounting Policies – IAS-1 Share Based Payment and Employee Benefits Consolidation
Technical Session IV 3:45 PM – 5:15 PM	Intangible Assets, Accounting transaction in foreign Currency segments – IFRS 8

<table>
<tr><th colspan="3">Saturday-19.06.2010</th></tr>
<tr><td>9:00 AM – 10:00 AM</td><td colspan="2">Registration</td></tr>
<tr><td>Technical Session V
10:00 AM – 11:30 AM</td><td colspan="2">Critical differences Indian GAAPs and IFRSs with special focus on Fair Value Accounting, business combinations and financial instruments
a. Creative accounting
b. Valuation & Fair value
c. Group concepts</td></tr>
<tr><td>Technical Session VI
11:45 AM – 01:15 PM</td><td colspan="2">Role of CAs in industry as well as in Practice
a. What industry gains?
b. What professionals achieve?
c. What country and society gains?</td></tr>
<tr><td>Technical Session VII
02:00 PM – 03:30 PM</td><td colspan="2">Challenges on first time adoption in India
a. Applicability
b. Business impact
c. Implementation planning</td></tr>
<tr><td>Technical Session VIII
03:45 PM – 5:15 PM</td><td colspan="2">Convergence Process in an organization
a. Roadmap
b. Problems likely to be faced and answers thereof
c. Areas that may have significant impact</td></tr>
<tr><td>Participation Fees</td><td colspan="2">Rs. 3,000/- for Members
The cheque should be drawn in favour of `Bangalore Branch of SIRC of ICAI' payable at Bangalore and cheque should be sent to Bangalore Branch of SIRC of ICAI, 16/0, Millers Tank Bed Area, Bangalore-560 052
Limited Seats, Registration on First Come First Serve Basis.</td></tr>
<tr><th colspan="3">Contact Details</th></tr>
<tr><td>Conference Chairman
CA. Subodh Kumar Agrawal Agrawal
Chairman
Committee for Members in Industry of ICAI
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<tr><td>Official Coordinator</td><td colspan="2">Shri Shaleen Suneja, Secretary, Committee for Members in Industry
☎ 011-30110555/491 ✉ cmii@icai.in</td></tr>
<tr><td>For Registration & further details, please contact</td><td colspan="2">Shri Jagdish Kumar N S, Assistant Secretary, Bangalore Branch of SIRC of ICAI. 16/0, Millers Tank Bed Area, Bangalore-560 052.
☎ +91-09342732548 ✉ dcobangalore@icai.org</td></tr>
</table>

Classifieds

4787 Required Chartered Accountants on partnership/assignment/sub-contract/employment-basis, semi-qualified and articled assistants (for the state of Jammu & Kashmir)/Northern States. Apply to Box: 4787, C/o Journal Section, The Institute of Chartered Accountants of India, ICAI Bhawan, A-94/4, Sector-58, Noida-201301.

4788 Delhi based CA firm requires fresh or experienced Chartered Accountants. Candidates should have audit or taxation experience.
Contact M/s. D. G. & Co, 403-Pratap Chambers, Gurudwara Road, Karol Bagh, New Delhi-05.
Ph no. 011-28751295
Email: dgco@airtelmail.in

4789 Experienced FCA with audit team interested in practice on outright/sharing-basis/assignment-basis, etc. in Delhi/NCR.
Contact: +91-98111-11245

Revised Syllabus and Background Materials for the Post Qualification Course on Information Systems Audit (ISA)

The Committee on Information Technology is pleased to introduce the *Revised Syllabus* and thoroughly revised Background Materials for the Post Qualification Course on *Information Systems Audit (ISA)* for the ISA *Professional Training* Batches from April 2010. The following table lists the revised course modules, percentage of questions that would be set in the ISA ET & AT and their mapping with old syllabus:

Module	Module Title	% Q's	Old Module
1	Information Technology Infrastructure & Communication/ Networking Technology	30%	1&2
2	Protecting Information Assets	22%	3
3	Systems Development. Life Cycle & Application Details	20%	4
4	Business Continuity Planning	10%	5
5	Information Systems Organisation & Management	8%	6
6	Information Systems Control & Audit Process	10%	7

Hence the *ISA Eligibility Test* from November 2010 and the ISA Assessment Test from December 2010 would be organized with the revised syllabus and materials.

Notwithstanding launch of new syllabus, candidates of the ISA course who have completed the Professional Training before 31^{st} March, 2010, will be given three attempts to take the examinations with the existing syllabus as follows:

Exam	1st Attempt	2nd Attempt	3rd Attempt
1.ISA Eligibility Test	Nov-2010	May-2011	Nov-2011
2.ISA Assessment Test	Dec-2010	Jun-2011	Dec-2011

Thereafter, candidates would have to take the ISA Eligibility Test and Assessment Test with the revised syllabus and materials. It may be incidentally mentioned that the revised syllabus incorporates renumbering of modules to reflect better course coverage, shifting of topics from one module to another to reflect current state of technology and incremental content of about 10 per cent while the materials have been re-written to reflect the current technology trends and make it more relevant for the profession. Hence, it is advisable for candidates to shift to the revised syllabus, even though the above facility of taking the tests with existing syllabus has been extended.

The revised *ISA Background Materials* are available in the sale counters of the Institute and can also be ordered from Noida Sale Counter of the Institute.

Secretary
Committee on Information Technology

Special Placement Programme – June, 2010 for experienced and fresh Chartered Accountants

The Committee for Members in Industry of the Institute is organizing Special Placement Programme for Chartered Accountants at various centres all over India. The scheme has been evolved to provide an opportunity both to employing organisations as well as the dynamic professional aspirants to meet and explore the possibility of taking up positions in Industry.

Invitation to Chartered Accountants

It has been decided to organise Special Placement Programme at 8 centres, viz., Bangalore, Chennai, Hyderabad, Jaipur, Kolkata, Mumbai, New Delhi and Pune in June, 2010. A large number of leading organisations are expected to participate.

The schedule of the Special Placement Programme is as below:

Centre	Dates
Mumbai and New Delhi	25th -26th June,2010
Bangalore, Chennai, Kolkata and Hyderabad	23rd -24th June,2010
Jaipur and Pune	22nd June,2010

Eligibility for appearing in Special Placement Programme

Chartered Accountants fulfilling the following conditions/criterias are eligible to take part in Special Placements.

- having the membership of Institute as on 10th May, 2010
- who have more than one year of experience may participate as experienced chartered accountants
- The chartered accountants who have less than one year or no experience may participate as fresh Chartered Accountant
- passed C.A. final examination on or before January, 2010
- who have not got the job through any placement services organized by the Institute, i.e., from 01.06.2009 to 1.06.2010.

Invitation to Employers

The Committee for Members in Industry of the Institute provides opportunity to the employers to interact with Chartered Accountants and makes all arrangements at its centres, thereby providing a cost effective mode of recruiting Chartered Accountants.

Organisations intending to recruit experienced and newly qualified Chartered Accountants through the above said scheme of Special Placement Programme are requested to get in touch with Shri Shaleen Suneja, Secretary, Committee for Members in Industry, Indraprastha Marg, New Delhi - 110002, Tel. No. (011) 30110450/491 E-mail: placements@icai.org, ssuneja@icai.org; Fax- +91(11) 30110583 (or) Mr. Ajeet Nath Tiwari, Placement Coordinator, at Tel +91(11) 30110450.

An organisation can participate in one or more centres, as per its requirements. Firms of Chartered Accountants are also welcome to join. For further details please log on to www.cmii.icai.org.

Chairman
Committee for Members in Industry

Invitation to Join CFO Guild / Members in Industry Guild

The Committee for Members in Industry of ICAI maintains two separate guilds as follows:

1. CFOs GUILD(Corporate Accountants Guild)

This guild is for our members who are occupying high positions (CEO/ CFO/Treasury Head/Head of Analyst, GM or above) in Industry. The Primary objective of setting up such a guild is to develop a platform where highly intellectual & talented pool of people from various organizations can discuss various issues concerning the profession in general and for Members in Industry in particular.

2. Members in Industry Guild

Members in Industry guild is for our

Members serving in Industries. The Primary objective of setting up such a guild is to develop and maintain an industry wise database of the members of our Institute serving in industries.

They can plan, formulate and strategize policies for improving the image of the Chartered Accountants in the eyes of the Industry. Industry specific seminars/ Conferences/Round Table meetings can also be organized to discuss the matters pertaining to the industry and make them the Brand Ambassadors of the profession. The Members shall also be apprised of the various happenings of the Institute, from time to time.

Members may also note that their membership must be active in case they want to register in the guild. In case they have not paid fees and are presently not active, they should first pay the fees and revive their membership.

We invite all the members to visit Members in Industry link in the web-site: http://www.cmii.icai.org and register to avail the benefits. Members who are already registered may also update their data in case of any change.

Committee on Public Finance and Government Accounting

Invitation to Contribute Articles

The Committee on Public finance and Government Accounting constituted by the Institute of Chartered Accountants of India desires to have associates on full-time, part-time or honorary basis to work in the field of Public Finance, Tax Policy, Public Expenditure and Control, Public debt & management, Inter-governmental fiscal relations, government accounting etc. The Committee invites experts, researchers and writers to contribute articles in different areas of Public Finance and government accounting for publication in the E-newsletter. Those desirous may please contact at the following address:

The Chairman
Committee on Public Finance and Government Accounting
The Institute of Chartered Accountants of India
'ICAI Bhawan', Indraprastha Marg
New Delhi-110002
Email: cpf_ga@icai.org

Formation of CPE Study Circle for Members in Industry of ICAI.

As you are aware that ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards.

It is always the endeavour of ICAI to update its members about the changes taking place in various statutes, share the knowledge on various new techniques and sharpen their skills on various professional matters. So, the ICAI in 2008 made Continuing Professional Education mandatory for Members in Industry to earn minimum number of CPE Credit Hours by attending the programmes of academic/professional interest organised by ICAI and its organs.

ICAI has notified the norms for CPE Study Circles, which caters exclusively for the members in service. These CPE Study Circles are being contemplated to help Members in industry to achieve the objectives of maintaining their core competencies and exchange professional knowledge amongst the members apart from fostering and developing fellowship. Please visit http://www.icai.org/resource_file/15888announ180409.pdf to see the entire norms of the CPE Study Circle for Members in Industry.

The Committee for Members in Industry (CMII) has been empowered to approve, guide and supervise the CPE Study Circles for Members in Industry, which will conduct Continuing Professional Education Programmes for the Members in industry. The norms provide for the minimum number of members required and the application procedure, rules for functioning, administration and accounts of these CPE Study Circles.

28 CPE Study Circle for Members in Industry have already been formed so far by the CMII.

A separate helpline for forming CPE Study Circle for Members in Industry has been established at the Headquarter of our Institute with Email: cmii_events@icai.in, Telephone: 011- 30110549 in case you need further details.

We request the members serving in industry to come forward to form CPE study circle in their organization/locality.

Invitation to Send Quotes for Printing Work of ICAI Journal, *The Chartered Accountant*

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 for regulating, monitoring and uplift of the Accountancy Profession in India. Having 120 branches across India and 24 Chapters abroad, the ICAI serves more than 1,61,000 Chartered Accountants and about 6 lakh accountancy students around the world.

A founder member of various international professional bodies, the ICAI has been publishing, for the last more than 58 years, a prestigious monthly journal *'The Chartered Accountant'*, which is its official mouthpiece. With ever-widening reach and readership base, the total circulation of the Journal stands at more than 1,90,000 today.

The ICAI is initiating the process to appoint a **Printer** of high repute, long experience and excellent track record for this prestigious journal from publication of October 2010 issue.

The interested printers/bidders are requested to send the quotes and technical evaluation data for the job on the basis of the enclosed 'Mandatory Prequalification Criteria' **(Annexure I)** and 'Basic Job Specifications & Scope of Work' **(Annexure II)**. Please send the quotes and technical evaluation data in the Annexures III and IV respectively in hard copy duly signed as well as compulsorily in soft copy **(CD).** [Please see the Annexures on the Institute's website www.icai.org]

The price quoted should be inclusive of all taxes and will be unchanged for three years.

The quotes must be sent by 15.05.2010 with the latest updated profile of the company for the following three case scenarios separately:

(1) Printing and other tasks mentioned in Annexure II when paper is sourced by ICAI

(2) Printing as well as other tasks mentioned in Annexure II when paper will be sourced by printer. (paper sample to be provided)
   - (a) 65 GSM LWC Matt
   - (b) 65 GSM LWC Gloss

(3) Printing as well as other tasks mentioned in Annexure II in any other paper suggested and procured by you (paper sample to be provided).

Any other information/innovation which the Printer/Bidder might like to give to strengthen the case would be welcome.

The quotes should be sent by courier/ speed post to: Shri Vijay Kapur, Secretary, Editorial Board, ICAI Bhawan, A-94/4, Sector 58, Noida (UP), Pin: 201301. Please feel free to contact us on 011-3045926 or 9313511454 for any clarifications.

For The Attention Of Members
Membership and Certificate of Practice Fee for the year 2010-2011

Annual Membership and Certificate of Practice fee for the year 2010-2011 became due for payment on 1st April 2010. The schedule of fee is as under: -

For Members below age of 65 years

Associate Membership Fee	600/-
Fellow Membership Fee	1800/-
Certificate of Practice Fee	1600/-

For Members above age of 65 years (As on 1st April 2010)

Associate Membership Fee	450/-
Fellow Membership Fee	1300/-
Certificate of Practice Fee	1200/-

Individual circulars have been dispatched to members giving details of scales of fee and also the manner of remittance of the fee. The fee can, therefore, be remitted to the concerned Decentralized Office.

It may be noted that the remittance of fee has to be made by cheque or demand draft in favour of "Secretary, The Institute of Chartered Accountants of India" payable at a place where the concerned decentralized office is located.

Member may kindly note that the scheme for advance amount remittance has been revised by the Executive Committee whereby earlier members could pay an advance fee for a period of 3 years only but now members can remit any amount at their discretion in advance. However the same would be kept as advance in the credit of the member concerned and would be adjusted against membership and/ or COP fee as and when the same becomes due and other dues, if any. (However member may note that in the event of any short fall in advance, due to revision/ increase in fee(s), it is the responsibility of the member to remit the balance). For more details in this regard members may refer the Fee Circular sent to them.

Members can also pay membership/ COP fees by using the online facility available on the Institute's website (www.icai.org). For the use of payment gateway, members are requested to log in through "**Online Services**" link available on home page of the Institute's website.

In case, any member has not received the fee circular and entry on Record they are advised to contact the concerned Decentralized Office.

Members are aware that the Chartered Accountants Benevolent Fund has been set up with the object, inter alia, of providing financial assistance to Institute's members and/or their families in distress. Chartered Accountants can become member of the Chartered Accountants Benevolent Fund either by paying ordinary membership fee of Rs. 500/- annually or become life member thereof by paying one time amount of Rs. 2500/-. The fund has been providing financial assistance to the members and/ or the families of the deceased member depending on the number of request received and the fund position. In order to provide assistance to more members and in a substantial manner, augmentation of the Chartered Accountants' Benevolent Fund is necessary. Towards this direction, members are earnestly requested to contribute their mite while remitting their membership/certificate of practice fee for the year 2010-11. It is hoped that the members of the Institute would respond positively to this noble cause.

For relevant details visit our website www.icai.org.

e-Learning - CBT Modules by Committee on Information Technology, ICAI

The Committee has introduced the following e-Learning/ Computer Based Training (CBT) modules to provide good quality standardised leaning content on all India basis such that members can lean and develop competencies in important areas at their convenience and at nominal cost:

CD Price: Rs.100/-

Information System Security, Cyber Threats & Review

Salient Features:

Introduction to Cyber Threats
Need for securing Information Systems
Emerging Cyber Threats
Use of IT resources in a secure manner
IS Security awareness

CD Price: Rs.100/-

Windows, Network & Wi-Fi Security an Intro

Salient Features:

Windows Security: Security threats Prevention Software, Data Back up, Network Security: Trend of Network Security, Network Security Threats Wi-Fi Security: Introduction, Best Practices, Securing Access Point

CD Price: Rs.100/-

Using MS-Excel 2007 as an Audit Tool

Salient Features:

On-demand training on using Computer Assisted Audit Techniques (CAATs)/General Audit Software. Hands-on Training on (HOT) on using MS-Excel

Lessons on:

Detecting Gaps & Duplicates
- Aging Analysis
- Pivot Table Reports
- Benford/Digital Analysis for Fraud Detection
- Sampling
- Stratification

CD Price: Rs.100/-

Using Computer Assisted Audit Techniques/General Audit SW

Salient Features:

On-demand training on using Computer Assisted Audit Techniques (CAATs)/General Audit Software.
Hands-on Training on (HOT) on using a CAAT/GAS Tool
Working copies of two CAAT/GAS Tools for practice.

Lessons on:
- Importing Files for Analysis
- Selecting/ Extracting required Records
- Detecting Gaps & Duplicates
- Aging Analysis
- Pivot Table Reports
- Benford/ Digital Analysis for Fraud Detection
- Sampling

These Publications can be obtained from the Sales Counters of the Institute at Regional Offices/Head Office. It can also be obtained through post by sending a DD for the publication cost plus courier charges as indicated below in favour of "The Secretary, ICAI" payable at New Delhi to "The Postal Sales Department, The Institute of Chartered Accountants of India, A-94/4, Sector-58, Noida – 201301, Uttar Pradesh.

Invitation for Empanelment of Service Maintenance Agencies for Placement Portal

Technical bids are invited from reputed/experienced agencies having relevant experience of maintenance of job portals containing the following details:

- Profile of the organisation
- Details of management personnel and their brief details
- Relevant experience justifying their empanelment with ICAI for maintenance and upgradation of the **ICAI Placement Portal** - **www.cmii.icai.org**
- Retainership/structure anticipated
- Technical bid containing the details of the organisation and the technology to be adopted for maintenance
- Any other detail, which will enhance the candidature of the organisation for the proposed purpose

ICAI reserves the right to reject the tenders without assigning any reasons or to award the contract to any agency even if it has not responded to this announcement.

If you desire any further clarification, you may get in touch with Shri Shaleen Suneja, Secretary or Mr. Ajeet Nath Tiwari, Placement Coordinator, Committee for Members in Industry ICAI, The Institute of Chartered Accountants of India, 'ICAI BHAWAN', Indraprastha Marg, New Delhi - 110 002,

Tel: 011–30110450/491

e-mail: ssuneja@icai.org or placements@icai.org

Committee for Members in Industry
The Institute of Chartered Accountants of India,
New Delhi

Corrigendum

Attention of readers is invited to Standard on Auditing (SA) 220 (Revised), *"Quality Control for an Audit of Financial Statements"*, published in the March, 2010 issue of the Journal at page no. 1521. The following limited revisions to SQC 1 pursuant to issuance of SA 220 (Revised) should be added:

"Limited Revisions Consequential to the issuance of the SA 220 (Revised), *"Quality Control for an Audit of Financial Statements"*.

The changes to SQC 1 have been shown in Track Changed mode.

Standard on Quality Control (SQC) 1, "Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements"

6. In this SQC, the following terms have the meanings attributed below:

...

(j) *Network firm* – A firm or entity that belongs to a network. ~~An entity under common control, ownership or management with the firm or any entity that a reasonable and informed third party having knowledge of all relevant information would reasonably conclude as being part of the firm nationally or internationally.~~

(k) *Network* – A larger structure:

(i)That is aimed at cooperation, and

(ii)That is clearly aimed at profit or cost-sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand name, or a significant part of professional resources.

(l~~k~~) *Partner* – any individual with authority to bind the firm with respect to the performance of a professional services engagement.

(m~~l~~) *Personnel* – partners and staff.

(n~~m~~) *Professional standards* – engagement standards, as defined in the AASB's "Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services," and relevant ethical requirements as contained in the Code.

(o~~n~~) *Reasonable assurance* – in the context of this SQC, a high, but not absolute, level of assurance.

(p~~o~~) *Staff* – professionals, other than partners, including any experts which the firm employs.

(q~~p~~) *Suitably qualified external person* – an individual outside the firm with the capabilities and competence to act as an engagement partner, for example a partner or an employee[1] (with appropriate experience) of another firm."

[1] Such employee should be a member of The Institute of Chartered Accountants of India.

ICAI Job Portal
(http://jobs4cas.icai.org)

ICAI Job portal for experienced Chartered Accountants and Accounting Technicians.

Objectives of ICAI Job portal

The ICAI Job Portal is primarily for experienced Chartered Accountants and Accounting Technicians. The said Job Portal has been designed and developed to provide a platform for industry to fill their vacancies and chartered accountants to get fresh jobs. The benefits are as follows:

- **From Members Perspective:**
  - a) To cater to the Career Advancement of the members in industry.
  - b) To provide a platform for members in practice who wish to switch over to service.
  - c) To provide career advancement services throughout the year.
- **From Industry Perspective:**
  - a) To reinforce the image of the Institute as partner in Nation Building and to identify itself as a partner in industrial development through the provision of quality professionals.
  - b) To provide placement services throughout the year and fill their evolving manpower requirements.
  - c) To be a driver to the overall improvement of the various functional area of Industry.
  - d) To be a driver to develop world class Indian organisations.
- **Features of the Job Portal**

  Some of the Prominent Features of this portal are as follows:

  For Employers:
  - Hot Vacancy-Premium Job Posting Services
  - Advanced Search Tools
  - Reach through Job Alerts
  - Resume Database Access Subscription
  - Unlimited writing for Job Advertisement
  - Extremely fast display of Job Advertisement
  - Facility to monitor the activities done through the Account.

  For Candidates:
  - Update Alert for CV
  - Job Messenger
  - Email Alerts
  - Resume Building Services
  - Job Search Facility on the Basis of Functional Area, Industry, Experience, Locations, Expected Salary, Job Type, Freshness etc
  - Covering Letter Option
  - Hot Employer/Preferred Employer marking facility

The Recruiting organizations as well as the Experienced Chartered Accountants and accounting technicians can avail the benefits of the ICAI Job Portal. In case you need any assistance you may feel free to contact Secretary to CMII at email: placements@icai.org , ssuneja@icai.org ,Tel: 011-30110450/491,

Chairman
Committee for Members in Industry

One Profession Versatile Roles

CA

A Total Business Solution Provider

Ever since its inception sixty years ago, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high quality accounting, auditing and ethical standards.

With ever changing economic and financial scenario on global front, the need arises for well rounded professionals who can tackle corporate matters. From laws to disputes, finance to taxation, ICAI 's curriculum is aptly designed and formulated to turn CAs into all round professionals, that is truly a Complete Business Solution provider.

- **Financial Reporting**
- **Auditing :** Compliance Audit, Management Audit, Forensic Audit.
- **Taxation and Corporate Laws**
- **Internal Audit and Control :** Enterprise Risk Management
- **Financial Management :** Corporate Restructuring, Mergers and Acquisitions, Forex and Treasury Management, Due Diligence.
- **Information Technology :** ERP Implementation, Systems Audit, Software Development.
- **Valuation**
- **Arbitration**
- **Insurance and Risk Management**
- **Strategic Management**
- **Knowledge Management**
- **Management Consultancy and much more ......**

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

ICAI - ENRICHING THE NATION WITH PROFESSIONAL EXCELLENCE

Report on Campus Placement Programme – February-March 2010

In its endeavour to provide quality accounting, finance, tax, audit and management consultancy personnel to recruiting entities, the Committee for Members in Industry (CMII) of the Institute has successfully organised one more round of campus placement programmes for newly qualified chartered accountants at sixteen centres, viz. Ahmedabad, Bangalore, Chandigarh, Chennai, Coimbatore, Ernakulam, Hyderabad, Indore, Jaipur, Kanpur, Kolkata, Mumbai, Nagpur, New Delhi, Pune and Surat, in February-March 2010.

Brief summary of the placement programme of both the phases is as follows:

Number of Candidates Registered	2931
Number of Interview Teams	199
Number of Organisations	94
Number of Jobs Offered	1411
Percentage of jobs offered vis a vis registered candidates	48.14%

Executive Summary

1. Highest salary offered for international posting in the campus placement programme is $1.5 lakh per annum (approx. INR 70.0 lakh per annum).
2. Highest salary offered for domestic posting in the campus placement programme is Rs. 10.82 lakh per annum.
3. The minimum salary paid is Rs. 3.24 lakh per annum.
4. The average salary offered was Rs. 6.58 lakh per annum.
5. In all, 2931 candidates registered for availing the services of campus placement programme.
6. Around 1411[1] jobs were offered to the candidates who participated in campus placement programme.
7. In all, more than 48 per cent of registered candidates were offered jobs.
8. 1170 candidates accepted the job offers.
9. 94 entities including the corporate organizations and the chartered accountancy firms have participated during the campus placement programme.
10. Around 200 interview panels have participated during this campus placement programme.

Salient features

1. Candidates have been given two choices to meet the recruiting organisations. First at bigger cities and second (if the candidates has not been selected at bigger cities) at smaller cities.
2. Two rounds of online registration as a facilitation to the candidates.
3. The committee organised an orientation programme for candidates to sharpen their soft skills and give updates on the technical side.
4. In this campus placement programme, candidates who have opted for bigger centres as first choice for appearing in the campus placement programme have been permitted to attend the orientation programme at any of the smaller centres to avoid the requirement to travel to bigger centres for attending the orientation programme.

The following table shows the statistical information of campus interview at a glance:

A) Phase I

Centre Name	Candidates Registered	Number of Interview Teams	Total No of jobs Offered
New Delhi	1348	30	438
Chennai	154	22	93
Mumbai	623	23	291
Bangalore	165	16	105
Calcutta	328	17	128
Total	2618	108	1055*

** Since previous reporting, further job offers were received from participating companies.*

B) Phase II

Centre	Candidates Registered	Number of Interview Teams	Total No of jobs Offered
Ahmedabad	158	8	29
Chandigarh	337	5	24
Coimbatore	29	13	8
Ernakulam	19	5	24
Hyderabad	201	19	106
Indore	66	7	27
Jaipur	370	9	51
Kanpur	142	3	22
Nagpur	21	5	12
Pune	262	10	52
Surat	22	1	1
Total	**1626**	**85**	**356**

* Comments/suggestions for improvement in placement programme, particularly to improve the penetration are welcome at placements@icai.org

[1] This write up reflects the status as on 12/04/2010 05:30 PM. Results are awaited from some of the companies. For further details, kindly visit http://www.cmii.icai.org

Non-compliance with Reporting Obligations

With a view to apprise the members of the Institute and others concerned about the major non-compliances observed during the review, the *Financial Reporting Review Board* (FRRB) compiles such non-compliances from time to time and publishes the same in the Journal of the Institute. Continuing the same practice, published below are some of the common non-compliances observed by the Board during the review of general-purpose financial statements of certain enterprises and auditors' reports thereon:

Accounting Standards

AS 1, Disclosure of Accounting Policies

1. Certain enterprises merely states in its accounting policy relating to revenue recognition that the revenue has been recognised on the basis as stipulated under the AS 9, Revenue Recognition. Such disclosure can not be considered as adequate disclosure under the AS 1. The accounting policy as adopted by the enterprise with respect to timing of recognition of revenue arising from sales revenue, interest income, royalty income and dividend income should be considered as one of the most important accounting policies for any organisation and it should be disclosed separately.
2. Paragraph 10 (a) of the AS 1 provides that "the enterprise is normally viewed as a going concern, that is, as continuing in operation for the foreseeable future. It is assumed that the enterprise has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the operations". Further, it may be noted that Paragraph 27 of the AS 1 provides that if the fundamental accounting assumptions, viz. going concern, consistency and accrual, are followed in financial statements, specific disclosure is not required. If a fundamental accounting assumption is not followed, the fact should be disclosed.

However, while reviewing the financial statement of an enterprise, it has been noted that it is continuously incurring losses and its net worth has become significantly negative. Further, certain relief measures are also being granted to it, so that the enterprise may be able to continue its operation, still, it fails to do so. It is also disclosed in the notes to accounts that even if the enterprise is able to continue some of its operations, it would be required to curtail its operations materially.

Despite all such facts, if the financial statements of such enterprise are prepared on a going concern basis, than, it is not as per the requirement of the AS 1. Also, it is not appropriate for such enterprise to simply prepare its financial statements on a going concern basis without disclosing this fact on the face of auditor's report.

3. Paragraph 24 of the AS 1 requires that all significant accounting policies adopted in the preparation and presentation of financial statements should be disclosed. The financial statements of the enterprises provide a detailed note on accounting policies as adopted by them. However, they often omit to disclose accounting policies with regard to the borrowing costs, valuation of inventories, accounting for investments, impairment of assets, provisions, contingent liabilities and contingent assets. It was felt that enterprises normally, borrow funds, hold inventories as well as investments and also possess certain assets which may be subject to impairment. Further, there is always a need to carry certain provisions for meet their future liabilities. Accordingly, subject to circumstances, enterprises are expected to also disclose the accounting policies as adopted by them with regard to borrowing costs, valuation of inventories, accounting for investments, impairment of assets and provisions, contingent liabilities and contingent assets.

AS 2, Valuation of Inventories

4. Some enterprises recognise the custom duty on inventory as and when the goods are cleared from custom warehouse. As such, no provision for customs duty is made on the goods lying in the warehouse. It is contrary to the requirement of the AS 2. It may be noted that as per Paragraph 6 of the AS 2, the cost of inventories should comprise all costs of purchase, costs of conversion and other costs incurred in bringing the inventories to their present location and condition. Since the customs duty is a cost incurred in bringing the goods to its present location and condition, therefore, the liability to pay such duty should be recognised as and when the goods enter the territorial waters of the country.
5. Certain enterprises disclose the amount of the MODVAT credit receivables as well as Excise duty on finished goods as separate sub-heads under the head of 'Inventories'. It may be noted that the Guidance note on Accounting Treatment for Excise Duty provides that the excise duty should be considered as a manufacturing expense and like other manufacturing expenses, it should be considered as an element of cost for inventory valuation. Therefore, 'excise duty on finished goods' should be included in the value of finished goods instead of separately disclosing the same as a separate sub-head under the head of 'Inventory'. Further, as per Paragraph 16 of the Guidance note on Accounting Treatment for MODVAT/CENVAT provides that the debit balance in the MODVAT/CENVAT credit receivable (inputs) account should be shown on the asset side under the head of 'advances'.

(… to be continued)

⏭ No Need to Establish a Debt as 'Bad Debt' for Tax Deduction: SC

Corporates and banks will not have to establish a debt as a 'bad debt' in order to claim tax deduction, according to a recent Supreme Court ruling. The apex court order has said that bad debts written off in the books of accounts of the taxpayer is sufficient ground for claiming deduction. Indeed the issue was settled by a 1989 amendment in the Income-tax Act. The amendment had clarified that the tax payer need not establish that the debt is irrecoverable for claiming deduction. Under this, if a bad debt is written off, the taxpayer can legitimately claim the deduction. This amendment was incorporated with the specific intention to reduce the number of litigation arising from disputes over whether a debt is a bad or not. But, even after the 1989 amendment, tax officers insisted on proofs from tax payers for declaring a debt as bad debt.

The Supreme Court judgement, therefore, reaffirmed the importance of the 1989 amendment, much to the relief of several corporates. The apex court's decision will reduce the number of litigation arising from the requirement to establish that the debts are irrecoverable. The apex court gave this order on an appeal filed by TRF, an engineering company. The company has claimed deduction under the Section 36(I)(vii) of Income-tax Act that deals with deduction on account of bad debts. The assessing officer disallowed the claim for deduction, triggering a long-drawn litigation that finally reached the Supreme Court.

Source: http://economictimes.indiatimes.com/)

⏭ Government Proposes More Time for Appeals Against ITAT Orders

The government has proposed to allow High Courts to admit appeals against orders of the Income Tax Appellate Tribunal (ITAT) beyond the currently-stipulated period of 120 days. While presenting the Union budget, Finance Minister Pranab Mukherjee had proposed to amend the Section 260A of the Income-tax Act, which gives only 120 days to challenge any order of the ITAT before any division bench of a High Court. As per the new proposal, if High Courts are satisfied that the delay was due to some reasonable cause, then they can admit the appeal. It has been decided to amend the Sections 260A and 27A of the Wealth Tax Act, which deals with the time period of the appeal against any ITAT order, by inserting a new sub-section. As per the proposal, the amendment will be effective retrospectively.

Source: http://www.business-standard.com/

⏭ HCs Get Back Power to Hear Late I-T Appeals

The amendments brought in the Finance Bill has empowered the Income-Tax (I-T) department to file about 12,000 appeals involving several thousand crores of rupees before the high courts, nullifying an earlier ruling by the Supreme Court. Two years ago, the apex court held that the high courts did not have powers to condone delays in filing appeals. According to the amendment, the High Courts have powers to condone delays in filing appeals as per the Section 260A of the I-T Act. The amendment will be effected retrospectively from October 1998. The proposed amendment throws clarity on the issue and also paves the way for the I-T department to recover tax dues locked up in disputes. The amendment follows I-T department's application to the Supreme Court challenging the Bombay High Court's ruling last year which rejected over 700 appeals. Bombay High Court had cited the case of *Hongo India Vs Commissioner of Customs* & Excise while pronouncing its judgement.

Source: http://economictimes.indiatimes.com/news/economy/

⏭ I-T Dept Fails to Meet FY10 Direct Tax Target

The FY10 all India direct tax collections saw a significant shortfall of Rs. 9,000 crore. This is expected to widen the fiscal deficit at a time when the Finance Ministry is yearning for much-needed revenue flexibility. According to government sources, there are several significant reasons that have contributed to this revenue shortfall. First, there were huge refunds of Rs. 22,000 crore issued in financial year 2009-10 as against Rs. 12,000 crore last fiscal. Second, tax deducted at source (TDS) rate deductions in October hit TDS collections. Third, pending demands are locked in dispute resolution. These demands are in excess of Rs. 6,000 crore. The Income-Tax department is unable to finalise assessments on pending demands. Fourth, with the government not issuing oil bonds or subsidies in FY10, payments from oil marketing companies have been hit. Finally, lacklustre fourth quarter advance tax from foreign banks also led to the shortfall.

Source: www.hindustantimes.com

⏭ CBDT Panel Mulls Retaining MAT

The committee set up by the Central Board of Direct Taxes (CBDT) is considering various options to retain minimum alternate tax (MAT) with the new proposed base of gross assets. The Direct Taxes code, proposed last year, had recommended shifting the base for calculation of MAT from book profit to gross assets, to make it an investment-linked, and not profit-linked, tax. However, stiff opposition from industry has led to reworking of MAT. MAT is the minimum tax payable by a company, if the normal tax liability of a company is less than 15 per cent of its book profit. "To encourage long gestation projects of 10-15 years, capital-intensive project proposal and asset creation, one of the options being considered is to exclude work-in-progress (WIP) from calculating MAT, while retaining its base as gross assets," said an official source.

Source: http://www.indianexpress.com/news/

CBDT Tags Gifts for Taxation

The Central Board of Direct Taxes has notified the valuation rules for gifts over Rs 50,000, and these will come into effect retrospectively from October 1, 2009. The transaction value of warrants, preference shares and other such instruments transferred to another individual or a company will now have to be certified by a category-I merchant banker according to CBDT's new fair market value (FMV) norms for gifts. Valuation rules have now been prescribed for gifts or properties, other than immovable properties and accordingly, all gifts of jewellery, art, etc., post October 1, 2009, would have to be valued and taxed in line with the new rules. Tax will have to be paid now, if not deposited in advance on an ad hoc/estimated basis. Gifts from a relative for a marriage, under will or by way of inheritance, from any local authority, or, from any fund or trust, is exempted from tax. Spouses, siblings and any lineal ascendant or descendant are defined as relatives under the Income-tax Act.

Source: www.financialexpress.com

Direct Taxes Code to Get a Makeover

The government wants to table it in monsoon session of Parliament. Faced with a lot of opposition from various quarters on the Direct Taxes Code (DTC), the finance ministry is completely rewriting the original draft rather than just making changes in some sections. A senior official in the finance ministry said the CBDT addressed the nine areas of concern in the Code identified by the Finance Minister Pranab Mukherjee. Besides, many other parts would be changed to take care of the concerns of various stakeholders. "It (DTC) is being rewritten. We want to make it progressive. While many parts have been completely revisited, minor changes have been made at some other places," the official said. The government has re-examined the proposals relating to the MAT on gross assets, capital gains tax in case of non-resident Indians, Double Taxation Avoidance Agreement, General Anti-Avoidance Rule, taxation of charitable organisations, effective management control and taxation of foreign companies in India, shift from exempt-exempt-exempt (EEE) to exempt-exempt-tax (EET) taxation system for savings and investments, taxation of income from house property in case of self-occupied property by the individual, and deductions in case of retirement benefits.

Source: www.zeenews.com

CBDT Receives BIS Certification

The Central Board of Direct Taxes has received certification from the Bureau of Indian Standards demonstrating its ability to provide effective and efficient services. "The CBDT and the Income-Tax department have received certification under IS 15700:2005 from the BIS for excellence in public delivery systems," CBDT said in a release.

Source: www.incometaxindia.gov.in/cbdt/org.asp

CBDT Wants Jail Term for Tax Evaders

Tax evasion could land you behind bars if the country's direct taxes authority has its way. The central board of direct taxes wants to prosecute tax evaders under the tough anti-terror financing law, even as it looks to adopt a more friendly approach towards honest tax payers. It has proposed to the department of revenue to bring offences such as concealment of income, not filing income tax returns, failure to deposit tax deducted at source and giving false evidence under the ambit of Prevention of Money Laundering Act (PMLA). If these offences become scheduled offences under the anti-money laundering law, they will invite rigorous imprisonment of three to seven years and a fine of up to Rs. 5 lakh. The trial will be faster in the case of offences under PMLA as these are tried in special courts and the accused has to prove that he is not guilty. "The board has written to the Department of Revenue to include these as predicate offence under the PMLA," a finance ministry official said. The department of revenue is an arm of the finance ministry that administers the money laundering law.

Source: http://www.business-standard.com/

Indirect Tax Kitty Swells Close to Revised Target

Government's indirect tax kitty, which was hit the most due to the stimulus packages given by the government to tide over economic slowdown, has almost met the revised collection target for 2009-10 at Rs. 2.41 lakh crore. According to official sources, indirect tax collections till March 31 are over 99 per cent of the revised estimate of Rs. 2.44 lakh crore, though a decline of 8.6 per cent compared to the previous fiscal collections.

Source: http://economictimes.indiatimes.com/)

(… to be continued)

⏭ IAASB Welcomes New Auditing Research Initiative

The International Auditing and Assurance Standards Board (IAASB) is looking forward to findings from four new auditing research projects announced recently by the Association of Chartered Certified Accountants (ACCA) and the International Association for Accounting Education and Research (IAAER). ACCA is funding the project. This initiative will help to inform debate within the profession on subjects relating to auditing and assurance. Major research areas include international consistency and convergence, XBRL for audits of, financial statements, use of risk-based audit methodology and the nature of professional judgement in auditing. It will be carried out by international teams from Australia, Germany, the Netherlands, the UK, and US. Final results will be published by October 2011.

Source: http://www.ifac.org/MediaCenter/

⏭ IESBA Seeks Views on Its Strategy and Work Plan for 2010-2012

The International Ethics Standards Board for Accountants (IESBA) has released for comment an exposure draft (ED) setting out its proposed strategy and work plan for the next three years. The proposed strategy and work plan focuses on the board's new projects and activities. The work plan for 2010-2012 includes the IESBA's intention to complete two high-priority projects from its previous work plan on *Conflicts of Interest and Responding to Suspected Fraud or Illegal Acts.* The IESBA also plans to begin a project that addresses the application of the "related entity" definition in the IESBA's *Code of Ethics for Professional Accountants* (the Code) to audits of collective investment vehicles. To access the ED or submit a comment, please visit the IFAC website. Comments on the exposure draft are requested by June 15, 2010.

Source: http://www.ifac.org/MediaCenter/

⏭ IAASB Launches Online Questionnaire to Inform Development of its Future Strategy

The IAASB is launching an online questionnaire to inform the development of its strategic direction and related work program for 2012-2014. This initiative will be a part of the IAASB's broader mandate to consult with key stakeholders to determine which issues should be addressed by the board. The questionnaire is the first stage of the IAASB's 18-month consultation process. Through the survey, the IAASB seeks feedback on the challenges facing the accountancy profession. Its results will be used to develop a formal Consultation Paper, to be issued in December 2010, outlining the IAASB's strategic focus and the potential projects. The questionnaire takes no more than 30 minutes to complete and can be accessed online at the IAASB website. Responses can be submitted by May 14, 2010.

Source: http://www.ifac.org/MediaCenter/

⏭ IFAC Releases 2010 Handbooks Containing Pronouncements and Code of Ethics

The International Federation of Accountants (IFAC) has released the 2010 *Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements, and the 2010 Handbook of the Code of Ethics for Professional Accountants.* The former Handbook includes the IAASB's complete set of clarified International Standards on Auditing (ISAs) and International Standard on Quality Control (ISQC) 1 now in effect. It also includes the IAASB's standards on review, other assurance, and related services, a glossary, and a preface to the international standards. The latter has the *Code of Ethics for Professional Accountants,* which has been revised by the IESBA, and it becomes effective on January 1, 2011, with early adoption permitted. The handbooks can be downloaded free of charge from web.ifac.org/publications.

Source: http://www.ifac.org/MediaCenter/

⏭ IFAC's Education Standards Board Adopts New Strategy

The IAESB has issued its Strategy and Work Plan for 2010-2012 focusing on enhancing the International Education Standards (IESs) and providing guidance for IES adoption and implementation. This work will assist IFAC member bodies, regulators, employers, academics, and students by prescribing principles for the learning and development of a professional accountant. Its focus will be on revising the IESs in consideration of the IAESB's drafting conventions project, developing implementation guidance and promoting awareness of the IAESB's pronouncements and their role in advancing international debate on emerging issues relating to the development and assessment of professional accountants. The *IAESB 2010-2012 Strategy and Work Plan* can be downloaded free of charge from www.ifac.org/education.

Source: http://www.ifac.org/MediaCenter/

⏭ IASC Foundation Invites Comment on the Proposed IFRS Taxonomy 2010

The International Accounting Standards Committee (IASC) Foundation has invited public comment on the exposure draft of the International Financial Reporting Standards (IFRSs) Taxonomy 2010 containing significant architectural improvements, which, for the first time, integrates the IFRSs and the IFRS for SMEs into a single taxonomy. To facilitate review of the proposed taxonomy, the IASC Foundation is pleased to provide a new tool, xIFRS (IFRS with XBRL). Available to eIFRS subscribers only, xIFRS supports viewing and understanding of the IFRS Taxonomy, without requiring any knowledge of XBRL. xIFRS provides a view of the eIFRSs with embedded XBRL (eXtensible Business Reporting Language). The Taxonomy is a translation of IFRSs as issued on January 1, 2010, into XBRL.

Source: http://www.iasb.org/News/

ED on Measurement of Liabilities in IAS 37: Comment Deadline Extended

In its March meeting, the International Accounting Standards Board (IASB) decided to extend the comment period for the exposure draft of the *Measurement of Liabilities in* IAS 37 to 19 May 2010. The extension is to facilitate its respondents more time to understand the recognition requirements of the standard that will replace IAS 37, before they finalise their comments on the revised measurement proposals.

Source: http://www.iasb.org/News/

Official Japanese IFRS Taxonomy Published: Other Translations in Pipeline

The IASC Foundation has published the Japanese translation of the complete label linkbases for the IFRS Taxonomy 2009, an official IASC Foundation translation and was created using official terminology. This translation marks the successful delivery of all the planned translations of the IFRS Taxonomy 2009 by the IASC Foundation into key languages, which also include Arabic, simplified Chinese, Dutch, French, German, Italian, Korean and Spanish. To further its support to the Japanese users, the IASC Foundation is planning to bring more support materials for viewing and use in Japanese: IFRS Taxonomy Modules Manager and IFRS Taxonomy Illustrated (ITI), which is a simplified Taxonomy in a visual format that does not require knowledge of XBRL. The ITI has been prepared for accountants, auditors and those wanting a comprehensive overview of the structure and content of the IFRS Taxonomy.

Source: http://www.iasb.org/News/

IASB Seeks Feedback on Extractive Activities Discussion Paper

The IASB has published the results of an international research project on a possible future IFRS for extractive activities in the form of a discussion paper – *Extractive Activities*, which contains the views of the project team consisting of members of the Australian, Canadian, Norwegian and South African accounting standard-setters. They analysed and discussed accounting for extractive activities with a wide range of stakeholders in order to identify a possible approach for a standard on the accounting for extractive activities. The discussion paper is open for comment until July 30, 2010, and is available on the IASB website.

Source: http://www.iasb.org/News/

Chairman of the IASB addresses the ECOFIN of the European Union

Chairman of the IASB informed the Council of the European Union (Economic and Financial Affairs) that since 2002, the IASB and the US Financial Accounting Standards Board (FASB) have worked closely to bring about convergence of and improvements to accounting standards and in September 2008, they updated their 2006 MoU and established a 2011 target date for completion of their ongoing joint work. He also said that the IASB took note of the G20 Leaders' Statement in September 2009 as an important reminder of the need to fulfill our commitments. He vowed to recognise the importance that the G20 and the European Union have placed on the IASB's work. The European Union has been the catalyst for the effort to adopt IFRSs globally, with more than 115 countries committed to IFRS and nearly all G20 members on their way to full IFRS adoption.

Source: http://www.iasb.org/News/

IASB-FASB Quarterly Report Shows Progress Towards Convergence Goal

The IASB and the US FASB have published a report on their work to improve and achieve convergence of the IFRS and US generally accepted accounting principles. In November 2009, the two Boards, with the support of their respective Trustee bodies and the IASC Foundation Monitoring Board of public capital market authorities (a body that also includes the US public authority), demonstrated their shared commitment to convergence by establishing a comprehensive work plan to complete their joint programme by the June 2011 target. To accomplish that objective, the boards have accelerated and intensified their joint work and, instead of meeting jointly every four months, have held ten joint meetings totalling more than 100 hours of discussions since the agreement.

Source: http://www.iasb.org/News/

IFAC Analysis Highlights the Expanding Role of SMPs in Advising SME Clients

The Small and Medium Practices (SMP) Committee of the IFAC published an analysis of research on business advisory services provided by SMPs. The extensive analysis includes a review of global research spanning academic studies, practitioner surveys, and interviews of SMP partners. The analysis suggests that the needs of small and medium-sized enterprises (SMEs)-- the sector commonly served by SMPs-- are changing due to an increasingly complex regulatory environment. Evidences suggest that SMEs have difficulty obtaining access to credit and other resources. The research suggests that referral networks are currently being underutilised by SMPs. The results of the analysis are presented in the information paper, *The Role of Small and Medium Practices in Providing Business Support to Small and Medium-sized Enterprises*, available on the IFAC website.

Source: http://www.ifac.org/MediaCenter/

(... to be continued)

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during March-April 2010 for the reference of Faculty/Students & Members of the Institute.

1. ACCOUNTING

Accounting for Investments & The Relevance of Losses to Firm Value by Hai Wu, etc. *The International Journal of Accounting,* Vol.45, 2010, pp.104-127.

Accounting for Non-Profit Organizations: An Empirical Study of the Information Needs of Contributors to Non-Profit Organization by S. Shankarappa & B. Mahadevappa. *Indian Journal of Accounting,* Dec. 2009, pp.27-34.

Adverse Effects of Uniform Written Reporting Standards on Accounting Practice, Education & Research by Shyam Sunder. J. Account. *Public Policy,* Vol.29, 2010, pp.99-114.

Financial Reporting Quality in International Settings: A Comparative Study of the USA, Japan, Thailand, France & Germany by Asheq Rahman, etc. *The International Journal of Accounting,* Vol.45, 2010, pp.1-34.

Global Financial Crisis – Implications for Accounting by Shirin Rathore. *Indian Journal of Accounting,* Dec. 2009, pp. 1-6.

How Will Convergence with IFRS Affect Audit Procedures? by Jamil Khatri & Akeel Master. *BCAJ*, April 2010, pp.95-99.

IFRS for SMEs – The Slow Road to Adoption by Smith & Williamson. *International Accountant*, Feb.-March 2010, pp.4-7.

2. AUDITING

Avoiding Common Errors of XBRL Implementation by Jon Bartley. *Journal of Accountancy,* Feb. 2010, pp.46-51.

Social Responsibility & Corporate Reputation: The Case of the Arthur Andersen Enron Audit Failure by Chery Linthicum, etc. J. Account. *Public Policy,* Vol.29, 2010, pp. 160-176.

3. ECONOMICS

Economic Survey 2009-2010. *Company Law Journal,* Vol.1, 2010, pp.100- 128.

Global Meltdown & SME Sector in India by Mohana E. Bandkar. *LLIM Journal of Research,* July-Dec. 2009, pp.31-35.

International Banking Statistics of India: June 30, 2009. *RBI Bulletin,* Feb. 2010, pp.385-413.

Lessons from the Financial Crisis for Monetary Policy in Emerging Markets by John Brian Taylor. *RBI Bulletin*, March 2010, pp.485-494.

4. EDUCATION

Issues on Globalization & Indian Higher Education by Rachel K. Daniel & P. Sam Daniel. *University News,* March 29–April 04, 2010, pp. 13-18.

Time Management by Teachers in the University System by Chandra B.P. Singh. *University News,* March 8-14, 2010, pp.1-5.

5. INVESTMENT

Do Expirations of Stock Futures Affect, Return & Volatility in Indian Stock Market? by Anil K. Mittal & R.K. Mittal. *Management Vistas,* Jan. 2010, pp.3-8.

Nation Branding: A Study of India's Brand Equity & Capabilities in Comparison to Two Other South Asian Countries by Rahela Farooqi. *Pranjana,* Jan.-Dec. 2009, pp.51-71.

Mergers & Acquisition Transactions: Examining the Role & Relevance of Intellectual Property by Amit Kumar & Arvind Giriraj. *Company Law Journal*, Vol.1, 2010, pp.81-85.

Performance of Exchange Traded Funds in India by Y.P. Sing & Swati Gupta. *Indian Journal of Accounting,* Dec. 2009, pp.16-26.

Valuation of Firms that Disclose Related Party Transactions by Mark Kohlbeck & Brian w. Mayhew. J. Account. *Public Policy,* Vol.29, 2010, pp.115-137.

6. LAW

Right to Education Act 2009: Critical Gaps & Challenges by Praveen Jha & Pooja Parvati. *Eco. & Pol. Weekly*, March 27, 2010, pp.20-23.

7. MANAGEMENT

Corporate Governance in 2010: What Will Change? by Mahbub Zaman. *International Accountant,* Feb.-March 2010, pp.12-13.

Debt Diversification & Earnings Management by G. R. Perez & S.V. Hemmen. J. Account. *Public Policy,* Vol.29, 2010, pp.138-159.

Exploring Determinants of Venture Capital Finance- A Factor Analysis Approach by Sanjeev Bansal & Dimple Khosla. *Management Vistas,* Jan. 2010,pp.54-62.

Financial Management Call for New Approach to Ethical Based Financial Statement Analysis by M.R. Kumara Swamy. *Journal of Financial Management & Analysis,* Vol. 22/2, 2009, pp.70-84.

Globalization & Governance for Sustainability by A. Martinelli & A. Midttun. *Corporate Governance,* Vol.10/1, 2010, pp.6-17.

Pension Plans, Provident Fund Schemes & Retirement Policies: India's Social Security Reform Imperative by Mukul G. Asher. *ASCI Journal of Management,* Vol. 39/1, pp. 1-18.

Performance Indicators for Entrepreneurs by Mark Wardell. *CGA Magazine,* March-April 2010, pp.12-13.

Risk Management in Large Information

Systems (IS) Projects: A Case Study of the Indian Railways Computerized Passenger Reservation System by K.S. Raman & Swati Wig. *ASCI Journal of Management*, Vol. 39/1, pp. 33-54.

Strategies for Developing Media Managers for Convergence: An Analysis of Perspectives from Management Theory & Practice for Managers of Converged Newsrooms by Serajul I. Bhuiyan. *Pranjana,* July-Dec. 2009, pp.1-15.

8. TAXATION & FINANCE

Budget 2010 – A Significant Change for the Better? by Gautam Nayak. *BCAJ,* March 2010, pp.5-6.

Budget 2010: Post-Budget Analyses– Part I by T.N. Pandey. Consolidated *Commercial Digest*, 15.03.2010, pp.7-37.

Designing & Drafting a Domestic Law to Implement a Tax Treaty by K. Nakayama. *Asia-Pacific Tax Bulletin,* Jan.-Feb. 2010, pp.4-8.

International Comparison of Taxation & Social Security Policies by S. Shiga. *Bulletin for International Taxation,* March 2010, pp.186-196.

International Tax Rulings – An Indian Perspective by Rajesh Kadakia, etc. *BCAJ,* April 2010, pp.39-47.

International Taxation by Mayur B. Nayak, etc. *BCAJ*, April 2010, pp.49-53.

New EU VAT Rules Applicable From 1 January 2010 (2) by W. D. Corput. *International VAT Monitor,* Jan.-Feb. 2010, pp. 9-19.

Transfer Pricing Regulations – A Comparative Study on the Confluence & Conflict Between India, the OECD & Other Countries by S.K. Dash & S. Krishnan. *Asia-Pacific Tax Bulletin,* Jan.-Feb. 2010, pp.24-35.

Union Budget for 2010-11 & the UPA's Growth Strategy by C.P. Chandrasekhar. *Eco. & Pol. Weekly,* March 27, 2010, pp.43-45.

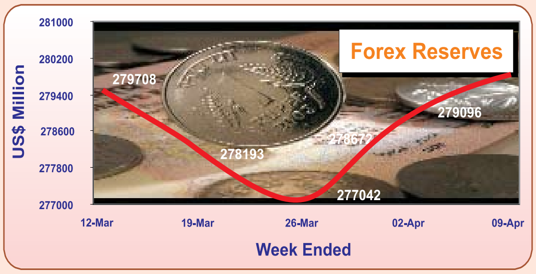
Update on the United Nations Tax Work by Michael Lennard. Asia-Pacific Tax Bulletin, Jan.-Feb. 2010, pp.9-13.

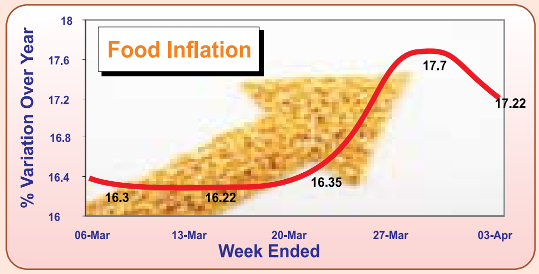
US Taxation of Foreign Currency Derivatives: 30 Years of Uncertainty by Viva Hammer. *Bulletin for International Taxation,* March 2010, pp.176-182.

What Does Budget 2010 Imply for the Social Sector? by Subrat Das & Yamini Mishra. *Eco. & Pol. Weekly,* March 27, 2010, pp.64-68.

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

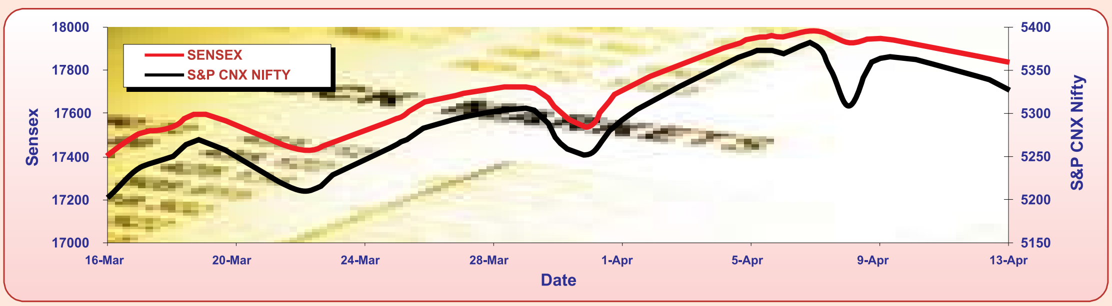
Economic Indicators





Indian Rupee vs. Major Foreign Currencies (March 16, 2010 to April 15, 2010)

Stock Markets



Selected Indicators

Item	Unit/Base	2009	2010					
		Apr. 3	Feb. 26	Mar. 5	Mar. 12	Mar. 19	Mar. 26	Apr. 2
Cash Reserve Ratio	per cent	5.00	5.50	5.75	5.75	5.75	5.75	5.75
Bank Rate	Per cent per annum	6.00	6.00	6.00	6.00	6.00	6.00	6.00
Prime Lending Rate	Per cent per annum	11.50-12.50	11.00-12.00	11.00-12.00	11.00-12.00	11.00-12.00	11.00-12.00	11.00-12.00
Deposit Rate	Per cent per annum	7.00-8.50	6.00-7.50	6.00-7.50	6.00-7.50	6.00-7.50	6.00-7.50	6.00-7.50
Call Money Rate (Low/High)	Per cent per annum	2.30/5.75	1.75/3.75	1.50/3.40	1.50/4.75	1.00/4.10	2.00/9.00	1.75/5.75

Note: Readers are Invited to contribute write-ups or any relevant and interesting piece of information for this feature at eboard@icai.org.

Standard on Review Engagements (SRE) 2400 (Revised)*
Engagements to Review Financial Statements

Standard on Review Engagements (SRE) 2400 (Revised), "Engagements to Review Financial Statements" should be read in the context of the "Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services[1]", which sets out the application and authority of SREs.

Introduction

1. The purpose of this Standard on Review Engagements (SRE) is to establish standards and provide guidance on the practitioner's[2] professional responsibilities when a practitioner, who is not the auditor of an entity, undertakes an engagement to review financial statements and on the form and content of the report that the practitioner issues in connection with such a review. A practitioner, who is the auditor of the entity, engaged to perform a review of interim financial information performs such a review in accordance with SRE 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity".

2. This SRE is directed towards the review of financial statements. However, it is to be applied, adapted as necessary in the circumstances, to engagements to review other historical financial information. Guidance in the Standards on Auditing (SAs) may be useful to the practitioner in applying this SRE.

Objective of a Review Engagement

3. **The objective of a review of financial statements is to enable a practitioner to state whether, on the basis of procedures which do not provide all the evidence that would be required in an audit, anything has come to the practitioner's attention that causes the practitioner to believe that the financial statements are not prepared, in all material respects, in accordance with the applicable financial reporting framework (negative assurance).**

General Principles of a Review Engagement

4. **The practitioner should comply with the *Code of Ethics* issued by the Institute of Chartered Accountants of India.** Ethical principles governing the practitioner's professional responsibilities are:

(a) Independence;

(b) Integrity;

(c) Objectivity;

(d) Professional competence and due care;

(e) Confidentiality;

(f) Professional behaviour; and

(g) Technical standards.

5. **The practitioner should conduct a review in accordance with this SRE.**

6. **The practitioner should plan and perform the review with an attitude of professional skepticism recognising that circumstances may exist which cause the financial statements to be materially misstated.**

7. **For the purpose of expressing negative assurance in the review report, the practitioner should obtain sufficient appropriate evidence primarily through inquiry and analytical procedures to be able to draw conclusions.**

Scope of a Review

8. The term "scope of a review" refers to the review procedures deemed necessary in the circumstances to achieve the objective of the review. **The procedures required to conduct a review of financial statements should be determined by the practitioner having regard to the requirements of this SRE, relevant professional bodies, legislation, regulation and, where appropriate, the terms of the review engagement and reporting requirements.**

Moderate Assurance

9. A review engagement provides a moderate level of assurance that the information subject to review is free of material misstatement; this is expressed in the form of negative assurance.

Terms of Engagement

10. **The practitioner and the client should agree on the terms of the engagement.** The agreed terms would be recorded in an engagement letter or other suitable form such as a contract.

11. An engagement letter will be of assistance in planning the review work. It is in the interests of both the practitioner and the client that the practitioner sends an engagement letter documenting the key terms of the appointment. An engagement letter confirms the practitioner's acceptance of the appointment and helps avoid misunderstanding regarding such matters as the objectives and scope of the engagement, the extent of the practitioner's responsibilities and the form of reports to be issued.

12. Matters that would be included in the engagement letter include the following:

- The objective of the service being performed.
- Management's responsibility for the financial statements.
- The scope of the review, including reference to this SRE (or relevant national standards or practices).
- Unrestricted access to whatever records, documentation and other information requested in connection with the review.
- The anticipated form and content of the report to be issued, including the identity of the addressee of the report.
- The fact that the engagement cannot be relied upon to disclose errors, illegal acts or other irregularities, for example, fraud or defalcations that may exist.
- A statement that an audit is not being performed and that an audit opinion will not be expressed. To emphasise this point and to avoid confusion, the practitioner may also consider pointing out that a review engagement will not satisfy any statutory or third party requirements for an audit.

A specimen of an engagement letter for a review of financial statements appears in Appendix 1 to this SRE.

Planning

13. **The practitioner should plan the work so that an effective engagement will be performed.**

14. **In planning a review of financial statements, the practitioner should obtain or update the knowledge of the business including consideration of the entity's organisation, accounting systems, operating characteristics and the nature of its assets, liabilities, revenues and expenses.**

15. The practitioner needs to possess an understanding of such matters and other matters relevant to the financial statements, for example, a knowledge of the entity's production and distribution methods, product lines, operating locations and related parties. The practitioner requires this understanding to be able to make relevant inquiries and to design appropriate procedures, as well as to assess the

* Hitherto known as SRE 2400 (AAS 33), "Engagements to Review Finacial Statements".

1 Published in the July, 2007 issue of the Journal.

2 The term "practitioner" means professional accountants in public practice, i.e., a member of the Institute of Chartered Accountants of India who is in practice in terms of section 2 of the Chartered Accountants Act, 1949. The term is also used to refer to a firm of chartered accountants in public practice.

responses and other information obtained.

Work Performed by Others

16. **When using work performed by another practitioner or an expert, the practitioner should be satisfied that such work is adequate for the purposes of the review.**

Documentation

17. **The practitioner should document matters which are important in providing evidence to support the review report, and evidence that the review was carried out in accordance with this SRE.**

Procedures and Evidence

18. **The practitioner should apply judgment in determining the specific nature, timing and extent of review procedures.** The practitioner will be guided by such matters as the following:

- Any knowledge acquired by carrying out audits or reviews of the financial statements for prior periods.
- The practitioner's knowledge of the business including knowledge of the accounting principles and practices of the industry in which the entity operates.
- The entity's accounting systems.
- The extent to which a particular item is affected by management judgment.
- The materiality of transactions and account balances.

19. **The practitioner should apply the same materiality considerations as would be applied if an audit opinion on the financial statements were being given.** Although there is a greater risk that misstatements will not be detected in a review than in an audit, the judgment as to what is material is made by reference to the information on which the practitioner is reporting and the needs of those relying on that information, not to the level of assurance provided.

20. Procedures for the review of financial statements will ordinarily include the following:

- Obtaining an understanding of the entity's business and the industry in which it operates.
- Inquiries concerning the entity's accounting principles and practices.
- Inquiries concerning the entity's procedures for recording, classifying and summarising transactions, accumulating information for disclosure in the financial statements and preparing financial statements.
- Inquiries concerning all material assertions in the financial statements.
- Analytical procedures designed to identify relationships and individual items that appear unusual. Such procedures would include:
    - ◊ Comparison of the financial statements with statements for prior periods.
    - ◊ Comparison of the financial statements with anticipated results and financial position.
    - ◊ Study of the relationships of the elements of the financial statements that would be expected to conform to a predictable pattern based on the entity's experience or industry norm.

  In applying these procedures, the practitioner would consider the types of matters that required accounting adjustments in prior periods.
- Inquiries concerning actions taken at meetings of shareholders, the board of directors, committees of the board of directors and other meetings that may affect the financial statements.
- Reading the financial statements to consider, on the basis of information coming to the practitioner's attention, whether the financial statements appear to conform with the basis of accounting indicated.
- Obtaining reports from other practitioners, if any and if considered necessary, who have been engaged to audit or review the financial statements of components of the entity.
- Inquiries of persons having responsibility for financial and accounting matters concerning, for example:
    - ◊ Whether all transactions have been recorded.
    - ◊ Whether the financial statements have been prepared in accordance with the basis of accounting indicated.
    - ◊ Changes in the entity's business activities and accounting principles and practices.
    - ◊ Matters as to which questions have arisen in the course of applying the foregoing procedures.
    - ◊ Obtaining written representations from management when considered appropriate.

Appendix 2 to this SRE provides an illustrative list of procedures which are often used. The list is not exhaustive, nor is it intended that all the procedures suggested apply to every review engagement.

21. **The practitioner should inquire about events subsequent to the date of the financial statements that may require adjustment of or disclosure in the financial statements.** The practitioner does not have any responsibility to perform procedures to identify events occurring after the date of the review report.

22. **If the practitioner has reason to believe that the information subject to review may be materially misstated, the practitioner should carry out additional or more extensive procedures as are necessary to be able to express negative assurance or to confirm that a modified report is required.**

Conclusions and Reporting

23. **The review report should contain a clear written expression of negative assurance. The practitioner should review and assess the conclusions drawn from the evidence obtained as the basis for the expression of negative assurance.**

24. **Based on the work performed, the practitioner should assess whether any information obtained during the review indicates that the financial statements do not give a true and fair view (or are not presented fairly, in all material respects) in accordance with the applicable financial reporting framework.**

25. The report on a review of financial statements describes the scope of the engagement to enable the reader to understand the nature of the work performed and make it clear that an audit was not performed and, therefore, that an audit opinion is not expressed.

26. **The report on a review of financial statements should contain the following basic elements, ordinarily in the following layout:**

(a) **Title[3];**
(b) **Addressee;**
(c) **Opening or introductory paragraph including:**
  (i) **Identification of the financial statements on which the review has been performed; and**
  (ii) **A statement of the responsibility of the entity's management and the responsibility of the practitioner;**
(d) **Scope paragraph, describing the nature of a review, including:**
  (i) **A reference to this SRE applicable to review engagements, or to relevant national standards or practices;**
  (ii) **A statement that a review is limited primarily to inquiries and analytical procedures; and**
  (iii) **A statement that an audit has not been performed, that the procedures undertaken provide less assurance than an audit and that an audit opinion is not expressed;**
(e) **Statement of negative assurance;**
(f) **Date of the report;**
(g) **Place of Signature;**
(h) **Practitioner's signature and membership number assigned by the Institute of Chartered Accountants of India (ICAI); and**
(i) **The Firm's registration number of the**

[3] It may be appropriate to use the term "independent" in the title to distinguish the practitioner's report from reports that might be issued by others, such as officers of the entity, or from the reports of other practitioners who may not have to abide by the same ethical requirements as an independent practitioner.

member of the Institute, wherever applicable, as allotted by ICAI [4].

Appendices 3 and 4 to this SRE contain illustrations of review reports.

27. **The review report should:**

(a) **State that nothing has come to the practitioner's attention based on the review that causes the practitioner to believe the financial statements do not give a true and fair view (or are not presented fairly, in all material respects) in accordance with the applicable financial reporting framework (negative assurance); or**

(b) **If matters have come to the practitioner's attention, describe those matters that impair a true and fair view (or a fair presentation, in all material respects) in accordance with the applicable financial reporting framework, including, unless impracticable, a quantification of the possible effect(s) on the financial statements, and either:**

   (i) **Express a qualification of the negative assurance provided; or**

   (ii) **When the effect of the matter is so material and pervasive to the financial statements that the practitioner concludes that a qualification is not adequate to disclose the misleading or incomplete nature of the financial statements, give an adverse statement that the financial statements do not give a true and fair view (or are not presented fairly, in all material respects) in accordance with the applicable financial reporting framework; or**

(c) **If there has been a material scope limitation, describe the limitation and either:**

   (i) **Express a qualification of the negative assurance provided regarding the possible adjustments to the financial statements that might have been determined to be necessary had the limitation not existed; or**

   (ii) **When the possible effect of the limitation is so significant and pervasive that the practitioner concludes that no level of assurance can be provided, not provide any assurance.**

28. **The practitioner should date the review report as of the date the review is completed, which includes performing procedures relating to events occurring up to the date of the report. However, since the practitioner's responsibility is to report on the financial statements as prepared and presented by management, the practitioner should not date the review report earlier than the date on which the financial statements were approved by management.**

Effective Date

29. This SRE is effective for reviews of financial statements for periods beginning on or after April 1, 2010.

Material Modifications *vis-à-vis* ISRE 2400, "Engagements to Review Financial Statements"

Addition

Paragraph 26 of ISRE 2400 deals with the basic elements of the report on a review of financial statements, which also includes the Practitioner's Address. Since in India, Revised Standard on Auditing (SA) 700 requires the auditor also to mention the "Place of Signature", i.e., name of specific location, which is ordinarily the city where the review report is signed, in his report, the requirement to mention the practitioner's address in the practitioner's report has been replaced with the requirement to mention the place of signature in the practitioner's report.

Appendix 1

Specimen of an Engagement Letter for a Review of Financial Statements

The following letter is for use as a guide in conjunction with the consideration outlined in paragraph 10 of this SRE and will need to be varied according to individual requirements and circumstances.

To the Board of Directors (or the appropriate representative of senior management):

This letter is to confirm our understanding of the terms and objectives of our engagement and the nature and limitations of the services we will provide.

We will perform the following services:

We will review the balance sheet of ABC Company as at March 31, 20XX, and the related statement of profit and loss and the cash flows for the year then ended, in accordance with the Revised Standard on Review Engagements (SRE) 2400, "Engagements to Review Financial Statements", issued by the Institute of Chartered Accountants of India (ICAI). We will not perform an audit of such financial statements and, accordingly, we will not express an audit opinion on them. Accordingly, we expect to report on the financial statements as follows:

(see Appendix 3 to this SRE)

Responsibility for the financial statements, including adequate disclosure, is that of the management of the company. This includes the maintenance of adequate accounting records and internal controls and the selection and application of accounting policies. (As part of our review process, we will request written representations from management concerning assertions made in connection with the review).

This letter will be effective for future years unless it is terminated, amended or superseded (if applicable).

Our engagement cannot be relied upon to disclose whether fraud or errors, or illegal acts exist. However, we will inform you of any material matters that come to our attention.

Please sign and return the attached copy of this letter to indicate that it is in accordance with your understanding of the arrangements for our review of the financial statements.

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[5]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[6])
Membership Number

Acknowledged on behalf of ABC Company by
(signed)
....
Name and Title
Date

Appendix 2

Illustrative Detailed Procedures that may be Performed in an Engagement to Review Financial Statements

1. The inquiry and analytical review procedures carried out in a review of financial statements are determined by the practitioner's judgment. The procedures listed below are for illustrative purposes only. It is not intended that all the procedures suggested apply to every review engagement. This Appendix is not intended to serve as a program or checklist in the conduct of a review.

General

2. Discuss terms and scope of the engagement with the client and the engagement team.

3. Prepare an engagement letter

[4] The attention of the members is drawn to the decision relating to inclusion of the firm's registration number, wherever applicable, in the audit report, taken by the Council of the Institute of Chartered Accountants of India at its 292nd meeting held on January 13, 2010 and the related Announcement is published in February 2010 issue of the Journal.

[5] See footnote 4.

[6] Partner or proprietor, as the case may be.

setting forth the terms and scope of the engagement.

4. Obtain an understanding of the entity's business activities and the system for recording financial information and preparing financial statements.

5. Inquire whether all financial information is recorded:

(a) Completely;

(b) Promptly; and

(c) After the necessary authorisation.

6. Obtain the trial balance and determine whether it agrees with the general ledger and the financial statements.

7. Consider the results of previous audits and review engagements, including accounting adjustments required.

8. Inquire whether there have been any significant changes in the entity from the previous year (e.g., changes in ownership or changes in capital structure).

9. Inquire about the accounting policies and consider whether:

(a) They comply with the applicable accounting standards;

(b) They have been applied appropriately; and

(c) They have been applied consistently and, if not, consider whether disclosure has been made of any changes in the accounting policies.

10. Read the minutes of meetings of shareholders, the board of directors and other appropriate committees in order to identify matters that could be important to the review.

11. Inquire if actions taken at shareholder, board of directors or comparable meetings that affect the financial statements have been appropriately reflected therein.

12. Inquire about the existence of transactions with related parties, how such transactions have been accounted for and whether related parties have been properly disclosed.

13. Inquire about contingencies and commitments.

14. Inquire about plans to dispose of major assets or business segments.

15. Obtain the financial statements and discuss them with management.

16. Consider the adequacy of disclosure in the financial statements and their suitability as to classification and presentation.

17. Compare the results shown in the current period financial statements with those shown in financial statements for comparable prior periods and, if available, with budgets and forecasts.

18. Obtain explanations from management for any unusual fluctuations or inconsistencies in the financial statements.

19. Consider the effect of any unadjusted errors – individually and in aggregate. Bring the errors to the attention of management and determine how the unadjusted errors will influence the report on the review.

20. Consider obtaining a representation letter from management.

Cash

21. Obtain the bank reconciliations. Inquire about any old or unusual reconciling items with client personnel.

22. Inquire about transfers between cash accounts for the period before and after the review date.

23. Inquire whether there are any restrictions on cash accounts.

Receivables

24. Inquire about the accounting policies for initially recording trade receivables and determine whether any allowances are given on such transactions.

25. Obtain a schedule of receivables and determine whether the total agrees with the trial balance.

26. Obtain and consider explanations of significant variations in account balances from previous periods or from those anticipated.

27. Obtain an age analysis of the trade receivables. Inquire about the reason for unusually large accounts, credit balances on accounts or any other unusual balances and inquire about the collectibility of receivables.

28. Discuss with management the classification of receivables, including non-current balances, net credit balances and amounts due from shareholders, directors and other related parties in the financial statements.

29. Inquire about the method for identifying "slow payment" accounts and setting allowances for doubtful accounts and consider it for reasonableness.

30. Inquire whether receivables have been pledged, factored or discounted.

31. Inquire about procedures applied to ensure that a proper cut-off of sales transactions and sales returns has been achieved.

32. Inquire whether accounts represent goods shipped on consignment and, if so, whether adjustments have been made to reverse these transactions and include the goods in inventory.

33. Inquire whether any large credits relating to revenue recorded have been issued after the balance sheet date and whether provision has been made for such amounts.

Inventories

34. Obtain the inventory list and determine whether:

(a) The total agrees with the balance in the trial balance; and

(b) The list is based on a physical count of inventory.

35. Inquire about the method for counting inventory.

36. Where a physical count was not carried out on the balance sheet date, inquire whether:

(a) A perpetual inventory system is used and whether periodic comparisons are made with actual quantities on hand; and

(b) An integrated cost system is used and whether it has produced reliable information in the past.

37. Discuss adjustments made resulting from the last physical inventory count.

38. Inquire about procedures applied to control cut-off and any inventory movements.

39. Inquire about the basis used in valuing each category of the inventory and, in particular, regarding the elimination of inter-branch profits. Inquire whether inventory is valued at the lower of cost and net realisable value.

40. Consider the consistency with which inventory valuation methods have been applied, including factors such as material, labour and overhead.

41. Compare amounts of major inventory categories with those of prior periods and with those anticipated for the current period. Inquire about major fluctuations and differences.

42. Compare inventory turnover with that in previous periods.

43. Inquire about the method used for identifying slow moving and obsolete inventory and whether such inventory has been accounted for at net realisable value.

44. Inquire whether any of the inventory has been consigned to the entity and, if so, whether adjustments have been made to exclude such goods from inventory.

45. Inquire whether any inventory is pledged, stored at other locations or on consignment to others and consider whether such transactions have been accounted for appropriately.

Investments (Including Associated Companies and Marketable Securities)

46. Obtain a schedule of the investments as at the balance sheet date and determine whether it agrees with the trial balance.

47. Inquire about the accounting policy applied to investments.

48. Inquire from management about the carrying values of investments. Consider whether there are any realisation problems.

49. Consider whether there has been proper accounting for gains and losses and investment income.

50. Inquire about the classification of long-term and short-term investments.

Property and Depreciation

51. Obtain a schedule of the property indicating the cost and accumulated depreciation and determine whether it agrees with the trial balance.

52. Inquire about the accounting policy applied regarding the provision for

depreciation and distinguishing between capital and maintenance items. Consider whether the property has suffered a material, permanent impairment in value.

53. Discuss with management the additions and deletions to property accounts and accounting for gains and losses on sales or retirements. Inquire whether all such transactions have been accounted for.

54. Inquire about the consistency with which the depreciation method and rates have been applied and compare depreciation provisions with prior years.

55. Inquire whether there are any liens on the property.

56. Discuss whether lease agreements have been properly reflected in the financial statements in conformity with current accounting pronouncements.

Prepaid Expenses, Intangibles and Other Assets

57. Obtain schedules identifying the nature of these accounts and discuss with management the recoverability thereof.

58. Inquire about the basis for recording these accounts and the amortisation methods used.

59. Compare balances of related expense accounts with those of prior periods and discuss significant variations with management.

60. Discuss the classification between long-term and short-term accounts with management.

Loans Payable

61. Obtain from management a schedule of loans payable and determine whether the total agrees with the trial balance.

62. Inquire whether there are any loans where management has not complied with the provisions of the loan agreement and, if so, inquire as to management's actions and whether appropriate adjustments have been made in the financial statements.

63. Consider the reasonableness of interest expense in relation to loan balances.

64. Inquire whether loans payable are secured.

65. Inquire whether loans payable have been classified between non-current and current.

Trade Payables

66. Inquire about the accounting policies for initially recording trade payables and whether the entity is entitled to any allowances given on such transactions.

67. Obtain and consider explanations of significant variations in account balances from previous periods or from those anticipated.

68. Obtain a schedule of trade payables and determine whether the total agrees with the trial balance.

69. Inquire whether balances are reconciled with the creditors' statements and compare with prior period balances. Compare turnover with prior periods.

70. Consider whether there could be material unrecorded liabilities.

71. Inquire whether payables to shareholders, directors and other related parties are separately disclosed.

Accrued and Contingent Liabilities

72. Obtain a schedule of the accrued liabilities and determine whether the total agrees with the trial balance.

73. Compare major balances of related expense accounts with similar accounts for prior periods.

74. Inquire about approvals for such accruals, terms of payment, compliance with terms, collateral and classification.

75. Inquire about the method for determining accrued liabilities.

76. Inquire as to the nature of amounts included in contingent liabilities and commitments.

77. Inquire whether any actual or contingent liabilities exist which have not been recorded in the accounts. If so, discuss with management whether provisions need to be made in the accounts or whether disclosure should be made in the notes to the financial statements.

Income and Other Taxes

78. Inquire from management if there were any events, including disputes with taxation authorities, which could have a significant effect on the taxes payable by the entity.

79. Consider the tax expense in relation to the entity's income for the period.

80. Inquire from management as to the adequacy of the recorded deferred and current tax liabilities including provisions in respect of prior periods.

Subsequent Events

81. Obtain from management the latest interim financial statements and compare them with the financial statements being reviewed or with those for comparable periods from the preceding year.

82. Inquire about events after the balance sheet date that would have a material effect on the financial statements under review and, in particular, inquire whether:

(a) Any substantial commitments or uncertainties have arisen subsequent to the balance sheet date;

(b) Any significant changes in the share capital, long-term debt or working capital have occurred up to the date of inquiry; and

(c) Any unusual adjustments have been made during the period between the balance sheet date and the date of inquiry.

Consider the need for adjustments or disclosure in the financial statements.

83. Obtain and read the minutes of meetings of shareholders, directors and appropriate committees subsequent to the balance sheet date.

Litigation

84. Inquire from management whether the entity is the subject of any legal actions threatened, pending or in process. Consider the effect thereof on the financial statements.

Equity

85. Obtain and consider a schedule of the transactions in the equity accounts, including new issues, retirements and dividends.

86. Inquire whether there are any restrictions on retained earnings or other equity accounts.

Operations

87. Compare results with those of prior periods and those expected for the current period. Discuss significant variations with management.

88. Discuss whether the recognition of major sales and expenses have taken place in the appropriate periods.

89. Consider extraordinary and unusual items.

90. Consider and discuss with management the relationship between related items in the revenue account and assess the reasonableness thereof in the context of similar relationships for prior periods and other information available to the practitioner.

Appendix 3
Form of Unqualified Review Report

REVIEW REPORT TO...

We have reviewed the accompanying balance sheet of ABC Company as at March 31, 20XX, and related statement of profit and loss , and the cash flow statement for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to issue a report on these financial statements based on our review.

We conducted our review in accordance with the Revised Standard on Review Engagements 2400, "Engagements to Review Financial Statements", issued by the Institute of Chartered Accountants of India (ICAI). This Standard requires that we plan and perform the review to obtain moderate assurance as to whether the financial statements are free of material misstatement. A review is limited primarily to inquiries of company personnel and analytical procedures applied to financial data and thus provides less assurance than an audit. We have not performed an audit and, accordingly, we do not express an audit opinion.

Based on our review, nothing has come to our attention that causes us to believe that the accompanying financial statements do not give a true and fair view (or are not presented fairly, in all material respects) in accordance with the Financial Reporting Standards[7] .

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[8]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[9])
Membership Number

Place of Signature
Date

Appendix 4

Examples of Review Reports Other than Unqualified

Qualification for a Departure from Financial Reporting Standards

REVIEW REPORT TO …

We have reviewed the accompanying balance sheet of ABC Company as at March 31, 20XX, and the related statement of profit and loss, and the cash flow statement for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to issue a report on these financial statements based on our review.

We conducted our review in accordance with the Revised Standard on Review Engagements 2400, "Engagements to Review Financial Statements", issued by the Institute of Chartered Accountants of India (ICAI). This Standard requires that we plan and perform the review to obtain moderate assurance as to whether the financial statements are free of material misstatement. A review is limited primarily to inquiries of company personnel and analytical procedures applied to financial data and thus provides less assurance than an audit. We have not performed an audit, and, accordingly, we do not express an audit opinion.
Management has informed us that inventory has been stated at its cost, which is in excess of its net realisable value. Management's computation, which we have reviewed, shows that inventory, if valued at the lower of cost and net realisable value as required by Accounting Standard (AS) 2, "Valuation of Inventories" notified by the Central Government under the Companies (Accounting Standards) Rules, 2006[10], would have been decreased by Rs. X, and net profit and reserves would have been decreased by Rs. X.

Based on our review, except for the effects of the overstatement of inventory described in the previous paragraph, nothing has come to our attention that causes us to believe that the accompanying financial statements do not give a true and fair view (or are not presented fairly, in all material respects) in accordance with the aforesaid Rules, 2006[11] .

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[12]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[13])
Membership Number

Place of Signature
Date

Adverse Report for a Departure from Financial Reporting Standards

REVIEW REPORT TO …..

We have reviewed the accompanying balance sheet of ABC Company as at March 31, 20XX, and the related statement of profit and loss, and the cash flow statement for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to issue a report on these financial statements based on our review.

We conducted our review in accordance with the Revised Standard on Review Engagements 2400, "Engagements to Review Financial Statements", issued by the Institute of Chartered Accountants of India (ICAI). This Standard requires that we plan and perform the review to obtain moderate assurance as to whether the financial statements are free of material misstatement. A review is limited primarily to inquiries of company personnel and analytical procedures applied to financial data and thus provides less assurance than an audit. We have not performed an audit and, accordingly, we do not express an audit opinion.

As noted in note X, the Company has adopted the method of taking entire profits on construction contracts to the statement of profit and loss on entering into the contract. This has resulted in anticipating the profit in cases where the contracts have not even been commenced or where only a very minor part of the expenditure relating to the construction contracts has been incurred. This method of accounting is contrary to the requirements of Accounting Standard (AS) 7, "Accounting for Construction Contracts", notified by the Central Government under the Companies (Accounting Standards) Rules, 2006[14] .

Based on our review, because of the pervasive effect on the financial statements of the matter discussed in the preceding paragraph, the accompanying financial statements do not give a true and fair view (or are not presented fairly, in all material respects) in accordance with the aforesaid Rules, 2006 [15].

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[16]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation [17])
Membership Number

Place of Signature
Date

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[7] Financial Reporting Standards promulgated by the Accounting Standards Board of the Institute of Chartered Accountants of India or Accounting Standards notified by the Central Government as the Companies (Accounting Standards) Rules, 2006, or the Accounting Standards for Local Bodies promulgated by the Committee on Accounting Standards for Local Bodies (CASLB) of the Institute of Chartered Accountants of India, as may be applicable.
[8] See footnote 4.
[9] Partner or proprietor, as the case may be.
[10] See footnote 7.
[11] See footnote 7.
[12] See footnote 4.
[13] Partner or proprietor, as the case may be.
[14] See footnote 7.
[15] See footnote 7.
[16] See footnote 4.
[17] Partner or proprietor, as the case may be.

Standard on Review Engagements (SRE) 2410 Review of Interim Financial Information Performed by the Independent Auditor of the Entity

Standard on Review Engagements (SRE) 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity" should be read in the context of the "Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services[1]",which sets out the application and authority of SREs.

Introduction

1. The purpose of this Standard on Review Engagements (SRE) is to establish standards and provide guidance on the auditor's professional responsibilities when the auditor undertakes an engagement to review interim financial information of an audit client, and on the form and content of the report. The term "auditor" is used throughout this SRE, not because the auditor is performing an audit function but because the scope of this SRE is limited to a review of interim financial information performed by the independent auditor of the financial statements of the entity.

2. For purposes of this SRE, interim financial information is financial information that is prepared and presented in accordance with an applicable financial reporting framework[2] and comprises either a complete or a condensed set of financial statements for a period that is shorter than the entity's financial year.

3. **The auditor who is engaged to perform a review of interim financial information should perform the review in accordance with this SRE.** Through performing the audit of the annual financial statements, the auditor obtains an understanding of the entity and its environment, including its internal control. When the auditor is engaged to review the interim financial information, this understanding is updated through inquiries made in the course of the review, and assists the auditor in focusing the inquiries to be made and the analytical and other review procedures to be applied. A practitioner who is engaged to perform a review of interim financial information, and who is not the auditor of the entity, performs the review in accordance with SRE 2400 (Revised), "Engagements to Review Financial Statements." As the practitioner does not ordinarily have the same understanding of the entity and its environment, including its internal control, as the auditor of the entity, the practitioner needs to carry out different inquiries and procedures to meet the objective of the review.

3a. This SRE is directed towards a review of interim financial information by an entity's auditor. However, it is to be applied, adapted as necessary in the circumstances, when an entity's auditor undertakes an engagement to review historical financial information other than interim financial information of an audit client.

General Principles of a Review of Interim Financial Information

4. **The auditor should comply with the ethical requirements relevant to the audit of the annual financial statements of the entity.** These ethical requirements govern the auditor's professional responsibilities in the following areas: independence, integrity, objectivity, professional competence and due care, confidentiality, professional behavior, and technical standards.

5. **The auditor should implement quality control procedures that are applicable to the individual engagement.** The elements of quality control that are relevant to an individual engagement include leadership responsibilities for quality on the engagement, ethical requirements, acceptance and continuance of client relationships and specific engagements, assignment of engagement teams, engagement performance, and monitoring.

6. **The auditor should plan and perform the review with an attitude of professional skepticism, recognizing that circumstances may exist that cause the interim financial information to require a material adjustment for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework.** An attitude of professional skepticism means that the auditor makes a critical assessment, with a questioning mind, of the validity of evidence obtained and is alert to evidence that contradicts or brings into question the reliability of documents or representations by management of the entity.

Objective of an Engagement to Review Interim Financial Information

7. The objective of an engagement to review interim financial information is to enable the auditor to express a conclusion whether, on the basis of the review, anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with an applicable financial reporting framework. The auditor makes inquiries, and performs analytical and other review procedures in order to reduce to a moderate level the risk of expressing an inappropriate conclusion when the interim financial information is materially misstated.

8. The objective of a review of interim financial information differs significantly from that of an audit conducted in accordance with Standards on Auditing (SAs). A review of interim financial information does not provide a basis for expressing an opinion whether the financial information gives a true and fair view, or is presented fairly, in all material respects, in accordance with an applicable financial reporting framework.

9. A review, in contrast to an audit, is not designed to obtain reasonable assurance that the interim financial information is free from material misstatement. A review consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review may bring significant matters affecting the interim financial information to the auditor's attention, but it does not provide all of the evidence that would be required in an audit.

Agreeing the Terms of the Engagement

10. **The auditor and the client should agree on the terms of the engagement.**

11. The agreed terms of the engagement are ordinarily recorded in an engagement

[1] Published in the July, 2007 issue of the Journal.

[2] For example, Accounting Standards promulgated by the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI) or Accounting Standards, notified by the Central Government by publishing the same as the Companies (Accounting Standards) Rules, 2006, or the Accounting Standards for Local Bodies promulgated by the Committee on Accounting Standards for Local Bodies (CASLB) of the Institute of Chartered Accountants of India, as may be applicable.

letter. Such a communication helps to avoid misunderstandingsregarding the natureof the engagement and, in particular, the objective and scope of the review, management's responsibilities, the extent of the auditor's responsibilities, the assurance obtained, and the nature and form of the report. The communication ordinarily covers the following matters:

- The objective of a review of interim financial information.
- The scope of the review.
- Management's responsibility for the interim financial information.
- Management's responsibility for establishing and maintaining effective internal control relevant to the preparation of interim financial information.
- Management's responsibility for making all financial records and related information available to the auditor.
- Management's agreement to provide written representations to the auditor to confirm representations made orally during the review, as well as representations that are implicit in the entity's records.
- The anticipated form and content of the report to be issued, including the identity of the addressee of the report.
- Management's agreement that where any document containing interim financial information indicates that the interim financial information has been reviewed by the entity's auditor, the review report will also be included in the document.

An illustrative engagement letter is set out in Appendix 1 to this SRE. The terms of engagement to review interim financial information can also be combined with the terms of engagement to audit the annual financial statements.

Procedures for a Review of Interim Financial Information

Understanding the Entity and its Environment, Including its Internal Control

12. **The auditor should have an understanding of the entity and its environment, including its internal control, as it relates to the preparation of both annual and interim financial information, sufficient to plan and conduct the engagement so as to be able to:**

(a) **Identify the types of potential material misstatement and consider the likelihood of their occurrence; and**

(b) **Select the inquiries, analytical and other review procedures that will provide the auditor with a basis for reporting whether anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with the applicable financial reporting framework.**

13. As required by SA 315, "Identifying and Assessing the Risks of Material Misstatement Through Understanding the Entity and Its Environment", the auditor who has audited the entity's financial statements for one or more annual periods has obtained an understanding of the entity and its environment, including its internal control, as it relates to the preparation of annual financial information that was sufficient to conduct the audit. In planning a review of interim financial information, the auditor updates this understanding. The auditor also obtains a sufficient understanding of internal control as it relates to the preparation of interim financial information as it may differ from internal control as it relates to annual financial information.

14. The auditor uses the understanding of the entity and its environment, including its internal control, to determine the inquiries to be made and the analytical and other review procedures to be applied, and to identify the particular events, transactions or assertions to which inquiries may be directed or analytical or other review procedures applied.

15. The procedures performed by the auditor to update the understanding of the entity and its environment, including its internal control, ordinarily include the following:

- Reading the documentation, to the extent necessary, of the preceding year's audit and reviews of prior interim period(s) of the current year and corresponding interim period(s) of the prior year, to enable the auditor to identify matters that may affect the current-period interim financial information.
- Considering any significant risks, including the risk of management override of controls that were identified in the audit of the prior year's financial statements.
- Reading the most recent annual and comparable prior period interim financial information.
- Considering materiality with reference to the applicable financial reporting framework as it relates to interim financial information to assist in determining the nature and extent of the procedures to be performed and evaluating the effect of misstatements.
- Considering the nature of any corrected material misstatements and any identified uncorrected immaterial misstatements in the prior year's financial statements.
- Considering significant financial accounting and reporting matters that may be of continuing significance such as material weaknesses in internal control.
- Considering the results of any audit procedures performed with respect to the current year's financial statements.
- Considering the results of any internal audit performed and the subsequent actions taken by management.
- Inquiring of management about the results of management's assessment of the risk that the interim financial information may be materially misstated as a result of fraud.
- Inquiring of management about the effect of changes in the entity's business activities.
- Inquiring of management about any significant changes in internal control and the potential effect of any such changes on the preparation of interim financial information.
- Inquiring of management of the process by which the interim financial information has been prepared and the reliability of the underlying accounting records to which the interim financial information is agreed or reconciled.

16. The auditor determines the nature of the review procedures, if any, to be performed for components and, where applicable, communicates these matters to other auditors involved in the review. Factors to be considered include the materiality of, and risk of misstatement in, the interim financial information of components, and the auditor's understanding of the extent to which internal control over the preparation of such information is centralized or decentralized.

17. **In order to plan and conduct a review of interim financial information, a recently appointed auditor, who has not yet performed an audit of the annual financial statements in accordance with SAs, should obtain an understanding of the entity and its environment, including its internal control, as it relates to the preparation of both annual and interim financial information.**

18. This understanding enables the auditor to focus the inquiries made, and the analytical and other review procedures applied in performing a review of interim financial information in accordance with this SRE. As part of obtaining this understanding, the auditor ordinarily makes inquiries of the predecessor auditor and, peruses the copies of the audited financial statements including the other relevant documents relating to the prior period financial statements such as supporting schedules to the audited financial statements. In doing so, the auditor considers the nature of any corrected misstatements, and any uncorrected misstatements aggregated by the predecessor auditor, any significant

risks, including the risk of management override of controls, and significant accounting and any reporting matters that may be of continuing significance, such as material weaknesses in internal control.

Inquiries, Analytical and Other Review Procedures

19. **The auditor should make inquiries, primarily of persons responsible for financial and accounting matters, and perform analytical and other review procedures to enable the auditor to conclude whether, on the basis of the procedures performed, anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with the applicable financial reporting framework.**

20. A review ordinarily does not require tests of the accounting records through inspection, observation or confirmation. Procedures for performing a review of interim financial information are ordinarily limited to making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures, rather than corroborating information obtained concerning significant accounting matters relating to the interim financial information. The auditor's understanding of the entity and its environment, including its internal control, the results of the risk assessments relating to the preceding audit and the auditor's consideration of materiality as it relates to the interim financial information, affects the nature and extent of the inquiries made, and analytical and other review procedures applied.

21. The auditor ordinarily performs the following procedures:

- Reading the minutes of the meetings of shareholders, those charged with governance, and other appropriate committees to identify matters that may affect the interim financial information, and inquiring about matters dealt with at meetings for which minutes are not available that may affect the interim financial information.
- Considering the effect, if any, of matters giving rise to a modification of the audit or review report, accounting adjustments or unadjusted misstatements, at the time of the previous audit or reviews.
- Communicating, where appropriate, with other auditors who are performing a review of the interim financial information of the reporting entity's significant components.
- Inquiring of members of management responsible for financial and accounting matters, and others as appropriate about the following:
    - ◊ Whether the interim financial information has been prepared and presented in accordance with the applicable financial reporting framework.
    - ◊ Whether there have been any changes in accounting principles or in the methods of applying them.
    - ◊ Whether any new transactions have necessitated the application of a new accounting principle.
    - ◊ Whether the interim financial information contains any known uncorrected misstatements.
    - ◊ Unusual or complex situations that may have affected the interim financial information, such as a business combination or disposal of a segment of the business.
    - ◊ Significant assumptions that are relevant to the fair value measurement or disclosures and management's intention and ability to carry out specific courses of action on behalf of the entity.
    - ◊ Whether related party transactions have been appropriately accounted for and disclosed in the interim financial information.
    - ◊ Significant changes in commitments and contractual obligations.
    - ◊ Significant changes in contingent liabilities including litigation or claims.
    - ◊ Compliance with debt covenants.
    - ◊ Matters about which questions have arisen in the course of applying the review procedures.
    - ◊ Significant transactions occurring in the last several days of the interim period or the first several days of the next interim period.
    - ◊ Knowledge of any fraud or suspected fraud affecting the entity involving:
        - > Management;
        - > Employees who have significant roles in internal control; or
        - > Others where the fraud could have a material effect on the interim financial information.
    - ◊ Knowledge of any allegations of fraud, or suspected fraud, affecting the entity's interim financial information communicated by employees, former employees, analysts, regulators, or others.
    - ◊ Knowledge of any actual or possible noncompliance with laws and regulations that could have a material effect on the interim financial information.
- Applying analytical procedures to the interim financial information designed to identify relationships and individual items that appear to be unusual and that may reflect a material misstatement in the interim financial information. Analytical procedures may include ratio analysis and statistical techniques such as trend analysis or regression analysis and may be performed manually or with the use of computer-assisted techniques. Appendix 2 to this SRE contains examples of analytical procedures the auditor may consider when performing a review of interim financial information.
- Reading the interim financial information, and considering whether anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with the applicable financial reporting framework.

22. The auditor may perform many of the review procedures before or simultaneously with the entity's preparation of the interim financial information. For example, it may be practicable to update the understanding of the entity and its environment, including its internal control, and begin reading applicable minutes before the end of the interim period. Performing some of the review procedures earlier in the interim period also permits early identification and consideration of significant accounting matters affecting the interim financial information.

23. The auditor performing the review of interim financial information is also engaged to perform an audit of the annual financial statements of the entity. For convenience and efficiency, the auditor may decide to perform certain audit procedures concurrently with the review of interim financial information. For example, information gained from reading the minutes of meetings of the board of directors in connection with the review of the interim financial information also may be used for the annual audit. The auditor may also decide to perform, at the time of the interim review, auditing procedures that would need to be performed for the purpose of the audit of the annual financial statements, for example, performing audit procedures on significant or unusual transactions that occurred during the period, such as business combinations, restructurings, or significant revenue transactions.

24. A review of interim financial information ordinarily does not require corroborating the inquiries about litigation or claims. It is, therefore, ordinarily not necessary to send an inquiry letter to the entity's lawyer. Direct communication with the entity's

lawyer with respect to litigation or claims may, however, be appropriate if a matter comes to the auditor's attention that causes the auditor to question whether the interim financial information is not prepared, in all material respects, in accordance with the applicable financial reporting framework, and the auditor believes the entity's lawyer may have pertinent information.

25. **The auditor should obtain evidence that the interim financial information agrees or reconciles with the underlying accounting records.** The auditor may obtain evidence that the interim financial information agrees or reconciles with the underlying accounting records by tracing the interim financial information to:

(a) The accounting records, such as the general ledger, or a consolidating schedule that agrees or reconciles with the accounting records; and

(b) Other supporting data in the entity's records as necessary.

26. **The auditor should inquire whether management has identified all events up to the date of the review report that may require adjustment to or disclosure in the interim financial information.** It is not necessary for the auditor to perform other procedures to identify events occurring after the date of the review report.

27. **The auditor should inquire whether management has changed its assessment of the entity's ability to continue as a going concern. When, as a result of this inquiry or other review procedures, the auditor becomes aware of events or conditions that may cast significant doubt on the entity's ability to continue as a going concern, the auditor should:**

(a) **Inquire of management as to its plans for future actions based on its going concern assessment, the feasibility of these plans, and whether management believes that the outcome of these plans will improve the situation; and**

(b) **Consider the adequacy of the disclosure about such matters in the interim financial information.**

28. Events or conditions which may cast significant doubt on the entity's ability to continue as a going concern may have existed at the date of the annual financial statements or may be identified as a result of inquiries of management or in the course of performing other review procedures. When such events or conditions come to the auditor's attention, the auditor inquires of management as to its plans for future action, such as its plans to liquidate assets, borrow money or restructure debt, reduce or delay expenditures, or increase capital. The auditor also inquires as to the feasibility of management's plans and whether management believes that the outcome of these plans will improve the situation. However, it is not ordinarily necessary for the auditor to corroborate the feasibility of management's plans and whether the outcome of these plans will improve the situation.

29. **When a matter comes to the auditor's attention that leads the auditor to question whether a material adjustment should be made for the interim financial information to be prepared, in all material respects, in accordance with the applicable financial reporting framework, the auditor should make additional inquiries or perform other procedures to enable the auditor to express a conclusion in the review report.** For example, if the auditor's review procedures lead the auditor to question whether a significant sales transaction is recorded in accordance with the applicable financial reporting framework, the auditor performs additional procedures sufficient to resolve the auditor's questions, such as discussing the terms of the transaction with senior marketing and accounting personnel, or reading the sales contract.

Evaluation of Misstatements

30. **The auditor should evaluate, individually and in the aggregate, whether uncorrected misstatements that have come to the auditor's attention are material to the interim financial information.**

31. A review of interim financial information, in contrast to an audit engagement, is not designed to obtain reasonable assurance that the interim financial information is free from material misstatement. However, misstatements which come to the auditor's attention, including inadequate disclosures, are evaluated individually and in the aggregate to determine whether a material adjustment is required to be made to the interim financial information for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework.

32. The auditor exercises professional judgment in evaluating the materiality of any misstatements that the entity has not corrected. The auditor considers matters such as the nature, cause and amount of the misstatements, whether the misstatements originated in the preceding year or interim period of the current year, and the potential effect of the misstatements on future interim or annual periods.

33. The auditor may designate an amount below which misstatements need not be aggregated, because the auditor expects that the aggregation of such amounts clearly would not have a material effect on the interim financial information. In so doing, the auditor considers the fact that the determination of materiality involves quantitative as well as qualitative considerations, and that misstatements of a relatively small amount could nevertheless have a material effect on the interim financial information.

Management Representations

34. **The auditor should obtain written representation from management that:**

(a) **It acknowledges its responsibility for the design and implementation of internal control to prevent and detect fraud and error;**

(b) **The interim financial information is prepared and presented in accordance with the applicable financial reporting framework;**

(c) **It believes the effect of those uncorrected misstatement aggregated by the auditor during the review are immaterial, both individually and in the aggregate, to the interim financial information taken as a whole. A summary of such items is included in or attached to the written representations;**

(d) **It has disclosed to the auditor all significant facts relating to any frauds or suspected frauds known to management that may have affected the entity;**

(e) **It has disclosed to the auditor the results of its assessment of the risks that the interim financial information may be materially misstated as a result of fraud[3];**

(f) **It has disclosed to the auditor all known actual or possible noncompliance with laws and regulations whose effects are to be considered when preparing the interim financial information; and**

(g) **It has disclosed to the auditor all significant events that have occurred subsequent to the balance sheet date and through to the date of the review report that may require adjustment to or disclosure in the interim financial information.**

35. The auditor obtains additional representations as are appropriate related to matters specific to the entity's business or industry. An illustrative management representation letter is set out in Appendix 3 to this SRE.

Auditor's Responsibility for Accompanying Information

36. **The auditor should read the other information that accompanies the interim financial information to consider whether any such information is materially inconsistent with the interim financial information.** If the auditor identifies a material inconsistency, the auditor considers whether the interim financial information or the other information needs to be amended. If an amendment is necessary in the interim

[3] Refer SA 240 (Revised), "The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements".

financial information and management refuses to make the amendment, the auditor considers the implications for the review report. If an amendment is necessary in the other information and management refuses to make the amendment, the auditor considers including in the review report an additional paragraph describing the material inconsistency, or taking other actions, such as withholding the issuance of the review report or withdrawing from the engagement. For example, management may present alternative measures of earnings that more positively portray results of operations than the interim financial information, and such alternative measures are given excessive prominence, are not clearly defined, or not clearly reconciled to the interim financial information such that they are confusing and potentially misleading.

37. **If a matter comes to the auditor's attention that causes the auditor to believe that the other information appears to include a material misstatement of fact, the auditor should discuss the matter with the entity's management.** While reading the other information for the purpose of identifying material inconsistencies, an apparent material misstatement of fact may come to the auditor's attention (i.e., information, not related to matters appearing in the interim financial information, that is incorrectly stated or presented). When discussing the matter with the entity's management, the auditor considers the validity of the other information and management's responses to the auditor's inquiries, whether valid differences of judgment or opinion exist and whether to request management to consult with a qualified third party to resolve the apparent misstatement of fact. If an amendment is necessary to correct a material misstatement of fact and management refuses to make the amendment, the auditor considers taking further action as appropriate, such as notifying those charged with governance and obtaining legal advice.

Communication

38. **When, as a result of performing the review of interim financial information, a matter comes to the auditor's attention that causes the auditor to believe that it is necessary to make a material adjustment to the interim financial information for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework, the auditor should communicate this matter as soon as practicable to the appropriate level of management.**

39. **When, in the auditor's judgment, management does not respond appropriately within a reasonable period of time, the auditor should inform those charged with governance.** The communication is made as soon as practicable, either orally or in writing. The auditor's decision whether to communicate orally or in writing is affected by factors such as the nature, sensitivity and significance of the matter to be communicated and the timing of such communications. If the information is communicated orally, the auditor documents the communication.

40. **When, in the auditor's judgment, those charged with governance do not respond appropriately within a reasonable period of time, the auditor should consider:**

(a) **Whether to modify the report; or**

(b) **The possibility of withdrawing from the engagement; and**

(c) **The possibility of resigning from the appointment to audit the annual financial statements.**

41. **When, as a result of performing the review of interim financial information, a matter comes to the auditor's attention that causes the auditor to believe in the existence of fraud or noncompliance by the entity with laws and regulations the auditor should communicate the matter as soon as practicable to the appropriate level of management.** The determination of which level of management is the appropriate one is affected by the likelihood of collusion or the involvement of a member of management. The auditor also considers the need to report such matters to those charged with governance and considers the implication for the review.

42. **The auditor should communicate relevant matters of governance interest arising from the review of interim financial information to those charged with governance.** As a result of performing the review of the interim financial information, the auditor may become aware of matters that in the opinion of the auditor are both important and relevant to those charged with governance in overseeing the financial reporting and disclosure process. The auditor communicates such matters to those charged with governance.

Reporting the Nature, Extent and Results of the Review of Interim Financial Information

43. **The auditor should issue a written report that contains the following:**

(a) **An appropriate title.**

(b) **An addressee, as required by the circumstances of the engagement.**

(c) **Identification of the interim financial information reviewed, including identification of the title of each of the statements contained in the complete or condensed set of financial statements and the date and period covered by the interim financial information.**

(d) **If the interim financial information comprises a complete set of general purpose financial statements prepared in accordance with a financial reporting framework designed to achieve fair presentation, a statement that management is responsible for the preparation and fair presentation of the interim financial information in accordance with the applicable financial reporting framework.**

(e) **In other circumstances, a statement that management is responsible for the preparation and presentation of the interim financial information in accordance with the applicable financial reporting framework.**

(f) **A statement that the auditor is responsible for expressing a conclusion on the interim financial information based on the review.**

(g) **A statement that the review of the interim financial information was conducted in accordance with Standard on Review Engagements (SRE) 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity," and a statement that such a review consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures.**

(h) **A statement that a review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable the auditor to obtain assurance that the auditor would become aware of all significant matters that might be identified in an audit and that accordingly no audit opinion is expressed.**

(i) **If the interim financial information comprises a complete set of general purpose financial statements prepared in accordance with a financial reporting framework designed to achieve fair presentation, a conclusion as to whether anything has come to the auditor's attention that causes the auditor to believe that the interim financial information does not give a true and fair view, or does not present fairly, in all material respects,**

in accordance with the applicable financial reporting framework (including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[4] applicable in India).

(j) **In other circumstances, a conclusion as to whether anything has come to the auditor's attention that causes the auditor to believe that the interim financial information is not prepared, in all material respects, in accordance with the applicable financial reporting framework (including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards applicable in India).**

(k) **The date of the report.**

(l) **Place of Signature.**

(m) **The auditor's signature and membership number assigned by The Institute of Chartered Accountants of India (ICAI).**

(n) **The Firm's registration number of the member of the Institute, wherever applicable, as allotted by ICAI[5].**

Illustrative review reports are set out in Appendix 4 to this SRE.

44. In some jurisdictions, law or regulation governing the review of interim financial information may prescribe wording for the auditor's conclusion that is different from the wording described in paragraph 43(i) or (j). Although the auditor may be obliged to use the prescribed wording, the auditor's responsibilities as described in this SRE for coming to the conclusion remain the same.

Departure from the Applicable Financial Reporting Framework

45. **The auditor should express a qualified or adverse conclusion when a matter has come to the auditor's attention that causes the auditor to believe that a material adjustment should be made to the interim financial information for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework.**

46. If matters have come to the auditor's attention that cause the auditor to believe that the interim financial information is or may be materially affected by a departure from the applicable financial reporting framework, and management does not correct the interim financial information, the auditor modifies the review report. The modification describes the nature of the departure and, if practicable, states the effects on the interim financial information. If the information that the auditor believes is necessary for adequate disclosure is not included in the interim financial information, the auditor modifies the review report and, if practicable, includes the necessary information in the review report. The modification to the review report is ordinarily accomplished by adding an explanatory paragraph to the review report, and qualifying the conclusion. Illustrative review reports with a qualified conclusion are set out in Appendix 5 to this SRE.

47. When the effect of the departure is so material and pervasive to the interim financial information that the auditor concludes a qualified conclusion is not adequate to disclose the misleading or incomplete nature of the interim financial information, the auditor expresses an adverse conclusion. Illustrative review reports with an adverse conclusion are set out in Appendix 7 to this SRE.

Limitation on Scope

48. A limitation on scope ordinarily prevents the auditor from completing the review.

49. **When the auditor is unable to complete the review, the auditor should communicate, in writing, to the appropriate level of management and to those charged with governance the reason why the review cannot be completed, and consider whether it is appropriate to issue a report.**

Limitation on Scope Imposed by Management

50. The auditor does not accept an engagement to review the interim financial information if the auditor's preliminary knowledge of the engagement circumstances indicates that the auditor would be unable to complete the review because there will be a limitation on the scope of the auditor's review imposed by management of the entity.

51. If, after accepting the engagement, management imposes a limitation on the scope of the review, the auditor requests the removal of that limitation. If management refuses to do so, the auditor is unable to complete the review and express a conclusion. In such cases, the auditor communicates, in writing, to the appropriate level of management and those charged with governance the reason why the review cannot be completed. Nevertheless, if a matter comes to the auditor's attention that causes the auditor to believe that a material adjustment to the interim financial information is necessary for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework, the auditor communicates such matters in accordance with the guidance in paragraphs 38-40.

52. The auditor also considers the legal and regulatory responsibilities, including whether there is a requirement for the auditor to issue a report. If there is such a requirement, the auditor disclaims a conclusion, and provides in the review report the reason why the review cannot be completed. However, if a matter comes to the auditor's attention that causes the auditor to believe that a material adjustment to the interim financial information is necessary for it to be prepared, in all material respects, in accordance with the applicable financial reporting framework, the auditor also communicates such a matter in the report.

Other Limitations on Scope

53. A limitation on scope may occur due to circumstances other than a limitation on scope imposed by management. In such circumstances, the auditor is ordinarily unable to complete the review and express a conclusion and is guided by paragraphs 51-52. There may be, however, some rare circumstances where the limitation on the scope of the auditor's work is clearly confined to one or more specific matters that, while material, are not in the auditor's judgment pervasive to the interim financial information. In such circumstances, the auditor modifies the review report by indicating that, except for the matter which is described in an explanatory paragraph to the review report, the review was conducted in accordance with this SRE, and by qualifying the conclusion. Illustrative review reports with a qualified conclusion are set out in Appendix 6 to this SRE.

54. The auditor may have expressed a qualified opinion on the audit of the latest annual financial statements because of a limitation on the scope of that audit. The auditor considers whether that limitation on scope still exists and, if so, the implications for the review report.

Going Concern and Significant Uncertainties

55. In certain circumstances, an emphasis of matter paragraph may be added to a review report, without affecting the auditor's conclusion, to highlight a matter that is included in a note to the interim financial information that more extensively

[4] Financial Reporting Standards promulgated by the Accounting Standards Board of the Institute of Chartered Accountants of India or Accounting Standards notified by the Central Government as the Companies (Accounting Standards) Rules, 2006, or the Accounting Standards for Local Bodies promulgated by the Committee on Accounting Standards for Local Bodies (CASLB) of the Institute of Chartered Accountants of India, as may be applicable.

[5] The attention of the members is drawn to the decision relating to inclusion of the firm's registration number, wherever applicable, in the audit report, taken by the Council of the Institute of Chartered Accountants of India at its 292nd meeting held on January 13, 2010 and the related Announcement is published in February 2010 issue of the Journal.

discusses the matter. The paragraph would preferably be included after the conclusion paragraph and ordinarily refers to the fact that the conclusion is not qualified in this respect.

56. **If adequate disclosure is made in the interim financial information, the auditor should add an emphasis of matter paragraph to the review report to highlight a material uncertainty relating to an event or condition that may cast significant doubt on the entity's ability to continue as a going concern.**

57. The auditor may have modified a prior audit or review report by adding an emphasis of matter paragraph to highlight a material uncertainty relating to an event or condition that may cast significant doubt on the entity's ability to continue as a going concern. If the material uncertainty still exists and adequate disclosure is made in the interim financial information, the auditor modifies the review report on the current interim financial information by adding a paragraph to highlight the continued material uncertainty.

58. If, as a result of inquiries or other review procedures, a material uncertainty relating to an event or condition comes to the auditor's attention that may cast significant doubt on the entity's ability to continue as a going concern, and adequate disclosure is made in the interim financial information the auditor modifies the review report by adding an emphasis of matter paragraph.

59. **If a material uncertainty that casts significant doubt about the entity's ability to continue as a going concern is not adequately disclosed in the interim financial information, the auditor should express a qualified or adverse conclusion, as appropriate. The report should include specific reference to the fact that there is such a material uncertainty.**

60. **The auditor should consider modifying the review report by adding a paragraph to highlight a significant uncertainty (other than a going concern problem) that came to the auditor's attention, the resolution of which is dependent upon future events and which may affect the interim financial information.**

Other Considerations

61. The terms of the engagement include management's agreement that where any document containing interim financial information indicates that such information has been reviewed by the entity's auditor, the review report will also be included in the document. If management has not included the review report in the document, the auditor considers seeking legal advice to assist in determining the appropriate course of action in the circumstances.

62. If the auditor has issued a modified review report and management issues the interim financial information without including the modified review report in the document containing the interim financial information, the auditor considers seeking legal advice to assist in determining the appropriate course of action in the circumstances, and the possibility of resigning from the appointment to audit the annual financial statements.

63. Interim financial information consisting of a condensed set of financial statements does not necessarily include all the information that would be included in a complete set of financial statements, but may rather present an explanation of the events and changes that are significant to an understanding of the changes in the state of affairs and performance of the entity since the annual reporting date. This is because it is presumed that the users of the interim financial information will have access to the latest audited financial statements, such as is the case with listed entities. In other circumstances, the auditor discusses with management the need for such interim financial information to include a statement that it is to be read in conjunction with the latest audited financial statements. In the absence of such a statement, the auditor considers whether, without a reference to the latest audited financial statements, the interim financial information is misleading in the circumstances, and the implications for the review report.

Documentation

64. **The auditor should prepare review documentation that is sufficient and appropriate to provide a basis for the auditor's conclusion and to provide evidence that the review was performed in accordance with this SRE and applicable legal and regulatory requirements.** The documentation enables an experienced auditor having no previous connection with the engagement to understand the nature, timing and extent of the inquiries made, and analytical and other review procedures applied, information obtained, and any significant matters considered during the performance of the review, including the disposition of such matters.

Effective Date

65. This SRE is effective for reviews of interim financial information for periods beginning on or after April 1, 2010.

Material Modifications *vis-à-vis* ISRE 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity"

Additions

Paragraph 43 of ISRE 2410 deals with the basic elements of the written report of an auditor on the Review of Interim Financial Information, which also includes the location in the country or jurisdiction where the auditor practices. Since in India, Revised Standard on Auditing (SA) 700 requires the auditor to mention the "Place of Signature", i.e., name of specific location, which is ordinarily the city where the review report is signed, in his report, the requirement of mentioning the location in the country or jurisdiction where the auditor practices has been replaced with the requirement to mention the place of signature in the auditor's report.

Deletion

Paragraph 18 of ISRE 2410 deals with the procedures for obtaining the understanding of the entity and its environment for conducting the review of the interim financial information. These procedures also include the review of the predecessor auditor's documentation for the preceding annual audit, and for any prior interim periods in the current year that have been reviewed by the predecessor auditor. Since in India, Clause 1 of Part I of the Second Schedule to the Code of Ethics provides that a Chartered Accountant in Practice shall be deemed to be guilty of professional misconduct if he discloses information acquired in the course of his professional engagement to any person other than his client, an auditor cannot provide access to his working paper to the another auditor. Therefore, keeping in view the requirements of Code of Ethics, the requirement of reviewing the predecessor auditor's documentation has been replaced with the requirement of perusing the copies of the audited financial statements including the other relevant documents relating to the prior period financial statements.

Appendix 1

Example of an Engagement Letter for a Review of Interim Financial Information

The following letter is to be used as a guide in conjunction with the consideration outlined in paragraph 10 of this SRE and will need to be adapted according to individual requirements and circumstances.

To the Board of Directors of ABC Company Ltd. (or the appropriate representative of senior management)

We are providing this letter to confirm our understanding of the terms and objectives of our engagement to review the entity's interim balance sheet as on September 30, 20x1 and the related statement of profit & loss and cash flows for the six-month period then ended.

Our review will be conducted in accordance with Standard on Review Engagements 2410, "Review of Interim Financial Information

Performed by the Independent Auditor of the Entity" issued by the Institute of Chartered Accountants of India (ICAI) with the objective of providing us with a basis for reporting whether anything has come to our attention that causes us to believe that the interim financial information is not prepared, in all material respects, in accordance with the [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting when the financial reporting framework used is not Financial Reporting Standards[6] applicable in India]. Such a review consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures and does not, ordinarily, require corroboration of the information obtained. The scope of a review of interim financial information is substantially less than the scope of an audit conducted in accordance with Standards on Auditing whose objective is the expression of an opinion regarding the financial statements and, accordingly, we shall express no such opinion.

We expect to report on the interim financial information as follows:
[Include text of sample report.]

Responsibility for the interim financial information, including adequate disclosure, is that of management of the entity. This includes designing, implementing and maintaining internal control relevant to the preparation and presentation of interim financial information that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances. As part of our review, we will request written representations from management concerning assertions made in connection with the review. We will also request that where any document containing interim financial information indicates that the interim financial information has been reviewed, our report will also be included in the document.

A review of interim financial information does not provide assurance that we will become aware of all significant matters that might be identified in an audit. Further, our engagement cannot be relied upon to disclose whether fraud or errors, or illegal acts exist. However, we will inform you of any material matters that come to our attention.

We look forward to full cooperation with your staff and we trust that they will make available to us whatever records, documentation and other information are requested in connection with our review.

[Insert additional information here regarding fee arrangements and billings, as appropriate.]

This letter will be effective for future years unless it is terminated, amended or superseded (if applicable).

Please sign and return the attached copy of this letter to indicate your acknowledgement of, and agreement with, the arrangements for our review of the interim financial information including our respective responsibilities.

XYZ & Co.
Chartered Accountants
Firm's Registration Number[7]

(Signature)
Date :
(Name of the Member)
Place :
(Designation[8])

Acknowledged on behalf of
ABC Company by
……………………..

(Signature)
Name and Designation
Date

Appendix 2
Analytical Procedures the Auditor May Consider When Performing a Review of Interim Financial Information

Examples of analytical procedures the auditor may consider when performing a review of interim financial information include the following:

- Comparing the interim financial information with the interim financial information of the immediately preceding interim period, with the interim financial information of the corresponding interim period of the preceding financial year, with the interim financial information that was expected by management for the current period, and with the most recent audited annual financial statements.
- Comparing current interim financial information with anticipated results, such as budgets or forecasts (for example, comparing tax balances and the relationship between the provision for income taxes to pretax income in the current interim financial information with corresponding information in (a) budgets, using expected rates, and (b) financial information for prior periods).
- Comparing current interim financial information with relevant non-financial information.
- Comparing the recorded amounts, or ratios developed from recorded amounts, to expectations developed by the auditor. The auditor develops such expectations by identifying and applying relationships that are reasonably expected to exist based on the auditor's understanding of the entity and of the industry in which the entity operates.
- Comparing ratios and indicators for the current interim period with those of entities in the same industry.
- Comparing relationships among elements in the current interim financial information with corresponding relationships in the interim financial information of prior periods, for example, expense by type as a percentage of sales, assets by type as a percentage of total assets, and percentage of change in sales to percentage of change in receivables.
- Comparing disaggregated data. The following are examples of how data may be disaggregated:
  - ◊ By period, for example, revenue or expense items disaggregated into quarterly, monthly, or weekly amounts.
  - ◊ By product line or source of revenue.
  - ◊ By location, for example, by component.
  - ◊ By attributes of the transaction, for example, revenue generated by designers, architects, or craftsmen.
  - ◊ By several attributes of the transaction, for example, sales by product and month.

Appendix 3
Example of a Management Representation Letter

The following letter is not intended to be a standard letter. Representations by management will vary from entity to entity and from one interim period to the next.

(Entity Letterhead)
(To Auditor) (Date)

Opening paragraphs if interim financial information comprises condensed financial statements:

This representation letter is provided in connection with your review of the condensed balance sheet of ABC Entity as of June 30, 20X1 and the related condensed statements of profit & loss and cash

[6] See footnote 4.
[7] See footnote 5.
[8] Partner or proprietor, as the case may be.

flows for the three-month period then ended for the purposes of expressing a conclusion whether anything has come to your attention that causes you to believe that the interim financial information is not prepared, in all material respects, in accordance with [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[9] applicable in India].

We acknowledge our responsibility for the preparation and presentation of the interim financial information in accordance with [indicate applicable financial reporting framework].

Opening paragraphs if interim financial information comprises a complete set of general purpose financial statements prepared in accordance with a financial reporting framework designed to achieve fair presentation:

This representation letter is provided in connection with your review of the balance sheet of ABC Entity as of June 30, 20X1 and the related statements of income, changes in equity and cash flows for the three-month period then ended and a summary of the significant accounting policies and other explanatory notes for the purposes of expressing a conclusion whether anything has come to your attention that causes you to believe that the interim financial information does not give a true and fair view of (or "does not present fairly, in all material respects,") the State of Affairs of ABC Entity as at June 30, 20X1, and of its Results of Operations and its cash flows in accordance with [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[10] applicable in India].

We acknowledge our responsibility for the fair presentation of the interim financial information in accordance with [indicate applicable financial reporting framework].

We confirm, to the best of our knowledge and belief, the following representations:

- The interim financial information referred to above has been prepared and presented in accordance with [indicate applicable financial reporting framework].
- We have made available to you all books of account and supporting documentation, and all minutes of meetings of shareholders and the board of directors (namely those held on [insert applicable dates]).
- There are no material transactions that have not been properly recorded in the accounting records underlying the interim financial information.
- There has been no known actual or possible noncompliance with laws and regulations that could have a material effect on the interim financial information in the event of noncompliance.
- We acknowledge responsibility for the design and implementation of internal control to prevent and detect fraud and error.
- We have disclosed to you all significant facts relating to any known frauds or suspected frauds that may have affected the entity.
- We have disclosed to you the results of our assessment of the risk that the interim financial information may be materially misstated as the result of fraud.
- We believe the effects of uncorrected misstatements summarized in the accompanying schedule are immaterial, both individually and in the aggregate, to the interim financial information taken as a whole.
- We confirm the completeness of the information provided to you regarding the identification of related parties.
- The following have been properly recorded and, when appropriate, adequately disclosed in the interim financial information:
    - ◊ Related party transactions, including sales, purchases, loans, transfers, leasing arrangements and guarantees, and amounts receivable from or payable to related parties;
    - ◊ Guarantees, whether written or oral, under which the entity is contingently liable; and
    - ◊ Agreements and options to buy back assets previously sold.
- The presentation and disclosure of the fair value measurements of assets and liabilities are in accordance with [indicate applicable financial reporting framework]. The assumptions used reflect our intent and ability to carry specific courses of action on behalf of the entity, where relevant to the fair value measurements or disclosure.
- We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities reflected in the interim financial information.
- We have no plans to abandon lines of product or other plans or intentions that will result in any excess or obsolete inventory, and no inventory is stated at an amount in excess of realizable value.
- The entity has satisfactory title to all assets and there are no liens or encumbrances on the entity's assets.
- We have recorded or disclosed, as appropriate, all liabilities, both actual and contingent.
- [Add any additional representations related to new accounting standards that are being implemented for the first time and consider any additional representations required by a new Standard on Auditing that are relevant to interim financial information.]

To the best of our knowledge and belief, no events have occurred subsequent to the balance sheet date and through the date of this letter that may require adjustment to or disclosure in the aforementioned interim financial information.

____

(Senior Executive Officer)

____

(Senior Financial Officer)

Appendix 4

Examples of Review Reports on Interim Financial Information

Complete Set of General Purpose Financial Statements Prepared in Accordance with a Financial Reporting Framework Designed to Achieve Fair Presentation (see paragraph 43(i))

Report on Review of Interim Financial Information

(Appropriate addressee)

Introduction

We have reviewed the accompanying balance sheet of ABC Entity as of June 30, 20X1 and the related statements of Profit & Loss and cash flows for the three-month period then ended, and a summary of significant accounting policies and other explanatory notes. Management is responsible for the preparation and fair presentation of this interim financial information in accordance with [indicate applicable financial reporting framework]. Our responsibility is to express a conclusion on this interim financial information based on our review.

[9] See footnote 4.
[10] See footnote 4.

Scope of Review

We conducted our review in accordance with Standard on Review Engagements 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity[11]". A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Conclusion

Based on our review, nothing has come to our attention that causes us to believe that the accompanying interim financial information does not give a true and fair view of (or "does not present fairly, in all material respects,") the State of Affairs of the entity as at June 30, 20X1, and of its Results of Operations and its cash flows for the three month period then ended in accordance with [applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[12] applicable in India].

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[13]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[14])
(Membership Number)

Place of Signature
Date

Other Interim Financial Information (see paragraph 43(j))

Report on Review of Interim Financial Information

(Appropriate addressee)

Introduction

We have reviewed the accompanying [condensed] balance sheet of ABC Entity as of June 30, 20X1 and the related [condensed] Statements of Profit & Loss and cash flows for the three-month period then ended. Management is responsible for the preparation and presentation of this interim financial information in accordance with [indicate applicable financial reporting framework]. Our responsibility is to express a conclusion on this interim financial information based on our review.

Scope of Review

We conducted our review in accordance with Standard on Review Engagements 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity[15]". A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Conclusion

Based on our review, nothing has come to our attention that causes us to believe that the accompanying interim financial information is not prepared, in all material respects, in accordance with [applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[16] applicable in India].

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[17]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation [18])
(Membership Number)

Place of Signature

Date

Appendix 5

Examples of Review Reports with a Qualified Conclusion for a Departure from the Applicable Financial Reporting Framework

Complete Set of General Purpose Financial Statements Prepared in Accordance with a Financial Reporting Framework Designed to Achieve Fair Presentation (see paragraph 43(i))

Report on Review of Interim Financial Information

(Appropriate addressee)

Introduction

We have reviewed the accompanying balance sheet of ABC Entity as of June 30, 20X1 and the related Statements of Profit & Loss and cash flows for the three-month period then ended, and a summary of significant accounting policies and other explanatory notes. Management is responsible for the preparation and fair presentation of this interim financial information in accordance with [indicate applicable financial reporting framework]. Our responsibility is to express a conclusion on this interim financial information based on our review.

Scope of Review

We conducted our review in accordance with Standard on Review Engagements 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity[19]". A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Basis for Qualified Conclusion

Based on information provided to us by management, ABC Entity has excluded from property and long-term debt certain lease obligations that we believe should be capitalized

[11] In the case of a review of historical financial information other than interim financial information, this sentence should read as follows: "We conducted our review in accordance with Standard on Review Engagements 2410, which applies to a review of historical financial information performed by the independent auditor of the entity." The remainder of the report should be adapted as necessary in the circumstances.
[12] See footnote 4.
[13] See footnote 5.
[14] Partner or proprietor, as the case may be.
[15] In the case of a review of historical financial information other than interim financial information, this sentence should read as follows: "We conducted our review in accordance with Standard on Review Engagements 2410, which applies to a review of historical financial information performed by the independent auditor of the entity." The remainder of the report should be adapted as necessary in the circumstances.
[16] See footnote 4.
[17] See footnote 5.
[18] Partner or proprietor, as the case may be.
[19] In the case of a review of historical financial information other than interim financial information, this sentence should read as follows: "We conducted our review in accordance with Standard on Review Engagements 2410, which applies to a review of historical financial information performed by the independent auditor of the entity." The remainder of the report should be adapted as necessary in the circumstances.

to conform with [indicate applicable financial reporting framework]. This information indicates that if these lease obligations were capitalized at June 30, 20X1, property would be increased by Rs.______, long-term debt by Rs.______, and net income and earnings per share would be increased (decreased) by Rs.________, Rs._________, Rs.________, and Rs.________, respectively for the three-month period then ended.

Qualified Conclusion

Based on our review, with the exception of the matter described in the preceding paragraph, nothing has come to our attention that causes us to believe that the accompanying interim financial information does not give a true and fair view of (or "does not present fairly, in all material respects,") the State of Affairs of the entity as at June 30, 20X1, and of its Results of Operations and its cash flows for the three month period then ended in accordance with [indicate applicable financial reporting framework, including the reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[20] applicable in India].

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[21]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[22])
(Membership Number)

Place of Signature
Date

Other Interim Financial Information (see paragraph 43(j))

Report on Review of Interim Financial Information

(Appropriate addressee)

Introduction

We have reviewed the accompanying [condensed] balance sheet of ABC Entity as of June 30, 20X1 and the related [condensed] Statements of Profit & Loss and cash flows for the three-month period then ended. Management is responsible for the preparation and presentation of this interim financial information in accordance with [indicate applicable financial reporting framework]. Our responsibility is to express a conclusion on this interim financial information based on our review.

Scope of Review

We conducted our review in accordance with Standard on Review Engagements 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity[23]". A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Basis for Qualified Conclusion

Based on information provided to us by management, ABC Entity has excluded from property and long-term debt certain lease obligations that we believe should be capitalized to conform with [indicate applicable financial reporting framework]. This information indicates that if these lease obligations were capitalized at June 30, 20X1, property would be increased by Rs.______, long-term debt by Rs.______, and net income and earnings per share would be increased (decreased) by Rs.________, Rs._________, Rs.________, and Rs.________, respectively for the three-month period then ended.

Qualified Conclusion

Based on our review, with the exception of the matter described in the preceding paragraph, nothing has come to our attention that causes us to believe that the accompanying interim financial information is not prepared, in all material respects, in accordance with [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[24] applicable in India].

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[25]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[26])
(Membership Number)

Place of Signature
Date

Appendix 6

Examples of Review Reports with a Qualified Conclusion for a Limitation on Scope Not Imposed By Management

Complete Set of General Purpose Financial Statements Prepared in Accordance with a Financial Reporting Framework Designed to Achieve Fair Presentation (see paragraph 43(i))

Report on Review of Interim Financial Information

(Appropriate addressee)

Introduction

We have reviewed the accompanying balance sheet of ABC Entity as of June 30, 20X1 and the related Statements of Profit & Loss and cash flows for the three-month period then ended, and a summary of significant accounting policies and other explanatory notes. Management is responsible for the preparation and fair presentation of this interim financial information in accordance with [indicate applicable financial reporting framework]. Our responsibility is to express a conclusion on this interim financial information based on our review.

Scope of Review

Except as explained in the following paragraph, we conducted our review in accordance with Standard on Review Engagements 2410, "Review of Interim Financial Information Performed by the Independent Auditor of the Entity[27]". A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Basis for Qualified Conclusion

As a result of a fire in a branch office

[20] See footnote 4.
[21] See footnote 5.
[22] Partner or proprietor, as the case may be.
[23] In the case of a review of historical financial information other than interim financial information, this sentence should read as follows: "We conducted our review in accordance with Standard on Review Engagements 2410, which applies to a review of historical financial information performed by the independent auditor of the entity." The remainder of the report should be adapted as necessary in the circumstances.
[24] See footnote 4.
[25] See footnote 5.
[26] Partner or proprietor, as the case may be.
[27] In the case of a review of historical financial information other than interim financial information, this sentence should read as follows: "We conducted our review in accordance with Standard on Review Engagements 2410, which applies to a review of historical financial information performed by the independent auditor of the entity." The remainder of the report should be adapted as necessary in the circumstances.

on (date) that destroyed its accounts receivable records, we were unable to complete our review of accounts receivable totaling Rs.________ included in the interim financial information. The entity is in the process of reconstructing these records and is uncertain as to whether these records will support the amount shown above and the related allowance for uncollectible accounts. Had we been able to complete our review of accounts receivable, matters might have come to our attention indicating that adjustments might be necessary to the interim financial information.

Qualified Conclusion

Except for the adjustments to the interim financial information that we might have become aware of had it not been for the situation described above, based on our review, nothing has come to our attention that causes us to believe that the accompanying interim financial information does not give a true and fair view of (or "does not present fairly, in all material respects,") the State of Affairs of the entity as at June 30, 20X1, and of its Results of Operations and its cash flows for the three-month period then ended in accordance with [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[28] applicable in India].

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[29]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[30])
(Membership Number)

Place of Signature
Date

Other Interim Financial Information (see paragraph 43(j))

Report on Review of Interim Financial Information

(Appropriate addressee)

Introduction

We have reviewed the accompanying [condensed] balance sheet of ABC Entity as of June 30, 20X1 and the related [condensed] Statements of Profit & Loss and cash flows for the three-month period then ended. Management is responsible for the preparation and presentation of this interim financial information in accordance with [indicate applicable financial reporting framework]. Our responsibility is to express a conclusion on this interim financial information based on our review.

Scope of Review

Except as explained in the following paragraph, we conducted our review in accordance with Standards on Review Engagements 2410, "Review of Interim Financial Information Performed by the Auditor of the Entity[31]". A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Basis for Qualified Conclusion

As a result of a fire in a branch office on (date) that destroyed its accounts receivable records, we were unable to complete our review of accounts receivable totaling Rs.________ included in the interim financial information. The entity is in the process of reconstructing these records and is uncertain as to whether these records will support the amount shown above and the related allowance for uncollectible accounts. Had we been able to complete our review of accounts receivable, matters might have come to our attention indicating that adjustments might be necessary to the interim financial information.

Qualified Conclusion

Except for the adjustments to the interim financial information that we might have become aware of had it not been for the situation described above, based on our review, nothing has come to our attention that causes us to believe that the accompanying interim financial information is not prepared, in all material respects, in accordance with [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[32] applicable in India].

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[33]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[34])
(Membership Number)

Place of Signature
Date

Appendix 7

Examples of Review Reports with an Adverse Conclusion for a Departure from the Applicable Financial Reporting Framework

Complete Set of General Purpose Financial Statements Prepared in Accordance with a Financial Reporting Framework Designed to Achieve Fair Presentation (see paragraph 43(i))

Report on Review of Interim Financial Information

(Appropriate addressee)

Introduction

We have reviewed the accompanying balance sheet of ABC Entity as of June 30, 20X1 and the related Statements of Profit & Loss and cash flows for the three-month period then ended, and a summary of significant accounting policies and other explanatory notes. Management is responsible for the preparation and fair presentation of this interim financial information in accordance with [indicate applicable financial reporting framework]. Our responsibility is to express

[28] See footnote 4.
[29] See footnote 5.
[30] Partner or proprietor, as the case may be.
[31] In the case of a review of historical financial information other than interim financial information, this sentence should read as follows: "We conducted our review in accordance with Standard on Review Engagements 2410, which applies to a review of historical financial information performed by the independent auditor of the entity." The remainder of the report should be adapted as necessary in the circumstances.
[32] See footnote 4.
[33] See footnote 5.
[34] Partner or proprietor, as the case may be.

a conclusion on this interim financial information based on our review.

Scope of Review

We conducted our review in accordance with Standard on Review Engagements 2410, "Review of Interim Financial Information Performed by the Auditor of the Entity[35]". A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Basis for Adverse Conclusion

Commencing this period, management of the entity ceased to consolidate the financial statements of its subsidiary companies since management considers consolidation to be inappropriate because of the existence of new substantial non-controlling interests. This is not in accordance with [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[36] applicable in India]. Had consolidated financial statements been prepared, virtually every account in the interim financial information would have been materially different.

Adverse Conclusion

Our review indicates that, because the entity's investment in subsidiary companies is not accounted for on a consolidated basis, as described in the preceding paragraph, this interim financial information does not give a true and fair view of (or "does not present fairly, in all material respects,") the State of Affairs of the entity as at June 30, 20X1, and of its Results of Operations and its cash flows for the three-month period then ended in accordance with [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[37] applicable in India].

For ABC and Co.,
Chartered Accountants
Firm's Registration Number[38]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[39])
(Membership Number)

Place of Signature
Date

Other Interim Financial Information (see paragraph 43(j))

Report on Review of Interim Financial Information

(Appropriate addressee)

Introduction

We have reviewed the accompanying [condensed] balance sheet of ABC Entity as of June 30, 20X1 and the related [condensed] Statements of Profit & Loss and cash flows for the three-month period then ended. Management is responsible for the preparation and presentation of this interim financial information in accordance with [indicate applicable financial reporting framework]. Our responsibility is to express a conclusion on this interim financial information based on our review.

Scope of Review

We conducted our review in accordance with Standard on Review Engagements 2410, "Review of Interim Financial Information Performed by the Independence Auditor of the Entity[40]". A review of interim financial information consists of making inquiries, primarily of persons responsible for financial and accounting matters, and applying analytical and other review procedures. A review is substantially less in scope than an audit conducted in accordance with Standards on Auditing and consequently does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit. Accordingly, we do not express an audit opinion.

Basis for Adverse Conclusion

Commencing this period, management of the entity ceased to consolidate the financial statements of its subsidiary companies since management considers consolidation to be inappropriate because of the existence of new substantial non-controlling interests. This is not in accordance with [indicate applicable financial reporting framework, including the reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[41] applicable in India]. Had consolidated financial statements been prepared, virtually every account in the interim financial information would have been materially different.

Adverse Conclusion

Our review indicates that, because the entity's investment in subsidiary companies is not accounted for on a consolidated basis, as described in the preceding paragraph, this interim financial information is not prepared, in all material respects, in accordance with [indicate applicable financial reporting framework, including a reference to the relevant jurisdiction of the financial reporting framework when the financial reporting framework used is not Financial Reporting Standards[42] applicable in India].

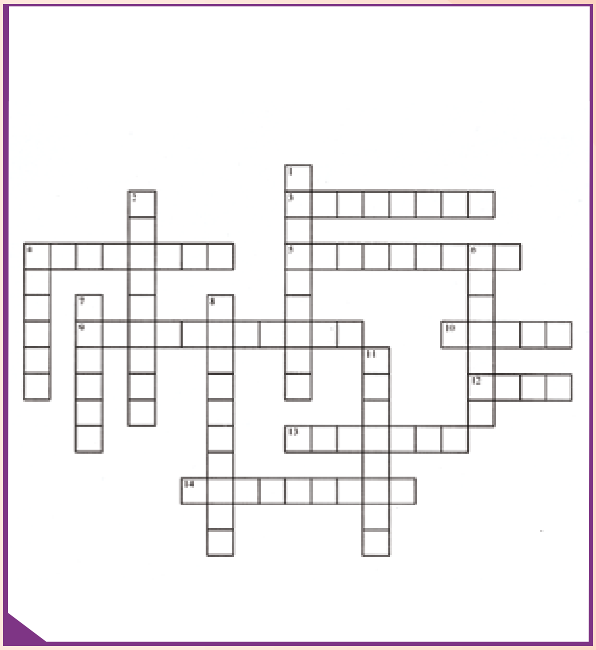
For ABC and Co.,
Chartered Accountants
Firm's Registration Number[43]

Auditor's Signature
(Name of Member signing the Audit Report)
(Designation[44])
(Membership Number)

Place of Signature
Date

[35] In the case of a review of historical financial information other than interim financial information, this sentence should read as follows: "We conducted our review in accordance with Standard on Review Engagements 2410, which applies to a review of historical financial information performed by the independent auditor of the entity." The remainder of the report should be adapted as necessary in the circumstances.
[36] See footnote 4.
[37] See footnote 4.
[38] See footnote 5.
[39] Partner or proprietor, as the case may be.
[40] In the case of a review of historical financial information other than interim financial information, this sentence should read as follows: "We conducted our review in accordance with Standard on Review Engagements 2410, which applies to a review of historical financial information performed by the independent auditor of the entity." The remainder of the report should be adapted as necessary in the circumstances.
[41] See footnote 4.
[42] See footnote 4.
[43] See footnote 5.
[44] Partner or proprietor, as the case may be.

CROSS WORD 047



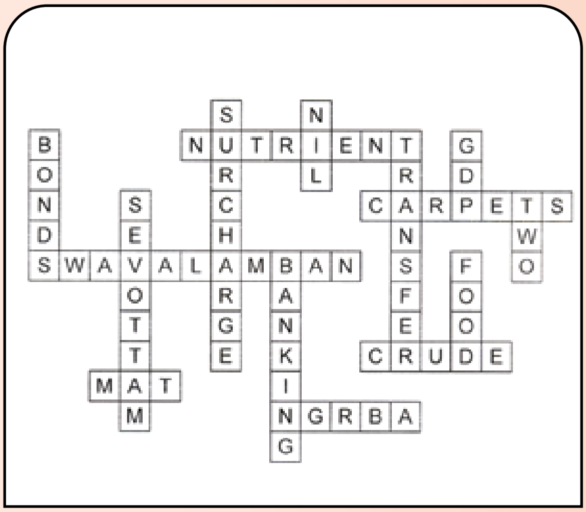
ACROSS

3. Definition of infrastructure project as per the extant ECB policy also include _________. (8)
4. ________ I.T. software, pre-packed in retail packages for single use is exempted from service tax subject to specified conditions. (8)
5. SEBI has introduced a new format for the half yearly report on ________ management activity. (9)
9. Exemption from service tax is provided to the technical service provided in relation to the transmission of ____________. (11)
10. Cenvat credit is admissible on the inputs and inputs services used in the manufacture of exempted goods supplied to specified mega ________ projects. (5)
12. If the *biris* are exempted from payment of Excise duty then they are also exempted from payment of *biri* _______. (4)
13. SSI sector is allowed full Cenvat credit on capital goods in one instalment in the year of _________ of such capital goods in the factory. (7)
14. RBI has introduced a fourth category of NBFCs for _________ Infrastructure sector. (9)

DOWN

1. Gossip spread by informal communication. (9)
2. SSI sector is allowed to make the payment of duty on _______ basis rather than monthly basis. (9)
4. Transport of _______ by road by a goods transport agency is exempted from service tax. (6)
6. Requirement of pre-authentication of ________ for the SSI sector has been dispensed with effective from April 1, 2010. (7)
7. Value of samples which are distributed free shall be determined under rule 4 of the valuation rule by taking into consideration the ________ value under section 4A(1). (6)
8. When members in a group refuse to think and decide independently. (10)
11. Assessees who have paid excise duty of ten lakh rupees or more in the preceding financial year are now required to deposit the duty electronically through ________ banking. (8)

Note:
Members can claim one hour CPE Credit – Unstructured Learning through self-declaration for attempting the above Crossword. Solutions can be sent to Journal Section, ICAI Bhawan, A - 94/4, Sector-58, Noida 201301.



SOLUTION Crossword 046

1 An accountant returned home after a very hectic day. He found his wife appearing little dull and her eyes little tired and swollen. He asked her, "What is the matter, dear? You appear dull and your eyes little swollen." His wife replied, "I am fine. Actually, I dropped my contact lens in our drawing room and I am unable to locate that small piece of glass now." Within no time, her husband finds it back. Surprised, his wife asks him, "How did you find it so soon?" The accountant replies, "It is simple. You were looking for a piece of glass, while I searched for the contact lens that cost me two thousand rupees."