The Institute of Chartered Accountants of India
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JOURNAL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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IFRS Convergence and India

Editorial

Come April 1, 2011, and India will join 120 odd countries that allow or require preparation of financial statements of various classes of entities in accordance with the International Financial Reporting Standards (IFRSs) or Accounting Standards prepared by the local accounting standard-setters in convergence with the IFRSs. In India, the convergence process will be over by 1st April, 2014 as insurance companies (from 1st April, 2012), banks and NBFCs (from 1st April, 2013) and all remaining listed entities (from 1st April, 2014) start preparing their financial statements in accordance with the Accounting Standards converged with IFRSs as per the road map issued by the Ministry of Corporate Affairs, Government of India. By 2015, it is expected that more than 150 countries including USA will move to the IFRSs. Thus, by 2015, IFRSs will truly emerge as the one single language of business ensuring comparability of financial statements prepared all over the world. This will facilitate cross-border movement of capital at lower cost, not to speak of enhancing mobility of professionals internationally. India, as an emerging economy has great appetite for foreign investment in various sectors of economy and convergence with the IFRSs will definitely go a long way in moving capital India's way.

While the benefits of global convergence cannot be doubted, this requires considerable groundwork to be done to make the country ready for the new regime. In this direction, all players involved in the formulation, implementation and enforcement of accounting standards have to play a stellar role. ICAI as the formulator of accounting standards has already reached advanced stage of formulation of Accounting Standards (ASs) corresponding to all IFRSs and, by the end of June 2010, it is expected that ICAI would have put in place these ASs. These Standards are also in the process of consideration by the National Advisory Committee on Accounting Standards (NACAS) for recommendation to the Central Government. It is expected that the Government would notify the same under the Companies Act, 1956, by the end of the year. To ensure that the Accounting Standards corresponding to the IFRSs do not conflict with various requirements of the Companies Act, 1956, the relevant provisions thereof are being amended. It is expected that the amendments in the Act will be in place much before the end of this year. To ensure consistency between various regulations and Accounting Standards converged with the IFRSs, the regulators such as Reserve Bank of India (RBI), the Insurance Regulatory and Development Agency (IRDA) and the Securities Exchange Board of India (SEBI) have also to identify areas in their regulations which are not consistent with the ASs converged with IFRSs and thereafter to amend the same. ICAI is providing necessary help in identifying such areas. Another area which needs to be addressed from the industry perspective is to ensure that these Accounting Standards are as tax neutral as possible so that there is no adverse tax implications.

To make a country ready for IFRS-converged accounting standards, the extent of preparedness of the professionals in carrying out the tasks related to preparation and audit of financial statements in accordance with standards is pivotal. The Institute of Chartered Accountants of India has started a massive exercise to train its members in industry as well as in practice. Last year, the ICAI launched a certificate course in IFRSs. So far, about 1800 members have successfully undergone the training of the IFRS certificate course. Besides this, the ICAI is also conducting large number of seminars and conferences on IFRSs to discuss various aspects related to implementation of IFRS. In this regard, another endeavour which ICAI has recently undertaken is conduct of workshops at 58 centres in India in collaboration with the Ministry of Corporate Affairs. ICAI is also acting as a nodal agency in the country to provide training to various entities particularly in public sector.

While the Institute, Government and the Regulators are performing their allotted tasks, it is also imperative for the entities to prepare themselves to change their accounting and other systems to be fully ready to implement the accounting standards converged with the IFRSs. Further, members in industry and in practice have to avail of the education and training opportunities being offered by the Institute so that they are in a position to discharge their onerous responsibilities in the same way as they have done so far.

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Dear All,

May the *Mother Nature* come soft and kind on all of us! *Amen*!

For the past two months, we are being hit by intolerably hot winds. Hundreds of people have died of sunstroke in the past two months across the country. Climate specialists foretell more horror for us that many areas of our earth will get too hot to survive in a few years. Taps, handpumps and pipelines have been drying up. This story will get louder every summer in all our cities, towns and villages. Worse, crisis is here to stay. By 2011, our Capital will need to increase its water supply by almost 50 per cent to take care of the basic needs of its citizens. Not just deforestation and industrialisation are to be blamed. It appears that we are losing our fundamental battle for survival. It is, therefore, time to understand that these are more than warning signals, which call for responsibility in all our actions – in our respective capacities.

We are acting quite responsibly in our capacity through strong environment-friendly initiative of our Institute, *Planet Alert*. We, professionally too, play an active role through environmental accounting and auditing in the industrial sector of our country by working out effective measures for minimising the consumption of resources and wastes. We can aid to the process further by helping the companies achieve the economic and environmental efficiency through appropriate measurements and sustainability reporting framework. Let us remind our society that we understand this need of the hour and its urgency.

Otherwise also, our responsibility refers not just to a compliance with the code of ethics as defined by our Institute, but also with our conscience. We can not afford to increase the crisis-quotient of our country by ignoring either of the two. We cannot be unethical by our training or by our choice. Ethics play an integral role in a professional's life. Celebrated French philosopher and Nobel Laureate Albert Schweitzer says, *'Ethics cannot be based upon our obligations toward [people], but they are complete and natural only when we feel…the desire to have compassion for and to help all creatures in so far as it is in our power.'* Only under such assumption, ethics can bring about true growth. Only then, ethics retain their true meaning. Schweitzer's premises of ethics have to be the guiding strength for all professionals, especially for the CA professionals who are led by values based on strong ethics and candour.

Ethics coupled with an upright mix of social responsibility have the power to save both human beings and humanity in the time dominated by various crises. It is time to be introspective. With an appeal for the righteous perspective, let us look at the steps we have taken, accomplishments we have made and lessons we have learnt from our own failures:

Our Initiatives and IFRS Implementation

It is indeed a matter of pride for us that we are associated with the Ministry of Corporate Affairs in the convergence of the Indian Accounting Standards with the International Financial Reporting Standards (IFRSs) in a phased manner. We are spearheading this initiative in India with an understanding that financial reporting system supported by strong governance, high-quality standards and regulatory framework will be the key to our economic growth. We understand our responsibility of contributing to the economic development. We are creating awareness among all, including the Small and Medium Practitioners (SMPs) while enabling them to accept the task ahead for implementing the IFRSs in India. However, we are also conscious of the fact that the implementation of the IFRSs in respect of the SMPs may not be cost effective and accordingly they have been subjected to exception. They will continue to follow the Accounting Standards already in vogue. Such Accounting Standards may be revised from time to time keeping in view the socio-economic requirements.

ICAI Designated as Nodal Agency

After the release of the Exposure Drafts of Accounting Standards corresponding to IFRSs to apply from April 1, 2011, greater need will be to train our members and other stakeholders in context of the implementation of IFRSs. We are aware that the readiness of our convergence with the IFRSs depends upon related preparedness of our professionals. We, therefore, recently organised a Curtain-Raiser Ceremony of the Chain-Workshops on *Indian Accounting Standards Converged with IFRSs* for the awareness of the relevant stakeholders in New Delhi, which was inaugurated by the Secretary, Ministry of Corporate Affairs, Shri R. Bandyopadhyay. While he praised our initiatives showing complete trust in our competence for the job, he informed that the Ministry has written to all stakeholders including various public-sectors entities that the ICAI would be the nodal agency in the country to provide training on implementation of Indian Accounting Standards converged with the IFRSs. He urged the stakeholders that they must participate in the ICAI's awareness drive. This curtain raiser event marked an important milestone of our efforts on the *convergence*. We are thankful to the Government for the confidence reposed in us and we are meeting Secretaries of various departments of Government of India to achieve the objective. Similar meetings shall be held with various regulators including SEBI, RBI and IRDA to carry the project forward. We will also strive to organise series of such programmes in various companies after meeting the heads of the select entities. As a first logical step in this direction, a two-day workshop on IFRSs was successfully held recently for the Central Council members of our Institute in New Delhi with a view to apprise them of the nuances of the convergence. Another two-day programme will be organised for the employees, particularly the CAs, of the Institute in the first week of June.

Chain of Training Workshops

The ICAI, going by its commitment to formulate the accounting standards converged with the IFRSs, has dedicated to the nation a chain of training workshops on Indian Accounting Standards (IASs) converged with IFRSs – intensive training workshops on 58 locations across the country. We have decided to undertake training programmes of varying duration for different entities/individuals, covering broadly the introduction and dissemination of knowledge on the IASs converged with IFRSs and the comparison of the IFRSs with the converged IASs, aiming to provide a general overview of the IASs converged with the IFRSs. It will benefit all the stakeholders, including our members and corporates. The details about the locations of workshops can be found on our website.

Certificate Course and Seminars

Let us remind you about our previous efforts and a massive exercise to train our members in industry as well as in the practice. Last year, we launched an extensive 100-hour Certificate Course on IFRSs and, as a result, about 1800 members have already successfully completed the course. Besides, we also conducted several seminars and conferences on the IFRSs to discuss various aspects of convergence. Special workshops for members in industry will be organised for apprising them of the first-time adoption of the Indian Accounting Standards converged with the IFRSs.

Direct Tax Issues Arising from Convergence

We take this opportunity to inform all our members that a Group has been constituted for identifying Direct Taxes issues arising from the convergence of the Indian Accounting Standards (ASs) with the International Financial Reporting Standards (IFRSs). Further, two Sub-Groups would study the practices adopted in other countries at the time of implementation of the IFRSs to mitigate the hardships of entities that may arise due to difference between the income as per financial statements and computed under tax laws. They are likely to go into various provisions of Direct Taxes, which may require change in view of fair-value accounting concept. The changes may be required in Direct Tax provisions to take care of moving from 'incurred loss' to 'expected loss' concept. However, it may not be out of place to say that the difference in the income calculated under financial statements and that under tax provisions cannot be eliminated altogether, though it may be reduced to quite an extent. Also, the Government may have to contend with the issue of SMEs continuing with accounting based on historical cost concept as per existing standards.

Joint Initiatives of India and Japan

You will be happy to know that a Japanese delegation led by Mr. Noriaki Shimazaki, Chairman, Internal Affairs Committee, IFRS visited ICAI recently to discuss the modalities of Indo-Japan Conference on IFRS and the capital markets and setting up a working group to enhance cooperation between India and Japan. The ICAI plans to play a key role to implement the understanding reached between India and Japan along with the Japanese Institute of Certified Public Accountants (JICPA) on common issues arising on the implementation of the IFRSs. The delegation along with the team of ICAI officials led by Vice-President CA. G. Ramaswamy, met Hon'ble Minister for Corporate Affairs Shri Salman Khurshid and Shri Bandyopadhyay to discuss and address critical issues involved in convergence to IFRS and evolve consensus through process of consultation mutually agreed to between the two countires. Vice-President CA. G. Ramaswamy expressed that this understanding would pave the way for greater cooperation between the ICAI and the JICPA in future. Shri Bandyopadhyay chaired the meeting for formulating guidelines for cooperation between the two countries and hoped that the said understanding will provide leadership in the development of the accountancy profession in India and Japan.

Later on, the delegates from Japan along with the officials of ICAI including the Chairman of Accounting Standards Board, CA. Manoj Fadnis, deliberated to work out plans for future cooperation. Mrs. Renuka Kumar, Joint Secretary, Ministry of Corporate Affairs, guided the deliberations. CA. T. V. Mohandas Pai, Member of the Board, Infosys, also contributed to the process.

World Congress of Accountants and IFAC Delegation

World Congress of Accountants (WCOA) is organised every four years to deliberate on contemporary issues in accountancy, under the aegis of the International Federation of Accountants (IFAC), to promote the awareness and contribute to the achievement and the implementation of the IFAC's strategy and mission to serve the public interest.

You will be happy to know that we have bid for hosting the 19th WCOA, also called *Olympics of the World's Accountants*, in the year 2014 in India. A high-powered delegation of the IFAC, the global organisation of accountancy profession representing 2.5 million accountants spread over 124 countries, comprising its President Mr. Robert Bunting, CEO Mr. Ian Ball, and Technical Manager, Governance & Operations, Mr. Matthew Bohun visited India.

The IFAC delegation first visited the city of Hyderabad, the IT hub of India and the proposed venue for the Congress, to assess our proposal of hosting the WCOA in India. The proposed venue, Hyderabad International Convention Centre, has a huge capacity of more than 6,000 delegates. Normally 5000 delegates across the world participate in the Congress. The IFAC delegates were quite impressed with the infrastructure of the city and the venue. The delegation also met the Hon'ble Governor of Andhra Pradesh, Shri E. S. L. Narasimhan, its Chief Secretary, Shri S. V. Prasad, and Home Secretary, in Hyderabad. The delegation was assured every kind of support by the top dignitaries of the State. All the doubts lurking in the minds of the delegation regarding the hosting of the Conference were set at rest. We thank the government dignitaries for their support and understanding extended in this endeavour. We do sincerely hope and pray that the delegation may give its verdict in favour of India and, then, we will have the proud privilege to host the first World Congress of Accountants in India in 2014. Whereas it was a matter of great satisfaction and pride that Hyderabad has such a tremendous infrastructural facility of hosting conferences having more than 5000 delegates, however, it remains a matter of concern that our metros don't have such facilities and, therefore, there is an urgent need to create the same.

A seminar on *Role of Accounting Profession in New Economic Order* was also organised during the visit. After the technical session on *New Accounting Language*, the seminar was addressed by the IFAC President, ICAI Vice-President and the undersigned. The efforts made by our Central Council members CA. J. Venkateswarlu and CA. M.Devaraja Reddy, and the Hyderabad Branch Chairman CA. C. Venkatram in making the IFAC delegation's Hyderabad visit successful were noteworthy.

As a first step of IFAC delegations's Delhi visit, a press conference was organised by the ICAI, which was addressed by Mr. Robert Bunting, Mr. Ian Ball, and Mr Matthew Bohun, and the undersigned. Mr. Kenneth Dakdduck and Ms. Jan Munro, the Chairman and the Director of the IESBA of IFAC respectively, also attended the conference, as they were also in the ICAI to discuss ethics-related issues. CA. G. Ramaswamy, Vice-President, ICAI, and Shri T. Karthikeyan, Secretary, ICAI, were also present in the conference. The undersigned informed the media that the prime objective of the IFAC delegation's visit was to assess the ICAI's proposal to host next WCOA in India and the delegation was deeply impressed with the proposed venue and Hyderabad's infrastructure.

The delegation later met the Hon'ble Chief Minister of Delhi Smt. Sheila Dixit, the Comptroller and Auditor General of India Shri Vinod Rai, the Secretary of the Ministry of Corporate Affairs Shri R. Bandyopadhyay and the Secretary of the Ministry of Commerce & Industry Shri Rahul Khullar in New Delhi. The role of India's supreme auditing body in the implementation of the IFRSs and the independence of accounting standards setting process were among the issues discussed with Shri Rai. At the meeting with Shri Khullar, the participants discussed opening up of accounting profession in the country in the wake of economic development. During the meetings, the IFAC President particularly elucidated the role of the IFAC in the development of accountancy profession worldwide.

To celebrate the occasion, a conference on *Role of Accountancy Profession in Anchoring Economic Order* was organised by the NIRC of the ICAI, highlighting the role of accounting profession in the recent financial crisis. At this conference, the undersigned highlighted that the accountancy profession needs to seriously reconsider the existing manner of reporting by auditors so as to bridge the expectation gap on one hand and raise the quality of reporting on the other hand. In this context, the undersigned called upon the IFAC to have a look at the existing reporting requirements in the form of Companies (Auditor's Report) Order (CARO), 2003 and Long Form Audit Report for the banking sector for implementation at international level. The IFAC President urged the Indian accounting profession to play a proactive role right from the stage of conceptualisation to the formulation of standards. Here, efforts made by CA. Atul Gupta, Chairman, NIRC in organising the conference were noteworthy.

SAFA and ICAI

Recently, the ICAI delegation, led by the undersigned, attended the 13th SAFA Board meeting held in Colombo, including the strategic meeting of the SMP Committee and the Task

Force to review the existing Constitution of SAFA. Important changes proposed by us in the existing Constitution of SAFA, like removal of the post of *'Advisor'* and a provision for *'associate membership'* were unanimously accepted by all member bodies. During the meeting, the issue of setting up an independent and permanent Secretariat, other than the ICAI, was also discussed. We showed our willingness to support the proposal, if all member bodies were ready to share the additional cost to be incurred for the purpose. No other member showed interest to have the permanent secretariat in their Institute. We assured the members of our complete support in all the endeavours of SAFA.

During the SAFA Board Meeting, we agreed to host the SAFA–RSS (Regional Standard Setters) meeting in November-December this year in New Delhi with the Chair of the IASB, Sir David Tweedie, as Chief Guest. The Auditing & Assurance Standards Board and Ethical Standards Board of the ICAI will also participate in the meeting. However, a proposal to host the first SAFA–SMP Forum in August 2010 is under consideration.

During the SMP Committee meeting, we shared the initiatives as undertaken by the ICAI for the capacity-building of the SMPs in India, e.g. networking, merger and de-merger, and provision for setting up limited companies for consultancy. Also, we shared that the LLP concept has been recognised in India and the required consequential amendments in the Acts of all the three professional Institutes are under consideration of the Government. A concept paper, *Issues and Challenges faced by SMPs and SMEs in SAARC Region*, prepared by us was also discussed in the meeting.

High-Powered Committee Report on Satyam Episode

We have finalised Second Volume of the ICAI's High-Powered Committee Report on the Satyam episode. The Committee made several suggestions including strict penal actions against auditors who are found to be colluding with management in serious accounting frauds. We have suggested to frame a code of conduct for Financial Analysts and Investment Bankers for better scrutiny of firms that may indulge in malpractices. The Report has already been submitted to the Ministry. Meanwhile, proposed amendments to the Chartered Accountants Act, 1949 arising out of recommendations in High-Powered Committee's Report, Volume 1, will be discussed in a Special Council Meeting to be conducted in mid-June and will be sent to the Government for necessary action.

Government Accepts ICAI Suggestions

You shall be glad to know that our suggestion relating to exemption of capital gains in the hands of shareholders consequent to conversion of a company into LLP has been accepted by the Government of India. It is also heartening that one out of the three amendments made while passing the Finance Bill, 2010 was in accordance with the suggestions submitted by the Direct Taxes Committee of ICAI given as part of the Post-Budget Memorandum, 2010.

In the Memorandum, we had observed that though as per the Section 47(xiiib), conversion of a company into an LLP is exempt from tax, liability would be attracted in the hands of shareholders under Sections 46(2) and 2(22)(c). Therefore, it was suggested that when the account of the shareholder is credited in the books of the LLP on such conversion, the provisions of the Sections 46(2) and 2(22)(c) levying tax on the shareholder on distribution of assets on liquidation of a company should not apply. This suggestion was accepted while passing the Finance Bill, 2010 by amending the Section 47(xiiib).

ICAI's Presentation Before the Parliamentary Standing Committee on Finance

With a view to keep pace with changes in the national and international economy, the Ministry of Corporate Affairs has taken up a comprehensive review of the existing Companies Act, 1956 and released the Companies Bill, 2009, for comments. We have submitted our suggestions to the Ministry and to the *Parliamentary Standing Committee on Finance* of the Lok Sabha Secretariat in this regard. Further, a presentation emphasizing on concerns related to accountancy profession was also made before the Committee.

ICAI's Presentation Before IBA

You will be happy to note that the Institute made a presentation for the first time before the Indian Banks' Association (IBA) Managing Committee that met recently. It was attended by the CMDs of the selected public- and private-sector banks. We highlighted the role of CAs in the implementation of the IFRSs and XBRL in banking sector and assured them of our full support including holding workshops. Also, we emphasised the need for uniformity in concurrent audit empanelment procedures, scope, reporting formats, auditor's remuneration and frequency of reporting. We also highlighted the role of CAs in information systems audit, revenue audit, stock audit, debtor's audit, credit audit, etc. We emphasized the importance of reporting by auditors, particularly with reference to CARO, 2003 which can be used by banks for effecting credit monitoring. We also highlighted the disciplinary mechanism of the ICAI and allayed fears of bank officials on such matters. We also pointed out that having filed complaints, in certain cases, the banks do not provide the required information to take the disciplinary proceedings to their logical conclusion. The presentation was very well received and it shall be our sincere endeavour to follow up our effort to the desired objective of enhancing the professional opportunities for our members.

President

Empowering SMPs

We propose to develop software to cater to the documentation needs of all practicing members specially our small and medium practitioners. Besides empowering them, this software will provide necessary checklists and required tools to ensure compliance with all applicable accounting and auditing standards and relevant legislations. It will be our endeavour to provide this software to the members at a reasonable cost.

Representations to Government Agencies

As a step in the direction of consolidating the ethical audit and accounting practices, our Institute has, last month, represented to Smt. Usha Narayanan, Executive Director of the SEBI, regarding introduction of internal audit by chartered accountants in all listed companies as supervision of internal control function by a chartered accountant firm. Recently, the ICAI delegation that included Vice-President, ICAI, and the undersigned met the Secretary, Department of Financial Services, Ministry of Finance, Shri R. Gopalan, and discussed the issues of managerial autonomy granted to banks, particularly with regard to appointment of auditors, internal audit of insurance companies and pre-audit by chartered accountants (in case disbursal amount of the insurance claim is above a threshold limit). We also met the Joint Secretary, Department of Insurance and Pension, Ministry of Finance, Shri Tarun Bajaj, and discussed the issues of mutual interest including internal audit and concurrent audit of branches of insurance companies. We have recently sent a representation to the Chairman, CBDT, to avail centralised panel of chartered accountants or CA firms for allotting special audit under Section 142(2A) of the Income-tax Act, 1961 across the country.

Group Formed to Check Misrepresentations by Non-CAs

Of late, we have come across cases involving forgery of signature and misuse of seal of chartered accountants in the general-purpose financial statements, tax audit reports and other statutory and non-statutory documents. We have set up a Group to look into these practices of misrepresentations. The Group will deliberate and formally suggest measures in order to keep a check on such fraudulent practices and to ensure that the public interest is taken care of. The Council at its last meeting has considered a proposal for strict punishment under Section 24 of the Chartered Accountants Act, 1949 *(dealing with penalty for falsely claiming to be a member)*. It is proposed to enhance the penalty to a significant amount including imprisonment upto five years.

Meeting Commerce Educationists

We plan to hold a one-day workshop with the Vice Chancellors and Heads of Department of Commerce of various universities to assess the present-day relevance, orientation, efficacy and utility of commerce education in India and its future needs. The idea is to know what our country needs in terms of commerce education for the overall benefit of the economy. It will be highly beneficial for all the stakeholders as educational institutions may carry, in their courses, contents from the CA perspective to make them more useful from the viewpoint of industry and society at large. The idea is also to assess the likely changes in commerce education in future and to plan revision of curriculum, if so required, well in advance. It will also enable the ICAI to build up a resource pool for our examination and academic requirements. As a brand building exercise for the profession, such an event will also promote the wider awareness of the CA Course within appropriate strata of the society.

Students' Matters

When crisis strikes, education becomes our power to guard, respond and guide, which has two fundamental forms: theory and practice. In principle, they may not be any different. But, practically, they are, as Confucius had once said: *What I hear, I forget. What I see, I remember. What I do, I understand*. Education that comes through our action is powerful. It helps us to know what we do not know and how much more we need to know. Only a continuous education can make us complete – to review our knowledge and past experiences, and to connect them to our present. Urge to know the truth has overpowered all other desires in human beings and this situation is quite prophetic. Dear Students! Please watch out!

Examinations are over. We believe, students must have done well. Now, they must focus on practical training that is cornerstone of success in our profession. We regret, however, that re-examination was ordered at one centre for IPCC, while another re-examination was ordered on all-India basis for Hindi medium students with regard to the Cost Accounting paper of the IPCC. The decisions were driven by the circumstances that warranted them. The performance of coordinators and observers of examinations is under review and the system will be strengthened. We are confident that with such preventive measures, similar situations will not recur in future.

We are concerned over the working of ITT Centres, and accordingly, 16 ITT centres were selected in a random manner across the countr to be put to audit/review for identifying the grey areas to improve their functioning. The review revealed that certain centres are not adhering to ICAI guidelines. The necessary steps are being taken to ensure that all ITT Centres comply with the guidelines issued by the ICAI.

Further, we have been making constant efforts to provide academic inputs to standardise the quality of 100-Hour IT-Training imparted to our students through our IT centres. The second module of the ITT course material has already been thoroughly revised. Also, a CD containing laboratory exercises and case studies for practical sessions on various relevant topics of the curriculum has been prepared. These inputs will help the students in understanding the application of software in their professional space.

Infrastructure Acceleration Group

We plan to categorise our branches under four categories based on number of members and students served by the branch, say, less than 250, 251-500, 501-1000, and 1000 and above. Uniform infrastructural facilities are planned for the branches to ensure optimal utilisation of resources available at various branches.

In view of the above, we have evaluated various ongoing building projects. Whereas it would be our endeavour to ensure the completion of various projects, we may have to shelve a few projects where the commitments are too high in relation to the number of the members and students being served by the branch. We can assure the office bearers of all branches that infrastructural facilities shall continue to be looked into with all urgency they deserve.

Meanwhile, the work on Bandra-Kurla Complex project in Mumbai is in full swing. This project, once completed, will be a pride of our profession. Similarly, the project of new ICAI Bhawan in Kolkata is attracting our attention and we intend to complete its first phase by December 2010. It will prove to be another milestone for our profession.

Future Belongs to Us

It is a matter of joy for the accountancy profession in India that, of late, there has been a welcome upsurge in the opportunities available to the members in industry. As a result, more members are joining industry and a concern has been voiced that fewer members would come into practice because of lucrative offers in industry. This apprehension is indeed genuine. However, we believe that, within 3-5 years, there will be a partial reversal of this trend and auditing and accounting practice will grow manifold. With a positive growth in the economy, we are bound to have greater professional opportunities available to the members in practice, both from private- and public-sector. Let us not forget that the C&AG office recently entered into an arrangement with few hundred chartered accountants to undertake assignments at individual level as their extended arm. The number of chartered accountants to be engaged by the C&AG office will increase manifold, once the auditing of panchayat funds, the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) fund and the National Rural Employment Gurantee Act (NREGA), etc., come under the purview of the C&AG. It is in the offing, probably immediately after a proposed amendment to the C&AG Act, 1971 in this regard. We can also foresee ever-increasing opportunities for chartered accountants in areas like Mergers & Acquisitions, Due Diligence, Consultancy including in respect of FEMA, Valuations, IFRS Implementation, Indirect Taxes including GST, and IT, etc. The CA fraternity can rest assured of a very bright future. However, quality of professional services will hold the key.

Transparency is the key to improve all kinds of services. It is in this view that we have endeavoured to share all information with membership at large. Reporting of certain matters should not be seen as signs of weakness of the system, but as an effort to improve upon the same in a timely and effective manner.

July 1, celebrated as *CA Day*, marks the establishment of the ICAI in India. All chartered accountants of India will be busy preparing for celebrations through the month of June. *July 1*, let us recall, also marks the enactment of the *British North America Act* in 1867, which united two British colonies and a province of the British Empire into a single country called Canada, therefore, also known as *Canada's Day*. CA is the country code for Canada used as internet domain name. Our chapter in Toronto will have reasons for double celebrations on *July 1*. We would like to extend our advance wishes to the citizens of Canada for their celebrations of *July 1.*

However, the Indian CA community across the world will always remember *July 1* as CA (chartered accountants') Day. It is a matter of overwhelming joy that our Institute, being the second largest accounting body of the world, has 21 overseas Chapters spanning all possible continents of the world to facilitate best-possible professional relationship of world accounting fraternities with ours. Despite outstanding achievements in the past, we will remember that we still have miles to go from where we are at present.

Notable American humourist Mark Twain denounces all who only 'grumble about the weather, but...but...but' they do 'nothing'...'about it.' We will learn how to weather all weathers of crisis by joining hands with other responsible citizens of the world. This pledge is especially crucial at present, as accounting fraternities across the world have been trying their best to learn a common code of financial reporting.

Best wishes,

Yours sincerely,

CA. Amarjit Chopra,
May 25, 2010

May 2010 Issue of Journal Very Informative

The journal May 2010 issue of the journal has been very well prepared and useful since it covers many current topics like Government Accounting, IFRS, International Taxation etc. The article on 'Accounting Legend' Shri K. S. Iyer is particularly informative and is a must read for all Chartered Accountants and CA students. The story of his noble ventures and achievements is really inspiring and is worth emulating by one and all.

-R. Kannan, Chennai

The May 2010 issue of the journal had some really informative and knowledge-enhancing articles and features. These included articles titled 'IPSAS: Harmonising Government Accounting with Commercial Accounting,' 'Agriculture Industry and IFRS,' 'Section 206AA of Income-tax, 1961- Whether a Nightmare for Non-Residents' and biography of Shri K. S. Iyer. The journal is becoming more and more useful for members as well as CA students. It should continue carrying articles on most-recent aspects of various areas related to the profession.

-CA. Manoj Bhagwat

e-Sahaayataa is a Very Useful Service

I thank the Institute for launching *e-Sahaayataa* service for members and students, which is a very transparent and hassle free facility to resolve any grievances in time-bound manner. With the complaints getting resolved in a time-bound and transparent manner, this service will save a lot of time for members and students, who otherwise had to physically visit the concerned departments to resolve their various problems. I was extremely happy to see my articleship related query resolved within two hours.

-Mayank Gupta

MoU with CBEC Highly Beneficial

I thank the institute and its leadership for taking many initiatives for the benefit of practicing Chartered Accountants. Particularly, the MoU signed between our esteemed institute and CBEC on 31^{st} March, 2010 for the setting up of Certified Facilitation Centres by the practicing Chartered Accountants. I would appreciate if important details about the MoU are published in brief in the journal so that all the practicing Chartered Accountants who are yet unaware of it can benefit from the same. The trust reposed on CAs by the CBEC is really appreciable.

-CA. Jomon C. V., Mumbai

Stop Use of Plastic Bags

Its high time that our Institute takes a lead in reducing the use of plastic by stopping to the same itself and also encouraging public limited companies to do the same. The journal is being sent in plastic bags for the past many years, which should not be the case when the ICAI has been actively taking up the cause of environment for past many years. Although it is well known that plastic causes immense harm to our environment, many companies too, send their annual reports in plastic bags. The ICAI should pay heed to the need of curbing the use of plastic.

-CA. Alpa Shyam Parekh

I am a supporter of the green campaign. In order to make our planet green, how about accepting the request of our esteemed members for receiving their CA monthly journal through e-mail in the form of an e-book. This will save a lot of paper and in turn our trees.

-CA. Suresh C. S.

Attestation of Public Documents

Referring to the letter written by CA. Jomon C. V. in the 'Readers Write' column of March 2010 issue of the Journal, I fully support the views that there was a need to get recognised the Chartered Accountants for general attestation work of public documents at par with gazetted officers of the Government of India. I request the Institute to take up this issue with the Government in the interest of our profession as well as the general public.

-CA. A. M. Shah, Baroda

Limca Book of Records 2010

I wish to share with my fraternity that my name appears in 'Limca Book of Records' 2010 edition at pages 85-86 in the category – 'Communications: Letters to the editor'. My name has been included in the book for my 9,569 letters published in 321 newspapers and magazines since 1974. My latest tally is 10,449 letters in 339 newspapers and magazines.

-CA. Mahesh Kapasi

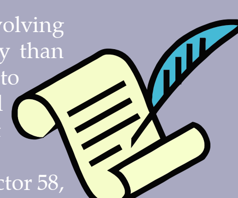
EDITOR

For the Attention of Readers

Readers' attention is specifically invited to the fact that the views and opinions expressed or implied in *The Chartered Accountant* journal are those of the respective authors only, and not of the ICAI. The ICAI bears no responsibility of any sort whatsoever in case of any action taken by any reader based on any article published in the Journal.

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



Curtain Raiser Ceremony for All India Chain Workshops

ICAI President CA. Amarjit Chopra presents a memento to Secretary, Ministry of Corporate Affairs Shri R. Bandyopadhyay in presence of ICAI Vice President CA. G. Ramaswamy, Central Council Member CA. Manoj Fadnis, ICAI Secretary Shri T. Karthikeyan and other dignitaries at the Curtain Raiser Ceremony for the All India Chain Worshops on Indian Accounting Standards converged with IFRS. (April 29, 2010)

Japanese Delegation Visits India

Minister of Corporate Affairs Mr. Salman Khurshid with the head of Japanese delegation Mr. Noriaki Shimazaki, Chairman, Sub Committee on Accounting, Japan Business Federation and ICAI Vice President CA. G Ramaswamy as Secretary, Ministry of Corporate Affairs Mr. R. Bandyopadhyay looks on. (April 22, 2010).

ICAI President Presents Memento to Andhra Pradesh Governor

ICAI President CA. Amarjit Chopra and Andhra Pradesh Governor Hon'ble Shri E. S. L. Narasimhan with the IFAC delegation (IFAC President Mr. Robert Bunting, IFAC CEO Mr. Ian Ball, and IFAC Technical Manager, Governance & Operations, Mr. Matthew Bohun). Also seen are Shri T. Karthikeyan, Secretary, ICAI, CA. G. Ramaswamy, Vice-President, ICAI, and other ICAI delegates during the IFAC Visit to Hyderabad (May 10, 2010)

Delhi Chief Minister Receives the IFAC Delegation

Delhi Chief Minister Smt. Sheila Dixit welcomes the IFAC President, Mr. Robert Bunting, the CEO, Mr. Ian Ball, and the Technical Manager, Mr. Matthew Bohun

ICAI Leadership Meets Delhi Chief Minister

ICAI President CA. Amarjit Chopra presents a memento to the Delhi Chief Minister Smt. Sheila Dixit while Vice-President CA. G. Ramaswamy looks on. (May 11, 2010)

Meeting with C&AG

Shri Vinod Rai, Comptroller & Auditor General of India meets ICAI President CA. Amarjit Chopra, Vice-President CA. G. Ramaswamy, IFAC President Mr. Robert Bunting, CEO Mr. Ian Ball and Technical Manager, Governance & Operations, Mr. Matthew Bohun.

ICAI's Memento to IFAC President

ICAI President CA. Amarjit Chopra presents a memento to the IFAC President Mr. Robert Bunting on the occasion of the Conference on Role of Accountancy Profession in Anchoring Economic Order organised by the NIRC.

IFAC Delegation and ICAI Leaders Meet

ICAI President CA. Amarjit Chopra and Vice-President CA. G. Ramaswamy, with the IFAC Delegation (IFAC President Mr. Robert Bunting (centre), IFAC CEO Mr. Ian Ball (right corner), and IFAC Technical Manager, Governance & Operations, Mr. Matthew Bohun)

IFAC and ICAI: Discussions on World Congress of Accountants

ICAI President CA. Amarjit Chopra, Vice-President CA. G. Ramaswamy, Secretary Shri T. Karthikeyan, Central Council Members CA. J. N. Shah and CA. Atul Bheda with the IFAC Delegation (President Mr. Robert Bunting, CEO Mr. Ian Ball, Technical Manager, Governance & Operations, Mr. Matthew Bohun, and others).

Consolidating Accountancy Profession in SAARC Region

Sitting (Left to Right): Mr. Sujeewa Rajapakse, Vice President, ICA Sri Lanka and SAFA Board Member, Mr. ABM Shamshuddin, Past President, ICMA Bangladesh, Mr. Narayan Bajaj, Past President, ICA Nepal, Mr. Abdul Rahim Suriya, President, ICA Pakistan, Mr. A.N. Raman, Vice-President SAFA and Central Council Member of ICWAI, Prof. Lakshman Watawala, Past President SAFA and President CMA Sri Lanka, Mr. Md. Abdus Salam, Vice-President ICA Bangladesh, Mr. Muhammad Rafi, SAFA Board Member from ICMAP, Mr. G.N. Venkataraman, President ICWAI, and CA. Amarjit Chopra, President ICAI and SAFA Board Member

Standing (Left to Right): CA. Mudit Vashishtha, Sr. Executive Officer ICAI & SAFA Nodal Officer, Mr. Muzaffer Ahmed, ICA Bangladesh, Mr. Shaikh Saqib Masood, SAFA Board Member from ICAP, Mr. Parmananda Adhikari, Executive Secretary SAFA, Mr. Nishan Fernando, Past President, ICA Sri Lanka, Mr. Mushtaq Ahmed Madraswala, Executive Director ICMAP, Mr.Ananda Wehalle, Technical Advisor, CMA Sri Lanka, Mr. Madhu Bir Pande, Council Member, ICA Nepal, and Mr. Md. Syful Islam, Council Member, ICA Bangladesh

International Conference in Dubai

ICAI President CA. Amarjit Chopra, Consul General of India to Dubai Shri Sanjay Verma, Chairman ICAI Dubai Chapter CA. Hanumantha Kumar and other office bearers of the Chapter at the lighting ceremony of the international conference on 'the economy through the looking glass" organised by ICAI Dubai Chapter on 22nd and 23rd April 2010 in Dubai.

Nellore Branch Foundation Laying Ceremony

ICAI Vice President CA. G Ramaswamy welcomes Chief Minister of Andhra Pradesh Sri Konjeti Rosaiah on the occasion of the foundation stone laying ceremony of Vellore branch of ICAI. (May 2, 2010).

ICAI NEWS

"e-Sahaayataa" - A New Grievance Resolution Mechanism

'e – Sahaayataa' is the only e-channel for the entire base of members and students of the Institute and other stakeholders of the profession wherein all their queries/ complaints/grievances pertaining to the day-to-day working shall be catered to and be resolved in a time-bound and transparent manner.

Objectives:

- To provide timely services to all the stakeholders of the profession throughout the globe.
- To resolve the query/complaint/grievance within 3 – 7 days from the date of submission of the same.
- To eliminate the operational bottlenecks and smoothen the flow of the education process of Chartered Accountancy

Features:

- Automatically sends the query/complaint/ grievance to the dashboard of the concerned official as soon as the same is submitted.
- Complete history of the query/complaint/ grievance, from the date of entering it into the system till the date of resolving it, is available for future reference.
- Relevant and necessary e-documents/files can also be sent to the users.
- Status of the query/complaint/grievance can be checked.
- Email is sent to the user once the query/complaint/ grievance is resolved.
- Query/complaint/grievance can be re-opened by the user, in case the user is not satisfied.
- No query/complaint/grievance can be deleted from *"e-Sahaayataa"*.

Key Statistics:

Total Queries/Complaints/Grievances submitted till May 20, 2010	1742
Total Queries/Complaints/Grievances resolved till May 26, 2010	1689
Total Queries/Complaints/Grievances under the process	53

Scope:

"e -Sahaayataa" caters only to the Queries/Complaints/ Grievances pertaining to the day-to-day working of the Institute which are general in nature. This facility is not meant for registering or making allegations, personal observations and personal comments. Kindly submit relevant Queries/Complaints/Grievances and help us to serve you better.

How to access:

The service of *"e-Sahaayataa"* is available on the Institute's website at the following link:

http://www.icai.org/help/

Legal Decisions[1]

DIRECT TAXES

Income-tax Act

Section 36(1)(vii) of the Income-tax Act, 1961 – Bad Debts

It is not imperative for bank to close individual account of each of it's debtors in it's books; a mere reduction in 'Loans and Advances Accounts' or 'Debtors Account' on asset side of it's Balance Sheet to extent of provision for bad debt would be sufficient to constitute a write off [Assessment Years 1993-94 and 1994-95]

Vijaya Bank v. Commissioner of Income-tax, 15th April 2010 (SC)

The Assessing Officer disallowed a sum of Rs. 7,10,47,161 which the assessee-Bank had reduced from Loans and Advances or Debtors on the ground that the impugned bad debt had not been written off in an appropriate manner as required under the Accounting principles. According to him, the impugned bad debt supposedly written off by the assessee-Bank was a mere provision and the same could not be equated with the actual write off of the bad debt, as per the requirement of Section 36(1)(vii) read with *Explanation* thereto inserted in 1961 Act by Finance Act, 2001 with effect from 1st April, 1989.

The Supreme Court held that in the instant case, besides debiting the Profit and Loss Account and creating a provision for bad and doubtful debt, the assessee-bank had correspondingly/simultaneously obliterated the said provision from it's accounts by reducing the corresponding amount from Loans and Advances/debtors on the asset side of the Balance Sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the asset side of the Balance Sheet was shown as net of the provision "for impugned bad debt". In the judgement of the Gujarat High Court in the case of Vithaldas H. Dhanjibhai Bardanwala v. CIT [1981] 130 ITR 95 a mere debit to the Profit and Loss Account was sufficient to constitute actual write off whereas, after the insertion of the Explanation, the assessee(s) is now required not only to debit the Profit and Loss Account but simultaneously also reduce loans and advances or the debtors from the asset side of the Balance Sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of provisions for impugned bad debt. In the circumstances, it was to be held that the assessee was entitled to the benefit of deduction under Section 36(1)(vii) as there was an actual write off by the assessee in it's Books, as indicated above.

Section 92 of Income-tax Act, 1961 read with Article 5(2)(i) of the Indo-Mauritius Double Taxation Avoidance Agreement – Transfer Pricing

In determining existence of Permanent Establishment of a foreign enterprise, for applying threshold of duration test, justification for aggregation of time spent by foreign enterprise on different business activities, sites or projects, unless activities are of such a nature as to be viewed only in conjunction and as a coherent whole, relevant considerations where-fore are nature of activities, their interconnection and interrelationship with each other [Assessment Year 2001-02]

Assistant Director of Income Tax v Valentine Maritime (Mauritius) Ltd, 5 April 2010 (Mum-ITAT)

The true test must lie in examining whether or not the activities performed by the enterprise in various project or sites are interconnected and have to be necessarily regarded as a coherent whole. Unless the activities are of such a nature as to be viewed only in conjunction and as a coherent whole, there is no justification in aggregation of time spent on various business activities, sites or projects of the enterprise. In this view of the matter, strictly speaking, it is not really relevant whether the activities so carried out by the enterprise are for the same principal or different principals. The relevant considerations are the nature of activities, their interconnection and interrelationship and whether these activities are required to be essentially regarded as a coherent whole in conjunction with each other.

The justification for aggregation of time spent by a foreign enterprise on different project sites, for applying threshold of duration test, is not sustainable. Neither the work having been carried out for the same principal is sufficient to justify the aggregation of time spent on all the projects, nor does the fact that all works were carried out in the same area, which is a huge geographical area anyway, was sufficient to invoke that exercise. Even if all projects are commercially coherent in the sense that these projects are for the same organization directly or through a sub contractor, and geographically coherent in the sense that these are on nearby locations, these two factors would not necessarily mean that these projects were to be necessarily seen as a coherent whole-geographically and commercially. The true test is in interconnection and independence – in addition to geographical proximity and commercial nexus.

The assessee, a Mauritius company, was engaged in the business of marine and general engineering and construction. During the relevant previous year, the assessee had executed three contracts in India relating to (i) replacement of main deck with temporary deck, (ii) charter of hook up/accommodation, Barge for a revamp project and (iii) charter of Barge for a power project. The Assessing Officer held that each of the contracts cannot be considered individually, all the contracts are to be considered together for the purposes of applying duration threshold test. On the basis of this reasoning he noted that if all the projects were taken together, it exceeded more than nine months. The Assessing Officer concluded that the assessee had a PE in India.

The ITAT Mumbai held that there was no finding, nor even a suggestion, by any of the authorities below to the effect that the three contracts are inextricably interconnected, interdependent or could only be seen only as a coherent whole in conjunction with each other. As a matter of fact all the three contracts were for three different purposes for charter of accommodation barge, for use of barge in domestic were and

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

for replacement of decks. None of these contracts were such that these could be viewed as interconnected or interdependent. Thus, the duration of these projects could not be aggregated for the purposes of ascertaining whether or not the permanent establishment of the assessee could be said to have existed in India. It was an admitted position that unless the time spent on these different contracts was aggregated, the threshold limit of nine months, as laid down in Article 5(2)(i), could not be satisfied. It was to be held that the assessee did not have a permanent establishment in India. Accordingly, the business profits of the assessee could not be brought to tax.

Section 148 read with Section 28 of the Income-tax Act, 1961 – Income Escaping Assessment – Issue of Notice

Question as to whether there was reason to believe within meaning of Section 147 that income has escaped assessment, must be determined with reference to reasons recorded by Assessing Officer and reasons which are recorded cannot be supplemented by affidavits; where on account of retirement, partner received certain amount from firm in addition to balance lying in capital/ current account in full and final settlement of dues and same was not offered to tax claiming it to be capital receipts, notice under Section 148 could not be issued on basis that in case of firm it was allowed as revenue expenditure and thus, escaped assessment [Assessment Yeas 2005-06 and 2006-07]

Prashant S. Joshi v. Income-tax Officer, 22 February 2010 (BOM)

Section 147 provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of Sections 148 to 163, assess or reassess such income and also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the Section.

The basic postulate which underlines Section 147 is the formation of the belief by the Assessing Officer that any income chargeable to tax has escaped assessment for any assessment year. The Assessing Officer must have reason to believe that such is the case before he proceeds to issue a notice under Section 147. The reasons which are recorded by the Assessing Officer for reopening an assessment are the only reasons which can be considered when the formation of the belief is impugned. The recording of reasons distinguishes an objective from a subjective exercise of power. The requirement of recording reasons is a check against arbitrary exercise of power. For it is on the basis of the reasons recorded and on those reasons alone that the validity of the order reopening the assessment is to be decided. The reasons recorded while reopening the assessment cannot be allowed to grow with age and ingenuity, by devising new grounds in replies and affidavits not envisaged when the reasons for reopening an assessment were recorded. The principle of law, therefore, is well settled that the question as to whether there was reason to believe, within the meaning of Section 147 that income has escaped assessment, must be determined with reference to the reasons recorded by the Assessing Officer. The reasons which are recorded cannot be supplemented by affidavits. The imposition of that requirement ensures against an arbitrary exercise of powers under Section 148.

The Supreme Court in Assistant Commissioner of Income Tax V/s. Rajesh Jhaveri Stock Brokers P. Ltd. has noticed the difference between the expression `intimation' and `assessment' and the Supreme Court held that in the scheme of things an intimation under Section 143(1)(a) cannot be treated as an order of assessment. The Supreme Court held that there being no assessment under Section 143(1)(a), the question of a change of opinion, as contended did not arise. The judgment of the Supreme Court also emphasises what is meant by the expression "reason to believe" and the nature of the belief that is to be formed by the Assessing Officer that the income for any assessment year has escaped assessment. The Supreme Court held that at the stage of the issuance of a notice under Section 148, the Assessing Officer must have reason to believe that income has escaped assessment and at that stage an established fact that income has escaped assessment is not required.

The Supreme Court has held that so long as the ingredients of Section 147 are fulfilled, the Assessing Officer is free to initiate proceedings under Section 147 and failure to take steps under Section 143(3) will not render him powerless to initiate reassessment proceedings even when intimation under Section 143(1) had been issued. In other words, when intimation has been issued under Section 143(1), the Assessing Officer is competent to initiate reassessment proceedings provided that the requirements of Section 147 are fulfilled. In such a case as well, the touchstone to be applied is as to whether there was reason to believe that income had escaped assessment.

Explanation (2) to Section 147 creates a deeming fiction of cases where income chargeable to tax has escaped assessment. Clause (b) deals with a situation "where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return." For the purpose of clause (b) to explanation (2), the Assessing Officer must notice that the assessee has understated his income or has claimed excessive loss, deduction, allowance or relief in the return. The taking of such notice must be consistent with the provisions of the applicable law. The act of taking notice cannot be at the arbitrary whim or caprice of the Assessing Officer and must be based on a reasonable foundation. The sufficiency of the evidence or material is not open to scrutiny by the Court but the existence of the belief is the sine qua non for a valid exercise of power.

The petitioners retired from the partnership. Under the Deed of dissolution, the petitioners agreed to receive a sum of Rs. 50 lacs each, in addition to the balance lying to the credit on the capital and/or current account as reflected in the books of account in full and final settlement of the dues on account of retirement. The amounts were claimed to be capital receipts and were not offered to tax by the petitioners. The petitioner received notices under Section 148. The reasons stated were that the CIT(A) passed an order in the case of the partnership firm for assessment, by which he allowed its claim for the payment of Rs. 1 crore to the retiring partners being treated as revenue expenditure. Since the assessee had claimed this to be exempted by treating it as capital receipt, the Assessing Officer stated that there was reason to believe that the receipts had escaped assessment within the meaning of Section 147.

The Bombay High Court held that there was no transfer of a capital asset by way of a distribution of the capital assets, on dissolution of the firm or otherwise in the facts of this case. Even in a situation where sub-Section (4) of Section 45 was to be applied, profits or gains arising from the transfer would be chargeable to tax as income of the firm.

On the date on which reasons were recorded by the Assessing Officer, the revenue had challenged the order of the CIT(A) in respect of the firm before the Tribunal. One of the grounds of appeal was that the assessee had claimed in the Income tax returns that his share of of money received from the firm as a capital asset, which was not exigible to tax. The revenue, therefore, submitted that when the recipient claimed the receipt as capital expenditure, in the hands of the firm, the payment was also to be treated as capital expenditure.

Thus, it was evident that there was absolutely no basis for the first respondent to form a belief that any income chargeable to tax has escaped assessment within the meaning of the substantive provisions of Section 147. In these circumstances, the notice under Section 148 was to be set aside.

Section 194C of the Income-tax Act, 1961 – Deduction of tax at Source – Contactors/Sub-contractors,Payments to

Where assessee had an agreement with a third party on principal to principal basis for manufacture of certain pharmaceutical products, according to which (i) assessee provided formulations and specifications, (ii) manufacturer affixed trademark of assessee on articles produced, (iii) raw materials are purchased by manufacturer, it was to be held that transactions between the assessee and the manufacturer was a contract for sale of goods and was not in the nature of works contract and, therefore, the provisions of Section 194C were not attracted

Commissioner of Income-tax, TDS vs. Glenmark Pharmaceuticals Ltd, 12 March 2010 (BOM)

The assessee had an agreement with a third party on principal to principal basis for the manufacture of certain pharmaceutical products. The assessee provided the formulations and specifications. The manufacturer affixed the trademark of the assessee on the articles produced. The raw materials were purchased by the manufacturer. Property in the goods passed to the assessee only on delivery. This agreement was on a principal to principal basis. The assessee contended that the contract was a contract of sale. The Revenue contended that the contract was a contract of 'work' and tax was deductible at source under Section 194C.

The Bombay High Court held as follows:

If a contract involves the sale of movable property as movable property, it would constitute a contract for sale. On the other hand, if the contract primarily involves carrying on of work involving labour and service and the use of materials is incidental to the execution of the work, the contract would constitute a contract of work and labour. One of the circumstances which is of relevance is whether the article which has to be delivered has an identifiable existence prior to its delivery to the purchaser upon the payment of a price. If the article has an identifiable existence prior to its delivery to the purchaser, and when the title to the property vests with the purchaser only upon delivery, that is an important indicator to suggest that the contract is a contract for sale and not a contract for work.

Mere fact that the purchaser provides specifications to the manufacturer has never been construed to be a circumstance which should lead to the inference that the contract is not a contract of sale.

Firstly, the circulars issued by the Central Board of Direct Taxes right since 29 May, 1972 consistently took the position that furnishing of specifications to the manufacturer of goods by the purchaser would not detract from a contract being regarded as a contract for sale so long as the property in the goods passes upon delivery. The consideration which was regarded by the Revenue as having relevance was whether the material was supplied to the contractor by the Government, or, as the case may be, by a specified person. Where the material is provided by the purchaser and the work of fabrication or manufacture is carried out by the contractor, the agreement would, it was clarified, constitute a contract for work. On the other hand, where a manufacturer produces goods to the specifications of the purchaser and the property passes to the purchaser only upon delivery, the contract would be regarded as a contract of sale if the raw material is sourced by manufacturer and is not supplied to him by the purchaser. Secondly, the consistent view which held the field in several High Courts was that contracts where (i) property passes to the purchaser upon the delivery of the goods; and (ii) the raw material was sourced by the manufacturer and was not supplied by the purchaser do not fall within the scope and ambit of Section 194C. The Division Bench in BDA Ltd. v. ITO [2006] 281 ITR 99 (Bom.) had clearly held that providing a specification to the manufacturer who produces the article or thing would not detract from the nature of the transaction as a sale so long as the purchaser had not supplied raw material to the seller; and there was nothing to indicate that the seller was a captive unit of the purchaser. Such a contract would be a contract of sale.

What is of significance is whether material has been purchased from the customer, who orders the product. When the material is purchased from the customer who orders the product, it constitutes a contract of work while on the other hand, where the manufacturer has sourced the material from a person other than the customer, it would constitute a sale. What is significant is that in using the words which clause (e) uses in the Explanation, Parliament has taken note of the position that was reflected in the circulars issued by the Central Board of Direct Taxes since 29th May, 1972. The judgment of the Supreme Court in Associated Cement Co. Ltd. Vs. CIT [1993] 201 ITR 435 gave an expansive definition to the expression work and rejected the attempt of the assessee in that case to restrict the expression work to works contracts. Both before and after the judgment of the Supreme Court the expansive definition of the expression 'work' co-existed with the Revenue's understanding that a contract for sale would not be within the purview of Section 194C. The Revenue always understood Section 194C to mean that though a product or thing is manufactured to the specifications of a customer, the agreement would constitute a contract for sale, if (i) the property in the article or thing passes to the customer upon delivery; and (ii) the material that was required was not sourced from the customer/purchaser, but was independently obtained by the manufacturer from a person other than the customer. The rationale for this was that where a customer provides the material, what the manufacturer does is to convert the material into a product desired by the customer and ownership of the material being of the customer, the contract essentially involves work of labour and not a sale. Parliament recognized the distinction.

The fact that the specifications were provided by the assessee to the manufacturer / supplier would make no difference to the legal position. The agreement in the instant case was on a principal to principal basis. The manufacturer had his own establishment where the product was manufactured. The material required in the manufacture of the article or thing was obtained by the manufacturer from a person other than the assessee. The property in the articles passed upon the delivery of the product manufactured. Until delivery, the assessee had no title to the goods. The goods had an identifiable existence prior to delivery.

The reason that a specification or requirement was enunciated by the assessee constitute a matter of business expediency. A purchaser who would desire to get the product, which the assessee intended to sell under his brand name, or trademark, manufactured from a third party would be interested in ensuring the quality of the product. The trade-mark associates with it an assurance of the quality of the goods which are marketed traceable to the origin of the goods. Associated with the trade-mark is the goodwill and reputation which is associated with the mark. This is particularly so in the case of a pharmaceutical product where the ultimate consumer is legitimately entitled to ensure that her health is not prejudiced by the consumption of a product not meeting prescribed standards. The owner of a mark, therefore, introduces specifications to ensure that the product meets the standards justifiably associated with the reputation in the mark. The specification ensures the observance of standards. Similarly, a clause relating to exclusivity is not inconsistent with a transaction of sale. Here again, much depends upon the nature of the product. Restrictive covenants of this kind are intended to protect the intellectual and other property rights of a party which markets its goods by requiring a manufacturer to observe norms of specification and exclusivity. The law is, therefore, consistent with the transaction being regarded as a transaction of sale, provided that the requirements of a contract of sale are met.

The contract entered into by the assessee in the instant case was not a contract for carrying on any work within the meaning of Section 194C.

Section 195 read with Section 40(a)(i) of the Income-tax Act, 1961 — Deduction of tax at source — Payments to non-resident

If holding foreign company is not liable to tax in India mobilization and demobilization costs reimbursed by assessee Indian subsidiary to holding company would not be liable to deduction of tax at source under Section 195(1)[Assessment Year 2003-04]

Van Oord ACZ India (P) Ltd. v. Commissioner of Central Excise, 15 March 2010 (DEL)

No doubt, sub-Section (2) of Section 195 enables a person responsible for paying any such sum chargeable under the Act to a non-resident to seek determination as to whether tax shall be deducted under sub-Section (1) or not. However, indubitably, this is only a tentative determination. At that stage, the final view is not taken as to whether the recipients of the payments is liable to pay income tax in India or not. The scheme of the Act, insofar as it relates to deduction of tax at source is concerned, particularly under Section 195, provides that liability of the payee, i.e. the assessee, to deduct tax at source would arise when the payment is made to non-resident, not being a company, or to a foreign company and such payment is chargeable under the provisions of the Act. However, if the payee considers that whole of the said sum would not be income chargeable in the case of the recipient, he may move an application to the Assessing Officer to determine this aspect. Once such an application is moved and it is determined that the payment is income chargeable at the hands of the recipient, the assessee is under obligation to deduct the tax at source. However, in case the assessee does not do so, he runs the risk of attracting the consequences provided under Section 40(a)(i). The determination by the AO under Section 195(2) is tentative in nature. In case it is ultimately found in the assessment proceedings relating to the recipient that he was not liable to pay any tax on the sums received, the assessee cannot be treated in "default" inasmuch as Section 195(1) casts an obligation to deduct the tax at source on the sum 'chargeable under the provisions of this Act'.

The legal positions as regard to Section 195 are:

a) Section 195 deals with the deduction of tax at source by the payer i.e. assessee if the payments are to be made to a non- resident.

b) The payer/assessee is required to deduct Income tax on such payments made to non-resident at the specified rates in force.

c) The obligation to deduct the tax at source arises only when the payment is chargeable under the provisions of the Income Tax.

d) If the parties feel that either the deduction of tax at source by the payer is required to be at a rate lower than the prescribed rate or no deduction is required to be made they are required to file an application before the ITO for obtaining such certificate. In case no such application is filed before Assessing Officer for obtaining such certificate or such application is rejected by Assessing Officer and direction is issued by the Assessing Officer to deduct such tax at a particular rate the payer is duty bound to deduct tax as per the directions of Assessing Officer and in case no such application for obtaining the certificate was filed before the Assessing Officer then the payer is duty bound to deduct tax as per the prescribed rates in force at the relevant time.

e) The order of the Assessing Officer under Section 195(2) of the Act is tentative in nature.

f) In the assessment proceedings relating to the assessee when it is found that the assessee was required to deduct the tax at source in the eventuality contemplated in (d) above, the assessee would not be permitted to argue that the amount paid to the recipient is not chargeable under the provisions of the Act. The assessee may be treated as in default and would suffer the consequences provided under the Income Tax Act. However, in case in the assessment proceedings relating to the recipient, it is ultimately held that the sum received by the recipient was not chargeable to tax, the effect of that would be that it was no obligation on the assessee to deduct tax at source on the sum paid to the said non-resident and in that eventuality, the assessee will not be treated as in default and would be absolved of any consequences for not deduction the tax at source.

The return filed by the holding company was processed under Section 143(a)(i). Accepting the return as filed, the holding company had been refunded tax at source by the assessee and the implication was that it was not liable to pay tax.

The Delhi High Court held that the assessee was not liable to deduct tax at source under Section 195(1) in respect of the mobilization and demobilization costs reimbursed by the appellant to its holding company. However, the assessment proceedings of holding company was reopened and the final view taken was that the holding company was assessable to tax, the assessee subsidiary would also be treated as assessee in "default", which would attract the consequences provided under Section 40(a)(i).

Section 253 read with Section 249 of the Income-tax Act, 1961 – Appellate Tribunal – Appeal to

Section 249(4) which deals with Appeals to Commissioner (Appeals), falls in Chapter XX(A), whereas Appeals to Appellate Tribunal under Section 253(1)(b) falls in Chapter XX(B) and hence, Section 249(4) cannot be read into Section 253(1)(b)

Commissioner of Income-tax v. Pawan Kumar Laddha, 6 April 2010 (SC)

The Revenue raised a preliminary objection as to the maintainability of the appeal on the ground that the assessee having not paid the admitted tax before filing the appeal before the Tribunal, the appeal preferred by him should be dismissed as not maintainable.

The assessee's case was that Section 249(4) which deals with Appeals to the Commissioner (Appeals), falls in Chapter XX(A), whereas Appeals to the Appellate Tribunal under Section 253(1)(b) falls in Chapter XX(B) and hence, Section 249(4) cannot be read into Section 253(1)(b).

The Supreme Court held that Chapter XX deals with "Appeals and Revisions". Chapter XX is divided into Headings `A' to `F'. Section 246 enumerates a list of Orders of the Assessing Officer against which appeal(s) would lie. In that list of Orders, an appeal to the Appellate Tribunal under Section 253(1) is not mentioned. This is a very important indicia to show that each Heading in Chapter XX deals with a different subject- matter and one cannot read the words in Chapter XX(A) into the words used in Chapter XX(B). Chapter XX(A) deals with Appeals to the Deputy Commissioner and Commissioner (Appeals) whereas Chapter XX(B) deals with Appeals to the Appellate Tribunal. Similarly, Reference to the High Court lies under Chapter XX(C). It is for this reason that it is to be concluded that each Heading is a stand-alone item and, therefore, one cannot read the provision of Section 249(4)(a) into Section 253(1)(b). It cannot be argued to conclude that no appeal or Reference could lie even to the High Court without complying with the provisions of Section 249(4)(a). This cannot be the Scheme of Chapter XX. There is one more reason why the view is to be taken that Section 249(4)(a) cannot be read into Section 253(1)(b). Section 253(1)(b) refers to an assessee filing an appeal to the Appellate Tribunal against an order passed by an Assessing Officer under Section 158BC(c). Sub-Section (b) came to be inserted into Section 253(1) by the Finance Act, 1995, and, that too, with effect from 1-7-1995. The very concept of Block Assessment came to be inserted in the Income Tax Act, 1961, vide Finance Act, 1995, with effect from 1st July, 1995, whereas the words "this Chapter" in Section 249(4) came to be inserted in the Income Tax Act, 1961, vide Taxation Laws (Amendment) Act, 1975, with effect from 1-10-1975. This is one more reason to confine the expression "this Chapter" in Section 249(4) to Chapter XX(A) without it being extended to Section 253(1)(b) which is there in Chapter XX(B). Further, under the Scheme of Chapter XX, no appeal under Section 249(4)(a) in Chapter XX(A) was admissible without the assessee having paid the admitted tax due on the income returned by him.

It appears that once Section 249(4)(a) is treated as a mandatory condition for filing an appeal before Commissioner of Income Tax (Appeals) and once that condition stood satisfied at the time of his filing an appeal to Commissioner of Income Tax (Appeals), then, there was no necessity for the assessee to once again pay the admitted tax due as a condition precedent to his filing the appeal before the Appellate Tribunal under Section 253(1)(b). Lastly, one must keep in mind the principle that the doctrine of incorporation cannot be invoked by implication. A provision which insists on the assessee satisfying a condition of paying the admitted tax as condition precedent to his filing of appeal under Section 253(1)(b) is a disenabling provision. Such a disenabling provision must be clearly spelt out by the Legislature while enacting the statute. The Courts have to be careful in reading into the Act such dis-enabling provisions as that would tantamount to judicial legislation which the Courts must eschew. It is for the Parliament to specifically say that no appeal shall be filed or admitted or maintainable without the assessee(s) paying the admitted tax due. That has been done only in the case of an appeal under Section 249(4)(a). Such a dis-enabling provision cannot be read into Section 253(1)(b). Doing so, Court will be judicially legislating by reading something into the Act which is not there. In such a case, the question would also arise as to why the Appellate Tribunal should not be given the power to dispense with or waive such a condition. All this would come in the realm of legislation which can be done only by the Legislature.

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

Fact that an issue was pending before Special Bench can be no reason for the Tribunal not to dispose of appeal

Shri Jethmal Faujimal Soni v. Income-tax Appellate Tribunal, 12 April 2010 (BOM)

Under the first proviso to Section 254(2A), the Appellate Tribunal is empowered to pass an order of stay for a period of not exceeding one hundred and eighty days from the date of such order and the Tribunal has to dispose of the appeal within the said period. In the second proviso it is provided that where such appeal is not so disposed of within the said period of stay, the Tribunal on an application by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee may extend the period of stay for a further period or periods; so, however, that the aggregate of the period originally allowed and the extended period shall not, in any case, exceed three hundred and sixty¬ five days, within which the appeal is to be disposed of. The third proviso which was inserted by the Finance Act, 2008, with effect from 1-10-2008 provides that if there is a delay in disposing of the appeal within the period allowed under the first proviso or the extended period allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty ¬five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

A stringent provision is made by the third proviso to Section 254(2A), as a result of which even if the delay in disposing of the appeal is not attributable to the assessee, the stay has to stand vacated in any event upon the lapse of a period of three hundred and sixty¬ five days. Having regard to the nature of the provision which has been enacted by Parliament, the Tribunal is under a bounden duty and obligation to ensure that the appeal is disposed off, so as to not result in prejudice to the assessee, where no fault can be found with the conduct of the assessee. The fact that an issue was pending before the Special Bench can be no reason for the Tribunal not to dispose of the appeal, particularly since the consequence of the inability of the Tribunal to do so would result in the vacating of the order of stay, which was passed originally in favour of the assessee. The Tribunal should not adjourn the appeal merely on the ground of the pendency of an identical issue before the Special Bench. The appeal can be taken up for final disposal.

INDIRECT TAXES

Section 2(d) of the Central Excise Act, 1944 read with Sub-Heading 5905.10 of the Central Excise Tariff Act, 1985 – Excisable Goods

Unvulcanised sandwiched fabric assembly produced in shoe factory and captively consumed cannot be termed as "goods" and hence cannot be made liable to excise duty as "rubberized cotton fabrics"

Bata India Ltd. v. Commissioner of Central Excise, 12 April 2010 (SC)

During the process of manufacturing of foot wear various chemicals/rubbers/solvents etc., were mixed together and a thin layer of such mixed materials was sandwiched in between two sheets of textile fabric, in running length, through a three bowl calendering machine. The product was later cut and stitched according to the assessee's requirements and in-process materials were used as shoe- uppers in the foot wear. Such fabrics were also at times sent to job workers for stitching purposes only and the fabric sandwiched with the mixed materials were inputs of the intermediate stage during the course of manufacture of footwear. Vulcanisation of the foot wear took place only after completing the entire process and then it would be a finished product as a footwear, made available in the market and acquires commercial identity and turned out to be a commercially known product.

The Collector held that this double textured fabric was nothing but rubberized, water proof fabric with a thin layer of rubber sandwiched between two sheets of cotton fabric in running length. As a result of that process a double textured fabric emerges as a distinct product with specific properties and character other than that of original fabric used as input which is known in commercial trade parlance as double textured fabric which is used in considerable quantities for making rain- coats, holdalls, hand bags etc. The Collector therefore, came to the conclusion that this double textured fabrics are marketable products fulfilling the requirement of the definition of excisable goods as per Section 2(d).

The Supreme Court held that the product in question is used as an intermediate product, it goes to make the component for the final product. The burden to show that the product in question is marketed or capable of being bought or sold in the market so as to attract duty is entirely on the Revenue.

The marketability is essentially a question of fact to be decided on the facts of each case and there can be no generalization, and the fact that goods are not in fact marketed is of no relevance and the question whether they are capable of being marketed. Admittedly, the assessee was not marketing the product but still the question was whether the product is capable of being marketed.

The Revenue in this case had not succeeded in establishing that the product in question was either marketed or was capable of being marketed. The test of marketability was that the product which was made liable to duty must be marketable in the condition in which it emerges. No evidence had been produced by the Revenue to show the product unvulcanised sandwiched fabric as such was capable of being marketed, without further processing. The question is not whether there is an hypothetical possibility of a purchase and sale of the commodity but whether there is sufficient proof that the product is commercially known. The mere fact that the product in question was entrusted outside for some job work such as stitching is not an indication to show that the product is commercially distinct or marketable product. Without proof of marketability the intermediate product would not be goods much less excisable goods. Such a product is excisable only if it is a complete product having commercial identity capable of being sold to a consumer which has to be established by the Revenue.

The test report dated 25.10.1994 of the Chemical Examiner, SPB hand book of rubber products and the statement of the Superintendent (Supply and Transportation) of the assessee's company did not show that the product in question is capable of being marketed. The mere theoretical possibility of the product being sold is not sufficient but there should be commercial capability of being sold. Theory and practice will not go together when we examine the marketability of a product. On the other hand materials produced by the assessee i.e. affidavit of a Consultant of Rubber and Plastic Technology, affidavit of the Production Manager of the assessee company, certificate of a Professor of IIT, Kharagpur, certificate from Footwear Design and Development Institute, Ministry of Commerce, Government of India and The Vanderbilt Rubber Handbook, would show that the product in question is only an intermediary product generally used for captive consumption which has no commercial identity as such.

Therefore the show cause notices issued to the assessee was to be quashed since the Revenue had not produced any relevant materials to show the marketability of the product.

Section 35B of the Central Excise Act, 1944 – Appellate Tribunal - Appeals to

If Tribunal wanted to differ to earlier view taken by Tribunal in identical set of facts, judicial discipline required reference to larger bench; One co-ordinate bench finding fault with another co-ordinate bench is not a healthy way of dealing with matters

Mercedes Benz India Private Limited v. Union of India, 17 March 2010 (BOM)

Pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned single Judge or a Division Bench does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter should be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure. In our system of judicial review which is a part of our Constitutional scheme, it is the duty of the judges of the courts and members of the tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behavior. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it, ultimately, falls into disrepute.

If the Tribunal wanted to differ to the earlier view taken by the Tribunal in the identical set of facts, the judicial discipline required reference to the larger bench. One co-ordinate bench finding fault with another co-ordinate bench is not a healthy way of dealing with the matters.

Section 78(5) of the Rajasthan Sales Tax Act, 1994 - Penalty

Where Form-ST 18A/18C was signed but without giving material particulars, penalty would be levied

Assistant Commercial Taxes Officer v. Kansai Nerolac Paints Ltd, 15 April 2010 (SC)

The competent authority during the course of the enquiry found that paint buckets found in the vehicle intercepted were transferred by stock transfer but the declaration form ST 18A was completely blank. Treating the consignment under the category of incomplete documents in terms of Section 78(2) and forming an opinion that there was an intention to commit evasion of tax, penalty was imposed in terms of Section 78(5). Both the Commissioner in appeal and the Board of Revenue held that penalty could not be imposed as there was no intention to commit any evasion of tax. The revision petition filed was dismissed by the High Court.

The Supreme Court held that the High Court had not recorded its own reasoning for dismissing the revision petition in accordance with law. It would have certainly been more appropriate for the High Court to examine the matter at some length and deal with the arguments/grounds raised in the petition before it. This Court in the case of Guljag Industries v. CTO [2007] 7 SCC 269 had held that the object of Section 78(5) was to remedy the loss of revenue and where Form ST 18A/18C was duly signed but without giving material particulars, would automatically attract levy of penalty for breach of Section 78(2). It was also stated in the judgment that this modus operandi of the owner of goods in that case did indicate *mens rea*.

Therefore, the order of the High Court was unreasoned and suffered from the infirmity of non-application of mind.

Section 86 of Rajasthan Sales Tax, 1994 – Reasoned Order

A reasoned judgment is primarily written to clarify own thoughts of a judge and communicates reasons for decision to concerned parties and provides and ensures that such reasons can be appropriately considered by appellate/higher Court; absence of reasons, thus, would lead to frustrate very object

Assistant Commissioner, Commercial Tax Department v. Shukla & Brothers, 15 April 2010 (SC)

By practice adopted in all Courts and by virtue of judge made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. Failure to give reasons amounts to denial of justice. Reasons are the real live links to the administration of justice. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher Court. Absence of reasons, thus, would lead to frustrate the very object.

The requirement of stating reasons for judicial orders necessarily does not mean a very detailed or lengthy order, but there should be some reasoning recorded by the Court for declining or granting relief to a petitioner. The purpose is to make the litigant aware of the reasons for which the relief is declined as well as to help the higher Court in assessing the correctness of the view taken by the High Court while disposing off a matter. May be, while dealing with the matter at the admission stage even recording of short listening dealing with the merit of the contentions raised before the High Court may suffice, in contrast, a detailed judgment while matter is being disposed off after final hearing, but in both events, it is imperative for the High Court to record its own reasoning however short it might be.

Where no reason is recorded for rejecting the contentions raised, this legal infirmity will, in fact, prejudicially affect the case of the appellant.

A judgment of a Court must speak for itself to enable the higher Court to do complete and effective justice between the parties.

Entry 24 of the Schedule to the U.P. Trade Tax Act, 1948 - 'Properzi' redraw rods

'Properzi' redraw rods are 'metal' under Entry 24 [Assessment Year 1988-89]

Jai Vijai Metal Udyog Pvt. Ltd. v. Commissioner Trade Tax, 16 April 2010 (SC)

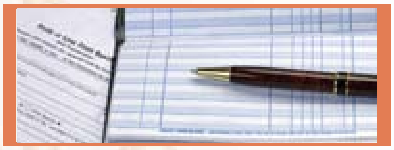
The `properzi' rods manufactured by the Dealer were classified by the Assessing Authorities to be a metal/primary metal and were assessed at the rate of 2% plus surcharge at 10% of the said rate in terms of Entry 24 of the Schedule to the U.P. Trade Tax Act, 1948

The Supreme Court held that this Court in Hindustan Aluminium Corporation Ltd. v. State of U.P. [Judgment dated 11-2-1993], while examining the question whether aluminium rolled products and extrusions could be described as `Metal' under Item No.6 (as it then existed) in the Schedule attached with the U.P. Act which is materially similar to Entry 24, observed that expression `Metal' has been generally employed to refer to the metal in its primary sense, i.e. the metal in the form in which it is marketable as a primary commodity.

Having carefully gone through the judgment, in so far as `properzi' redraw rods are concerned, a distinction has been drawn by this Court between `properzi' redraw rods and other aluminium rolled products and extrusions and precisely for this reason, the issue was kept open to be re-examined by the Sales Tax Officer after further enquiry. As noted above, learned counsel for the Revenue candidly conceded before us that in so far as assessment year 1988-89 is concerned, after fresh enquiry, the Assessing Officer treated `properzi' redraw rods as primary metal, classifiable under Entry 24. Admittedly, this decision of the Assessing Officer was not questioned by the higher authorities and thus, attained finality.

The Sales Tax Authorities in the State cannot be permitted to take a different stand in the case of the Dealer in respect of a similar item for the same assessment year.

OTHER ACTS



Contract Act

Section 237 read with Sections 186 and 188 of the Indian Contract Act, 1872 – Liability of principal inducing belief that agent's unauthorised acts were authorised

Onus to show that act done by an agent was within scope of his authority or ostensible authority held or exercised by him is on person claiming against principal

Dilawari Exporters v. Alitalia Cargo, 16 April 2010 (SC)

Section 186 of the Indian Contract Act, 1872 lays down that the authority of an agent may be expressed or implied. As per Section 187 of the Contract Act, an authority is said to be express when it is given by words spoken or written, and an authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, which may be accounted circumstances of the case. Section 188 of the Contract Act prescribes that an agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. Section 237 of the Contract Act provides that when an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority. There is no gainsaying that onus to show that the act done by an agent was within the scope of his authority or ostensible authority held or exercised by him is on the person claiming against the principal. This, of course, can be shown by practice as well as by a written instrument.

FEMA

Section 35 of the Foreign Exchange Management Act, 1999 read with Article 226 of the Constitution of India – Appeal to High Court

If appellant is allowed to file a writ petition despite existence of an efficacious remedy by way of appeal under Section 35 of FEMA this will enable him to defeat provisions of Statute which may provide for certain conditions for filing appeal, like limitation, payment of court fees or deposit of some amount of penalty or fulfillment of some other conditions for entertaining appeal; It is obvious that a writ court should not encourage aforesaid trend of by-passing a statutory provision

Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement, 12 April 2010 (SC)

The Supreme Court held that Section 35 clearly says that from `any decision or order' of the Appellate Tribunal, appeal can be filed to the High Court on a question of law.

The word `any' in this context would mean 'all'. This opinion is to be taken in view of the fact that this Section confers a right of appeal on any person aggrieved. A right of appeal, it is well settled, is a creature of Statute. It is never an inherent right, like that of filing a suit. A right of filing a suit, unless it is barred by Statute, as it is barred here under Section 34 of FEMA, is an inherent right (See Section 9 of the Civil Procedure Code) but a right of appeal is always conferred by Statute. While conferring such right Statute may impose restrictions, like limitation or pre-deposit of penalty or it may limit the area of appeal to questions of law or sometime to substantial questions of law. Whenever such limitations are imposed, they are to be strictly followed. But in a case where there is no limitation on the nature of order or decision to be appealed against, as in this case, the right of appeal cannot be further curtailed by this Court on the basis of an interpretative exercise. Under Section 35 of FEMA, the legislature has conferred a right of appeal to a person aggrieved from `any' `order' or `decision' of the Appellate Tribunal. Of course such appeal will have to be on a question of law. In this context the word `any' would mean 'all'.

When a right is conferred on a person aggrieved to file appeal from `any' order or decision of the Tribunal, there is no reason, in the absence of a contrary statutory intent, to give it a restricted meaning.

Under, Section 35 of FEMA, any `order' or `decision' of the Appellate Tribunal would mean all decisions or orders of the Appellate Tribunal and all such decisions or orders are, subject to limitation, appealable to the High Court on a question of law. Further, in a case where right of appeal is limited only from a final order or judgment and not from interlocutory order, the Statute creating such right makes it clear.

The right of appeal, being always a creature of a Statute, its nature, ambit and width has to be determined from the Statute itself. When the language of the Statute regarding the nature of the order from which right of appeal has been conferred is clear, no statutory interpretation is warranted either to widen or restrict the same.

When a statutory forum is created by law for redressal of grievance and that too in a fiscal Statute, a writ petition should not be entertained ignoring the statutory dispensation. The High Court is also a statutory forum of appeal on a question of law. That should not be abdicated and given a go bye by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction.

The appellate jurisdiction of the High Court under Section 35 of FEMA also provided an efficacious remedy. The High Court itself is the appellate forum.

In case an order is passed by the Tribunal, liability of the appellant is not created under any common law principle but, it is clearly a statutory liability and for which the statutory remedy is an appeal under Section 35 of FEMA, subject to the limitations contained therein. A writ petition in the facts is therefore clearly not maintainable.

In view of consistent opinion of this Court over several decades we are constrained to hold that even if High Court had territorial jurisdiction it should not have entertained a writ petition which impugns an order of the Tribunal when such an order on a question of law, is appealable before the High Court under Section 35 of FEMA.

This Court in Seth Chand Ratan vs. Pandit Durga Prasad (D) By Lrs. and Ors. - (2003) 5 SCC 399, lays down the principle, namely, when a right or liability is created by a Statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. However, the aforesaid principle is subject to one exception, namely, where there is a complete lack of jurisdiction of the tribunal to take action or there has been a violation of rules of natural justice or where the tribunal acted under a provision of law which is declared ultra vires. In such cases, notwithstanding the existence of such a tribunal, the High Court can exercise its jurisdiction to grant relief.

If the appellant is allowed to file a writ petition despite the existence of an efficacious remedy by way of appeal under Section 35 of FEMA this will enable him to defeat the provisions of the Statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fees or deposit of some amount of penalty or fulfillment of some other conditions for entertaining the appeal. It is obvious that a writ court should not encourage the aforesaid trend of by-passing a statutory provision.

CIRCULARS/NOTIFICATIONS

DIRECT TAXES

NOTIFICATIONS

1. Notification No. 29/2010 dated 23-04-2010

New ITR's- ITR 1 & ITR V of AY 2010-11

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has, through the Income-tax (3rd Amendment) Rules, 2010 notified the new ITR Forms – Namely ITR 1 (SARAL-II) & ITR V for the Assessment year 2010-11.

2. Notification No. 33/2010 dated 11-05-2010

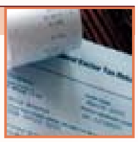
New ITR's- ITR 2, ITR 3, ITR 4, ITR 5, ITR 6, ITR 7 & ITR V of AY 2010-11

In exercise of the powers conferred by section 295 of the Income-tax Act, 1961, the Central Board of Direct Taxes has through the Income-tax (4th Amendment) Rules, 2010 notified the new ITR Forms – Namely ITR 2, ITR 3, ITR 4, ITR 5, ITR6, ITR 7 & ITR V for the Assessment year 2010-11.

For details visit: 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. Notifications:-

1. Notification No. 24/2010-CE dated 29.04.2010 has extended relaxation from brand name restriction under the general SSI exemption scheme to any specified goods in the nature of packing materials and are meant for use as packing material by or on behalf of the person whose brand name they bear. This has been done by substituting clause (e) and proviso thereto of paragraph 4 of Notification No. 8/2003-CE dated 01.03.2003 with a new clause.

II. Circular:

1. Circular No. 921/11/2010-CX dated 10.05.2010 has been issued to clarify that education cess and secondary and higher education cess would be required to be paid on S.S. Patta Patti and Aluminium Circles, covered by the compound levy over and above the notified Central Excise duty as the same has not specifically been included in the compound levy amount specified in the relevant notification. Moreover, there is no exemption provided for the same. The comparison with compound levy scheme in respect of PanMasala/ Gutkha etc. is erroneous as the two schemes are covered under different notifications. Whereas the notification No. 42/2008-CE dated 1.7.2008 in respect of Pan Masala/Gutkha specifically includes the Education Cess and Higher Education Cess in the amount fixed under compound levy scheme, there is no such stipulation in the scheme in respect of Stainless Steel Patta Patti and Aluminium Circles in the Notification No. 17/2007-CE dated 1-3-2007.

B. CUSTOM

I. Notification:

1. Notification No. 36/2010 Cus. (N.T.) dated 05.05.2010 has notified new regulations "Courier Imports and Exports (Electronic Declaration and Processing) Regulations, 2010". These regulations shall apply for assessment and clearance of imported or export goods, carried by an Authorised Courier by air, on behalf of a consignee or consignor at such Customs airports and in such form and to such extent, as the Board may, by notification, declare for the purposes of these regulations in this behalf.

For details visit: http://www.cbec.gov.in

C. SERVICE TAX

I. Notification:

1. Notification No. 23/2010 ST dated 29.04.2010 has exempted the taxable service specified in clause 105 (zzc) of section 65 of the Finance Act, in relation to Modular Employable Skill courses approved by the National Council of Vocational Training, by a Vocational Training Provider registered under the Skill Development Initiative Scheme with the Directorate General of Employment and Training, Ministry of Labour and Employment, Government of India, from the whole of the service tax leviable thereon under section 66 of the Finance Act.

II. Circular:

1. Circular No. 120(a)/2010-ST dated 16.04.2010 has been issued to clarify whether service tax on the amounts deducted by the insurance company on the ground that it is the consideration for the insurance company providing business auxiliary service to the re-insuring company is chargeable to service tax. The circular clarify that the arrangement between the insurance company and the reinsurer is only sharing of expenses and there is no service provided by the insurance company to the re-insurer for a consideration. Since the policy holder may not even be aware of the operations of the re-insurer, it cannot be said that the payment made by the re-insurer to the insurance company is for its business promotion or a service on behalf of the re-insuring company (i.e. Business Auxiliary Service). In fact, it is the reinsurer which provides insurance service to the insurance company. As both the insurance company and reinsurer pay service tax on the entire amount of premium charged by them, the question of charging service tax under business auxiliary service or any other taxable service does not arise.

2. Circular No. 121/2010-ST dated 26.04.2010 has been issued to clarify that 'detention charges' paid by the customer to shipping companies / steamer agent for delay in returning the container beyond pre – determined period is not chargeable to service tax. The reason being that retention of container beyond the pre-holding period is neither a service provided on behalf of the client (Business Auxiliary Service) nor it is an infrastructural support in the business of either the shipping lines or the customer (Business Support Service). Such charges can at best be called as 'penal rent' for retaining the containers beyond the pre-determined period.

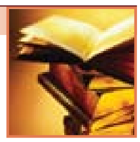
3. Circular No. 122/2010-ST dated 30.04.2010 has clarified the following relating to availment of credit on input services:

1. CENVAT credit of service tax paid can be availed in case of deemed payment i.e., when value of taxable services and service tax payable thereon is paid to the service provider through debit/credit notes and debit/credit entries in books of account or by any other mode as mentioned in Explanation (c) to section 67 for transactions between associate enterprises.
2. CENVAT credit of service tax can be availed where a service receiver does not pay the full invoice value and the service tax indicated thereon due to reasons like discount, unsatisfactory service etc. provided he has paid the amount of service tax (whether proportionately reduced or the original amount) to the service provider. The credit taken would be equivalent to the amount that is paid as service tax. However, in case of subsequent refund or extra payment of service tax, the credit would have to be altered accordingly.

For details visit: http://www.servicetax.gov.in/st-cirmainpg.htm

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

CORPORATE LAWS



1. NBFCs and interest rate sensitivity

The RBI has issued Circular No. RBI/2009-10/417 DNBS.PD.CC. No.169/22.05.02/2009-10 dated 22.04.2010 whereby it has stated that in terms of the Guidelines for NBFC-ND-SI (non-deposit taking Non-Banking Financial Companies with an asset size of Rs.100 crore and more as per the last audited balance sheet) as regards capital adequacy, liquidity and disclosure norms, such NBFC-ND-SI is required to file with the RBI a statement of Interest Rate Sensitivity [NBS-ALM3]. The RBI has now required that this return shall be submitted within 20 days of the close of the half year to which it relates to the Regional Office of the Department in whose jurisdiction the NBFC is registered. However, to enable the NBFCs to fine tune the system, the first return for the period ended March 2010 may be submitted by the first week of June 2010. The format of the ALM Returns (I, II and III) is available on the RBI website (https://cosmos.rbi.org.in) which can be filed online by eligible companies.

www.rbi.gov.in

2. Issue and pricing of shares by private sector banks

The RBI has issued Circular No. PSBD.BC.92 /16.13.100/2009-2010 dated 20.04.2010 whereby presently all banks in private sector are required to obtain approval of the RBI for issue of shares through Initial Public Offers (IPOs) and preferential issues and that while the banks were advised to follow certain prescriptions relating to pricing in respect of IPOs, bonus issues and Preferential issues, SEBI requirements in respect of bonus issues have also been indicated. Also, it is noted that SEBI had introduced an additional capital raising route of Qualified Institutional Placements (QIPs) that would enable listed companies to raise funds from the domestic market and hence many private sector banks have been availing this route for raising capital. In terms of SEBI Guidelines, since the allotments under QIP are on private placement basis, the QIP issues have been treated as preferential issue of shares which requires RBI's prior approval. This Circular now spells out the approval mechanism in respect of QIPs and now the guidelines in respect of issue and pricing of shares by private sector banks have been revised to incorporate the QIPs mode of raising capital. The revised guidelines are, (a) For IPOs, all banks should obtain RBI approval for IPOs. After listing on the stock exchanges, banks are free to price their subsequent issues and the issue price should be based on merchant banker's recommendation. There need be no reference to the CCI formula for deciding on the pricing of such issues. (b) For rights issues, the RBI approval would not be required by both listed and unlisted banks; however, banks need to comply with the existing requirements on rights issue laid down by the RBI. (c) For bonus issues, private sector banks, both listed and unlisted, need not seek RBI's approval for bonus issues. The issues would, however, be subject to SEBI's requirements on issue of bonus shares, viz. bonus issues should be made from free reserves built out of genuine profits or share premium, should not dilute the value or rights of partly or fully convertible debentures, should not be in lieu of dividend and should not be made unless all partly paid-up shares are fully paid-up. Further, bonus issues may be issued without linkage to rights issues. (d) For preferential issue, all such issues would require prior approval of the RBI and that the pricing of preferential issues by listed banks may be as per SEBI formula, while for unlisted banks the fair value may be determined by a chartered accountant or a merchant banker.

www.rbi.gov.in

3. Reduction in time between issue closure and listing

The SEBI has issued Circular No. CIR/CFD/DIL/3/2010 dated 22.04.2010 whereby SEBI has decided to reduce the time between issue closure and listing to 12 working days from the present average around 22 days to list the securities after an issue closes. The present timeline exposed investors as well as issuers to market risks as well as leading to infrastructural stress and costs. Under the new process, the syndicate members shall capture all data relevant for purposes of finalising basis of allotment while uploading bid data in the electronic bidding system of the stock exchanges. In order that the data so captured is accurate, syndicate members may be permitted an additional day to amend some of the data fields entered by them in the electronic bidding system. In order to facilitate quicker processing of applications for the purpose of allotment, instead of the name of the applicant, it is proposed to use PAN which is a unique identification number of the applicant. In this regard, the merchant bankers are directed to ensure that it is clearly disclosed in the prospectus / abridged prospectus, application form and the pre-issue advertisements to the effect that "the applicants may note that in case the DP ID & Client ID and PAN mentioned in the application form and entered into the electronic bidding system of the stock exchanges by the syndicate members do not match with the DP ID & Client ID and PAN available in the depository database, the application is liable to be rejected." This revised procedure shall be applicable to all public issues opening on or after May 3, 2010. One may refer to the website as mentioned below for further details and to the indicative timeline schedule for various activities in the proposed issue process.

www.sebi.gov.in

4. Amendment to Payment of Gratuity Act

The Government has issued Bill No. 49 of 2010 proposing to amend the Payment of Gratuity Act, 1972 by replacing the monetary limit upto which gratuity can be paid to Rs. 10 lakhs (earlier Rs. 3.5 lakhs). Hence, the monetary limit upto which gratuity would be exempt under section 10(10) of the Income-tax Act, 1961, stands increased upto Rs. 10 lakhs.

www.rajyasabha.nic.in

5. Execution of power of attorney (PoA) by client

The SEBI has issued Circular No. CIR/MRD/DMS/13/2010 dated 23.04.2010 whereby SEBI has noted that generally, a PoA is taken from clients who want to avail internet based trading services and for offering internet based trading services, a stock broker requires necessary authorisations for seamless trading, collection of margins as well as settlement of funds and securities and some stock brokers also obtain authorisations from their clients to offer non-internet based services. It had come to SEBI's notice that clients were compelled to give irrevocable power of attorney to manage client's demat account and bank account so that the client is able to pay funds or deliver shares to its broker on time and in some cases, the PoA even allowed a broker to open and close accounts on behalf of the client and to trade on client's account without the consent of the client. In order to standardise the norms to be followed by stock brokers and depository participants while obtaining PoA from the clients guidelines have been finalised based on discussions in Secondary Market Advisory Committee of SEBI (SMAC) and feedback from market participants, investor associations, major stock exchanges and depositories on discussion paper on the captioned subject put on SEBI website. It has been decided that the guidelines shall be made applicable to stock brokers and depository participants. The stock brokers shall take necessary steps to implement this circular latest by May 31, 2010 for the new clients and ensure to take necessary steps latest by September 01, 2010 to revoke those authorisations given by the existing clients.

www.sebi.gov.in

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

Capitalisation of expenditures in respect of projects under construction.

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 government company is engaged in the construction and operation of thermal power plants in the country. The company has also diversified into hydro power generation, coal mining and oil & gas exploration, etc. The company is registered under the Companies Act, 1956 and being an electricity generating company, is governed by the provisions of the Electricity Act, 2003. The company prepares its annual financial statements as per the provisions of the Companies Act, 1956. The company is listed with the Bombay Stock Exchange and the National Stock Exchange.

2. The company has a three-tier organisation structure consisting of projects/stations, regional headquarters and corporate office. The company has six regions with the regional headquarters located across the country and also a hydro region headquarter located centrally. The projects/stations are grouped under different regions and report to the corporate office through the regional headquarters. The regional headquarters provide various services to the projects under construction and the operating stations under their jurisdiction. The company has also established two transport and customs clearance (T&CC) offices to facilitate the timely receipt of imported goods for the projects/stations.

3. The company is undertaking construction of a number of new power projects at the greenfield sites as well as expansion of existing projects. Some of the key activities related to the construction projects, such as, design & engineering, award of major contracts, post-award contract management, project monitoring, etc., are performed centrally at the corporate office. The company has seven coal mining blocks and similar activities for the development of these mines are also performed centrally at corporate office. The company has established departments mainly for performing these activities for the construction/expansion of power projects and development of mining projects at its corporate office with a view to benefit from the pooling of highly skilled manpower in these areas and also to achieve economy in expenditure. As a result, according to the querist, certain expenditures required for construction/expansion of the projects are incurred centrally instead of at individual project locations.

4. The querist has stated that till the financial year 2007-08, in accordance with paragraph 5 read with paragraph 7 of the Guidance Note on Treatment of Expenditure during Construction Period[1], issued by the Institute of Chartered Accountants of India (ICAI), expenses of the corporate office, regional headquarters and T&CC offices were allocated to the operating stations and projects under construction in the proportion of sales to annual capital outlay. The amounts allocated to the operating stations were recognised in the profit and loss account. The amounts allocated to the projects under construction, along with the project's expenses considered as 'incidental expenditure during construction', were apportioned to different assets in the proportion of accretion to capital work-in-progress during the year and capitalised. The accounting policies of the company in this regard for the year 2007-08 were as under:

> "Expenses common to operation and construction activities are allocated to profit and loss account and incidental expenditure during construction in proportion of sales to annual capital outlay in the case of corporate office and sales to accretion to capital work-in-progress in the case of projects."
>
> "Incidental expenditure during construction (net) including corporate office expenses (allocated to the projects prorata to the annual capital expenditure) for the year, is apportioned to capital work-in-progress on the basis of accretions thereto."

5. The querist has also stated that consequent to the withdrawal of Guidance Note on Treatment of Expenditure during Construction Period by the Institute of Chartered Accountants of India (ICAI) during the year 2008-09, the company constituted a committee comprising members from cross functional areas to:

(a) identify the expenditures of the related departments of corporate office, regional headquarters (RHQs) and T&CC offices whose services are specifically attributable to construction of projects considering the provisions of Accounting Standard (AS) 10, 'Accounting for Fixed Assets', notified under the Companies (Accounting Standards) Rules, 2006, and

(b) allocate such expenses to the projects under construction/expansion.

[1] The Guidance Note on Treatment of Expenditure during Construction Period has since been withdrawn pursuant to the decision of the Council at its 280th meeting held on August 7-9, 2008.

As per the querist, the said committee was guided by the provisions of paragraph 9.2 of AS 10 which states that expenses which are specifically attributable to the construction of a project or incurred for acquisition of a fixed asset or incurred for bringing the asset to its working condition, can only be included as a part of the cost of construction project or as a part of the cost of the fixed asset. Paragraph 9.2 of AS 10 is reproduced as below:

> "9.2 Administration and other general overhead expenses are usually excluded from the cost of fixed assets because they do not relate to a specific fixed asset. However, in some circumstances, such expenses as are specifically attributable to construction of a project or to the acquisition of a fixed asset or bringing it to its working condition, may be included as part of the cost of the construction project or as a part of the cost of the fixed asset."

6. Considering the above mentioned provisions, the said committee reviewed the services rendered by various departments located at the corporate office to the construction/expansion projects. Based on such review, the committee identified that the following departments provide services mainly for construction/execution activities of the projects:

(a) Corporate Monitoring Group (CMG)
(b) Corporate Engineering Department
(c) Corporate Contract Services Department
(d) Finance Concurrence Department
(e) Hydro Region Headquarter for construction of hydro projects; and
(f) Coal mining department rendering services to coal mining projects.

According to the querist, the committee recommended that the expenditure of the above departments be allocated to the projects under construction/expansion on the basis of annual capital expenditure for the period considering the following principles:

Sl	Name of the Department	Allocated to
1	CMG, Engineering, Contracts and Finance Concurrence Group	Thermal, Gas, Hydro & Coal Mining Units
2	Hydro Region	Hydro Units
3	Coal Mining	Coal Mining Units

As regards other departments, the committee noted that other departments are either providing common services to projects under construction/expansion and projects in operation or providing services for operating stations only and hence, the committee recommended that expenses of these departments may be charged to the statement of profit and loss. Accordingly, the expenditure of engineering, contracting, project monitoring, hydro region headquarter, coal mining and finance concurrence departments were considered as expenditure during construction and for allocation to the projects under construction/expansion on a systematic basis, i.e., capital expenditure incurred during the year at these projects. Expenses of other departments providing common services were charged to the statement of profit and loss. Further, accounting policy of the company for allocation of administration and general overhead expenses to the units for the financial year 2008-09 was as under:

> "Administration and general overhead expenses attributable to construction of fixed assets incurred till they are ready for their intended use are identified and allocated on a systematic basis to the cost of related assets."

7. During supplementary audit of accounts under section 619(3)(b) of the Companies Act, 1956, the government auditor observed as below:

> "With the withdrawal of Guidance Note on Treatment of Expenditure During Construction Period by the ICAI, the accounting is to be done as per AS 10, which stipulates that administration and other general overhead expenses are usually excluded from the cost of fixed assets since they do not relate to a specific fixed asset. In some circumstances, such expenses as are specifically attributable to construction of a project or to the acquisition of a fixed asset or bringing it to its working condition, may be included as part of the cost of the construction project or as a part of the cost of the fixed asset.
> The company has allocated expenses relating to five divisions on the ground that they perform functions relating to construction only. However, the expenses do not pertain to any one project. Hence, allocation of the expenses was not in accordance with AS 10."

8. The company is of the view that the employees posted in engineering, contracts, project monitoring, hydro region headquarters, coal mining and finance concurrence departments at corporate centre are engaged in the activities of project engineering and design, procurement, contract management and project monitoring, etc. which are essential activities for the construction of projects/coal mine development. Since the activities of the identified departments were directly related to the construction of projects, capitalisation of these expenses is in accordance with the requirements of AS 10. The fact that these activities are performed centrally at the corporate centre does not change their basic character which is that such expenditure is incurred for the construction of fixed assets. The allocation to the individual projects based on the capital expenditure incurred during the year is a reasonable basis and is not prohibited under AS 10. Charging of the expenditure of the departments engaged in project engineering, design, procurement, contract management and project monitoring activities, etc. to profit and loss account merely because they are involved with more than one project would not be in accordance with paragraph 9.2 of AS 10.

B. Query

9. Considering the above facts, the querist has sought the opinion of the Expert Advisory Committee as to whether allocation and capitalisation of expenses related to the identified departments of corporate office and the regional headquarters which are engaged in project engineering, designing, contract management and project monitoring activities etc. to/at the projects under construction/expansion is correct.

C. Points considered by the Committee

10. The Committee notes that the basic issue raised in the query relates to the accounting treatment of expenditure incurred at various departments performing centralised functions identified by the company for the construction/expansion of power projects. The Committee has, therefore, considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, specific basis of allocation of the common expenditures incurred at these departments over various projects/ assets, propriety of accounting treatment followed by the company before financial year 2008-09, accounting for expenditure incurred by other departments providing common services to projects under construction/expansion and projects in operation, etc. The Committee has also not considered the issue with respect to the development of mining projects as special considerations may apply to those projects. Further, as the querist has referred to only AS 10 in the context of construction/expansion and development of power projects, the Committee presumes that the underlying assets in all cases are 'fixed assets' covered under the provisions of AS 10. As the exact nature of the activities being performed by various departments is not clear from the nomenclature of the departments, the Committee's opinion contained hereinafter is based on the general principles to be followed while accounting for expenditure incurred at departments engaged in providing services to the construction/ expansion of power projects. The exact expenditures that are to be capitalised will have to be determined on the basis of the said principles. The Committee also notes that while the querist has enumerated six departments that are stated by the querist to be engaged in the functions relating to construction activities, the government auditor has made his observation in respect of allocation of expenses relating to five divisions. However, that does not affect the opinion of the Committee expressed hereinafter.

11. The Committee notes that the accounting principles for determination of the cost of a self-constructed fixed asset, have been laid down, inter alia, in paragraph 10.1 of AS 10 which provides as follows:

> "10.1 In arriving at the gross book value of self-constructed fixed assets, the same principles apply as those described in paragraphs 9.1 to 9.5. Included in the gross book value are costs of construction that relate directly to the specific asset and costs that are attributable to the construction activity in general and can be allocated to the specific asset. Any internal profits are eliminated in arriving at such costs."

The Committee further notes paragraphs 9.1 and 9.2 of AS 10 reproduced below:

> "9.1 The cost of an item of fixed asset comprises its purchase price, including import duties and other non-refundable taxes or levies and any directly attributable cost of bringing the asset to its working condition for its intended use; any trade discounts and rebates are deducted in arriving at the purchase price. Examples of directly attributable costs are:
>
> (i) site preparation;
> (ii) initial delivery and handling costs;
> (iii) installation cost, such as special foundations for plant; and
> (iv) professional fees, for example fees of architects and engineers. …
>
> "9.2 Administration and other general overhead expenses are usually excluded from the cost of fixed assets because they do not relate to a specific fixed asset. However, in some circumstances, such expenses as are specifically attributable to construction of a project or to the acquisition of a fixed asset or bringing it to its working condition, may be included as part of the cost of the construction project or as a part of the cost of the fixed asset."

From a wholesome reading of the above paragraphs of AS 10, the Committee is of the view that the basic principle to be applied while capitalising an item of cost to a fixed asset/project under construction/expansion is that it should be directly attributable to the construction of the project/fixed asset for bringing it to its working condition for its intended use. The costs that are directly attributable to the construction/acquisition of a fixed asset/project for bringing it to its working condition are those costs that would have been avoided if the construction/ acquisition had not been made. These are the expenditures without the incurrence of which, the construction of project/ asset could not have taken place and the project/asset could not be brought to its working condition, such as, site preparation costs, installation costs, salaries of engineers engaged in construction activities, etc.The avoidance of costs as the basis of identifying directly attributable cost for the purpose of capitalisation is also supported by Accounting Standard (AS) 16, 'Borrowing Costs'. In the extant case, the Committee is of the view that it should be seen that whether the expenses incurred on the activities of the various departments are directly attributable to the construction as discussed above. Accordingly, if the expenses incurred at the various departments are directly attributable to construction, these can be capitalised with the cost of the concerned fixed asset(s)/project(s).

12. As regards basis of allocation of the expenses of these departments that can be allocated and capitalised to various projects or assets under construction, the Committee is of the view that the same should be allocated selecting an appropriate basis that reflects the extent of usage of service rendered by the department to the construction of the project.

D. Opinion

13. On the basis of the above and subject to the considerations contained in paragraph 10 above, the Committee is of the opinion on the issue raised in paragraph 9 above that capitalisation of expenses related to various departments of corporate office and the regional headquarters to the projects/ assets under construction/expansion would be correct provided the expenses incurred on the activities of these departments can be considered to be directly attributable to the construction of project(s)/ fixed asset(s) for bringing it(them) to its(their) working condition as discussed in 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 under the head 'Resources'.

5. Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.org.

Improvements and Developments to IFRSs

The improvements and developments to IFRSs amendments result from proposals that were contained in the exposure drafts of proposed amendments to the IFRSs published in October 2007, August 2008 and January 2009. The annual improvements project provides a vehicle for making non-urgent but necessary amendments to the IFRSs. The effective date of each amendment is included in the IFRSs affected. The improvements to 12 International Financial Reporting Standards were approved for the issue by the International Accounting Standards Board (IASB). This article sets out amendments to the IFRSs and the related bases for conclusions and guidance made in the IASB's annual improvements project and development project.

CA. (Dr.) A. L. Saini
(The author is a member of the Institute. He can be reached at eboard@icai.org)

Introduction

Change is the only thing that is constant. It is this continuity of change — change with the times that has kept the IFRS in a leading position in world for decades. As said in some ICAB Newsletter, *'continuity gives us roots; change gives us branches, letting us stretch and grow and reach new heights'*. IFRSs do not remain constant; these have been changing since the International Accounting Standard Committee (IASC) started issuing the IASs. During 2008-2009, a lot of the IFRSs were improved, new exposure drafts were issued and, as a result, new IFRSs were issued. The professionals should enhance their ability to apply changes in practical scenario and identify opportunities within their engagement portfolio to provide consultancy on the IFRSs. To be a good professional, it is necessary to demonstrate a technical expertise and update knowledge and watch on the recent changes which will increase professional credibility with the engagement team and the entity.

Improvement Project 2008/2009

The Standard under discussion is the second omnibus Standard published as a result of the annual improvements process of the IASB. The IASB uses this process to improve Standards by addressing non-urgent but necessary topics. The time between publication of an exposure draft and mandatory application of the changes is usually quite short: a little more than one year.

The exposure draft for this Standard was published in August 2008 and the final Standard followed in April 2009. As per the Board, the amendments presented in this article are effective from January 1, 2010, except for those that relate to the revised version of the IFRS 3 – *Business Combinations.* In order to avoid changes to the accounting for business combinations after the effective date of the new Standard (July 1, 2009), the amendments that relate to business combinations are also effective as of July 1, 2009. This year, only 10 Standards and 2 Interpretations are affected. Last year, there was a certain catching up of a backlog on non-urgent but necessary amendments.

1. Improvements to IAS 39 and IFRIC 9

Three amendments to the IAS 39 and one to the IFRIC 9 are introduced through the annual improvements Standard:

- Clarification that the scope exemption of the IAS 39 applies only to binding forward contracts between an acquirer and a vendor in a business combination to buy an acquiree at a future date.
- An amendment of the scope of the IFRIC 9 in relation to the IFRS 3 (2008) – *Business Combinations.*
- Gains and losses recognized in other comprehensive income as a result of cash-flow hedges of forecast transactions, which subsequently result in the recognition of a financial instrument or cash-flow hedges that do not result in the recognition of either a financial instrument or non-financial item, should be recognized in profit, or, loss as a reclassification adjustment in the period that the hedged forecast cash flows affect profit or loss.
- Loan prepayment penalties are only treated as closely related embedded derivatives, if the penalty on prepayment date is approximately equal to the amortized cost of the loan, or, if the penalty reimburses the lender up to the approximate present value of lost interest for the remaining term of the contract.

2. Forward contracts to acquire a business

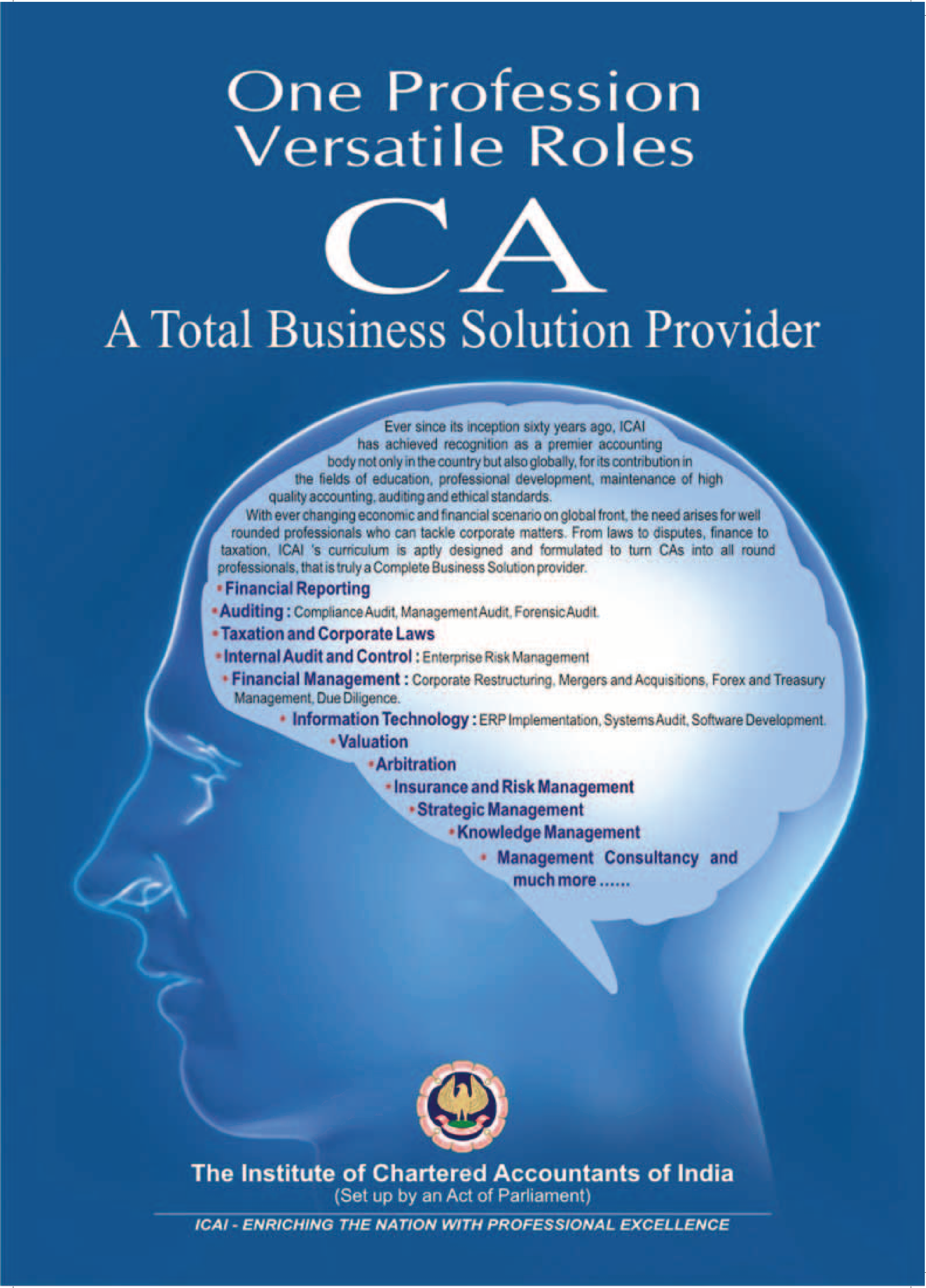
In a business combination, the acquisition date is sometimes later than the agreement date as the agreement is for the purchase of the business in the future; perhaps because necessary regulatory and legal processes are being completed. IAS 39.2(g) applies to these contracts, such that they are not accounted for as derivatives between the agreement date and the acquisition date. The purpose of the Paragraph 2(g) is to exempt from the provisions of the IAS 39 contracts for business combinations that are firmly committed to be completed. Once the business combination is consummated, the entity follows the requirements of the IFRS 3.

In a business combination, the acquisition date is sometimes later than the agreement date, as the agreement is for the purchase of the business in the future; perhaps because necessary regulatory and legal processes are being completed. IAS 39.2(g) applies to these contracts, such that they are not accounted for as derivatives between the agreement date and the acquisition date.

IAS 39.2(g) applies only when completion of the business combination is not dependent on further actions of either party, i.e. only the passage of a normal period of time is required. Option contracts may allow but do not require the purchase by one party of a business in the future. In contrast to forward contracts the completion of the business combination is not just dependant on the passage of time but upon the decision of the option holder to exercise the option. Therefore, the IAS 39.2(g) does not apply to option contracts, whether or not currently exercisable.

The acquisition of an interest in an associate represents the acquisition of a financial instrument. The acquisition of an interest in an associate does not represent an acquisition of a business with subsequent consolidation of the constituent net assets. Principles for business combinations and consolidations cannot be applied by analogy to accounting for investments in associates and joint ventures. Hence, the IAS 39.2(g) should not be applied by analogy to investments in associates and similar transactions.

Determining the fair value of a currently outstanding contract when its inception was before the effective date of the amendment would require the use of hindsight and might not achieve comparability, and, so, retrospective application is not permitted. Therefore, as per the Board, the amendment is applicable prospectively to all unexpired contracts for annual periods beginning on or after January 1, 2010.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Case Studies: Forward contracts for business combinations

Case 1: Anco Ltd. has entered into a forward contract to buy shares of Best Ltd. (controlling stake of 70 per cent) from Cathay Ltd. in a month time. The contract is exclusively gross settled. Anco Ltd. will have control of Best Ltd. once the shares are delivered under the forward contract. The completion of the forward contract is not conditional on any events.

Response: The forward contract would be covered by the scope exemption provided by the IAS 39.2(g) because the contract is not conditional.

Case 2: Cathay Ltd. has entered into a forward contract to buy all the shares (100 per cent) in Delta Ltd. from Ego Ltd. in a month time. However, the forward contract is only binding, if the FTSE 100 breaches 4,100.

Response: The forward contract would not be covered by the scope of exemption provided by the IAS 39.2(g), as it is uncertain whether a business combination will take place.

Case3: Frank Ltd. has entered into an option contract to buy 100 per cent of the shares in Goodway Ltd. from Harlan Ltd. in a month time. The option is not deeply in the money; however, Frank Ltd. expects to exercise the option at the end of the reporting date.

Response: This would not be covered by the scope exemption provided by the IAS 39.2(g), as this is not a forward contract but an option contract.

3. Scope of IFRIC 9 and IFRS 3 (2008)

During the development of the IFRS 3 (2008), the Board did not discuss whether the IFRIC 9 *Reassessment of Embedded Derivatives* should apply to business combinations, common control transactions and the formation of a joint venture. The Board did not intend to change the existing practice and, therefore, changed the scope of the IFRIC 9.

It was not clear how this paragraph should be applied, when the designated cash-flow exposure being hedged differs from the financial instrument arising from the hedged forecast cash-flows. Therefore, the IAS 39.97 was amended to clarify that the gains or losses on the hedged instrument should be reclassified from equity to profit or loss during the period that the hedged forecast cash-flows affect profit or loss.

No scope exemption was needed for investments in associates since the investor does not recognize the underlying assets and liabilities of the associate. As per the Board, the amendment is applicable prospectively for annual periods beginning on or after July 1, 2009. If an entity adopts the IFRS 3(2008) early, this amendment shall be applied at the same time.

4. Gains and losses on the hedging instrument in a cash flow hedge

If a hedged forecast transaction results in the recognition of a financial asset or a financial liability, the IAS 39.97 requires the associated gains or losses on hedging instruments to be reclassified from equity to profit or loss, as a reclassification adjustment in the same period or periods during which the hedged item affects profit or loss, e.g. in the same periods that interest income or interest expense is recognized.

It was not clear how this paragraph should be applied, when the designated cash-flow exposure being hedged differs from the financial instrument arising from the hedged forecast cash-flows. Therefore, the IAS 39.97 was amended to clarify that the gains or losses on the hedged instrument should be reclassified from equity to profit or loss during the period that the hedged forecast cash-flows affect profit or loss.

The Board also decided that, to avoid similar confusion, the IAS 39.100 should be amended to be consistent with the IAS 39.97. As per the Board, the amendment is applicable prospectively for annual periods beginning on or after January 1, 2010.

5. Loan prepayment penalties

[Exposed in the 2007/08 Annual Improvement Project (AIP)]

The Board identified an apparent inconsistency in the guidance in the IAS 39 related to embedded prepayment options in which the exercise price represented a penalty for early repayment, i.e. prepayment, of the loan. The inconsistency related to whether these options are considered closely related to the loan.

The amendment makes an exception to the examples in the IAS 39. Application Guidance (AG) 30(g) of embedded derivatives that are not closely related to the underlying. This exception is in respect of prepayment options, the exercise price of which compensates the lender for the loss of interest income because the loan was prepaid. This exception is conditional on the exercise price compensating the lender for loss of interest by reducing the economic loss from reinvestment risk.

As per the Board, the amendment is applicable for annual periods beginning on or after January 1, 2010.

Case Studies: Loan prepayment penalties due to the annual improvements project

Case 1: Inez Ltd. issues a five-year zero-coupon bond for £75 million, with a face value of £100 million. Embedded in the debt is a call option allowing Inez to repay the debt after one year for £80 million. The amortized cost of the zero-coupon bond with face value of £100 million after one year is £79,441,778.

a. Is the loan prepayment option closely related to the debt instrument?

Response: The effective interest rate of the instrument is 5.92 per cent. After one year, the amortized cost of the bond is £79,441,778 which is approximately equal to the repayment amount under the call option at that point. Therefore, the call option is closely related to the host contract and is not separated from it. This is the case for both the issuer and holder of the bond.

b. Would your answer change if Inez Ltd. could call the debt at any time, but would have to redeem it at a fixed amount, e.g. at par of £100 million.

Response: The call option would not be closely related, as the repayment amount would not approximately equal the debt's amortized cost of the debt on each date that the call can be exercised, e.g. the week after issuing the bond when the bond's amortized cost is approximately £75 million, Inez Ltd. could call it back but would have to pay £100 million to do so. The situation arises because the bond was issued at a substantial discount, and hence its amortized cost will not approximate to its par value except in the years close to its maturity. Accordingly, the embedded prepayment option would be separated from the bond and accounted

If an intangible asset acquired in a business combination is separable or arises from contractual or other legal rights, sufficient information exists to measure the fair value of the asset reliably. IASs 38.37 and 38 were amended to clarify the Board's intentions regarding the recognition of intangible assets acquired in a business combination.

for as a separate derivative both by the issuer and holder of the bond.

Case 2: Mathias Ltd. issues a mortgage with a prepayment option in which the penalty is calculated based on the forgone interest. The exercise price of the option reimburses the lender for an amount equal to the present value of the lost interest for the remaining period of the contract. Is the loan prepayment option closely related to the debt instrument?

Response: The option is closely related to the debt instrument and is not separated from the host contract on the basis of the AG30g(ii).

Case: Kathleen Ltd. issues 10-year bonds with a par value of £1 million for proceeds of £1 million. The bonds have a coupon of 10 per cent. Embedded in the bonds is a provision that allows the investors to put the bonds back to the issuer for 150 per cent of the par value after 5 years in the event the interest rate for similar bonds declines by 5 per cent. The present value of the lost interest at the point of exercise of the option would be approximately £2,16, 500. Is the loan prepayment option closely related to the debt instrument?

Response: In order to decide whether the prepayment option is closely related to the debt instrument, Kathleen Ltd. should compare the loan penalty of £500 000 with the present value of the lost interest for the remaining term of the contract:

- The lost interest each year is 10–5 per cent*£1million = £50,000, i.e. the difference between the coupon of 10 per cent and the interest of 5 per cent that could be earned on similar bonds if the put is exercised.
- The present value of the lost interest for remaining term of the contract at the point of exercise of the option is: £2,16, 500.
- As the loan prepayment penalty of £5,00,000 is higher than the approximate present value of the lost interest so that the prepayment option is not closely related to the contract and should be separated.

6. Amendment to IAS 17 Leases of land

[Exposed in the 2007/08 AIP]

Before this amendment, all land leases were classified as operating (unless the title to the lease was expected to pass to the lessee by the end of the lease term), because the IAS 17.14 indicated that "[…] land has infinite life and […] the lessee normally does not receive substantially all the risks and rewards incidental to ownership […]".

The previous guidance in the IASs 17.14 and 15 might lead to a conclusion that does not reflect the substance of the transaction. The amendment clarifies that the classification of a lease of land is subject to the general principles in the IAS 17. As a result of the amendment, now, some land leases can be classified as finance leases.

Example: 999-year lease would transfer significant risks and rewards associated with the land to the lessee during the lease term despite there being no transfer of title. The accounting for the land element as a finance lease, in such circumstances, would be consistent with the economic position of the lessee.

7. Amendment to IAS 38 Intangible assets acquired in a business combination

If an intangible asset acquired in a business combination is separable or arises from contractual or other legal rights, sufficient information exists to measure the fair value of the asset reliably. IASs 38.37 and 38 were amended to clarify the Board's intentions regarding the recognition of intangible assets acquired in a business combination. The amendment clarifies that when an intangible asset acquired in a business combination is only separable together with a related contract, identifiable asset or liability, the intangible asset is recognized together with the related item.

Example: The Evian trademark cannot be recognized separately from the Evian spring; however, Nestle, the trademark to which Evian belongs, should be recognized separately in the financial statements of a hypothetical acquirer.

8. Amendment to IAS 38 Intangible assets acquired in a business combination

The amendments clarify the description of valuation techniques commonly used to measure intangible assets at fair value when the assets are not traded in an active market.

As per the Board, the amendments to the IAS 38 are applicable prospectively for annual periods beginning on or after July 1, 2009. Therefore, amounts recognized for intangible assets and goodwill in prior business combinations shall not be adjusted. If an entity applies the IFRS 3 (2008) for an earlier period, these amendments to the IAS 38 shall be applied at the same time.

9. Amendment to scope of IFRS 2

IFRS 3 (2008) *Business Combinations* changed the definition of a business combination. The previous definition of a business combination was 'the bringing together of separate entities or businesses into one reporting entity'. The revised definition of a business combination is 'a transaction or other event in which an acquirer obtains control of one or more businesses'.

The changes to that definition caused the accounting for the contribution of a business in exchange for shares issued on formation of a joint venture by the venturers to be within the scope of the IFRS 2 *Share-based Payment*. Also, common control transactions may be within the scope of the IFRS 2 depending on which level of the group reporting entity is assessing the combination.

10. Amendment to IFRS 5 Disclosure requirements

IFRS 5.30 requires an entity to 'present and disclose information that enables users of the financial statements to evaluate the financial effects of discontinued operations and disposals of non-current assets (or disposal groups).'

Some IFRSs other than the IFRS 5 require specific disclosures for non-current assets (or disposal groups) classified as held-for-sale or discontinued operations. For instance, the IAS 33.68 requires an entity to disclose the amount per share for discontinued operations.

When a disposal group includes assets and liabilities that are not within the scope of the measurement requirements of the IFRS 5, disclosures about measurement of those assets and liabilities are normally provided in other notes to the financial statements and do not need to be repeated, unless they better enable users of the financial statements to evaluate the financial effects of discontinued operations and disposals of non-current assets (or disposal groups). The Board decided to clarify that the IFRS 5 and other IFRSs that specifically refer to non-current assets (or disposal groups) classified as held for sale or discontinued operations set out all the disclosures required in respect of those assets or operations. Additional disclosures about such assets (or disposal groups) may be necessary to comply with the general requirements of the IAS 1.

As per the Board, the amendment is applicable prospectively for annual periods beginning on or after January 1, 2010.

11. Amendment to IFRS 8 Disclosure of segment assets

The IASB thought that the requirement to disclose a measure of segment assets regardless of whether those measures are reviewed by the chief operating decision maker would converge with the US GAAP.

Classifying the liability on the basis of the requirements to transfer cash or other assets rather than on settlement better reflects the liquidity and solvency position of an entity, and, therefore, the IASB decided to amend the IAS 1 accordingly.

However, after the IFRS 8 was issued, the IASB was made aware that such a requirement contradicts long-standing interpretations published in the US for the application of the SFAS 131 and creates an unintended difference from practice in the US under the SFAS 131. Therefore, the IASB clarified that a measure of segment assets should be disclosed only if that amount is regularly provided to the chief operating decision maker.

As per the Board, the amendment is applicable for annual periods beginning on or after January 1, 2010.

12. Amendment to IAS 1 Classification of convertible instruments

[Exposed in the 2007/08 AIP]

Paragraph 69(d) of the IAS 1 states that when an entity does not have an unconditional right to defer settlement of a liability for at least twelve months after the reporting period, the liability should be classified as current. According to the Framework, conversion of a liability into equity is a form of settlement.

The application of these requirements means that if the conversion option can be exercised by the holder at any time, the liability component would be classified as current. This classification would be required even if the entity would not be required to settle unconverted instruments with cash or other assets for more than twelve months after the reporting period.

Classifying the liability on the basis of the requirements to transfer cash or other assets rather than on settlement better reflects the liquidity and solvency position of an entity, and, therefore, the IASB decided to amend the IAS 1 accordingly. The amendment applies only to the classification of a liability that can, at the option of the counterparty, be settled by the issue of the entity's equity instruments.

As per the Board, the amendment is applicable for annual periods beginning on or after January 1, 2010.

In March 2009, the IASB clarified the requirements of the IAS 39 and the IFRIC 9. The Board made it clear that the reclassifications of financial assets under the October\ November 2008 amendments to the IAS 39 trigger a (re)assessment for embedded derivatives.

13. Amendment to IAS 7 Classification of certain cash flows

Some types of expenditures incurred with the objective of generating future cash-flows when those expenditures are not recognized as assets under the IFRSs. Some entities classify such expenditures as cash-flows from operating activities and others classify them as investing activities.

Examples of such expenditures are those for exploration and evaluation activities, which can be recognized according to the IFRS 6 as either an asset or an expense.

The Board amended the IAS 7.16 to state that only an expenditure that results in a recognized asset can be classified as a cash-flow from investing activities. This amendment better aligns the classification of cash-flows from investing activities in the statement of cash-flows and the presentation of recognized assets in the statement of financial position, reduces divergence in practice and, therefore, results in financial statements that are easier for users to understand.

The Board also amended the Basis for Conclusions on the IFRS 6 to clarify that the exemption in the IFRS 6 applies only to recognition and measurement of exploration and evaluation assets, not to the classification of related expenditures in the statements of cash-flows.

As per the Board, the amendment is applicable prospectively for annual periods beginning on or after January 1, 2010.

14. Amendment to IAS 18 Principal/Agent relationships

An entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. The Board identified some features that, individually or in combination, indicate that this criterion is met.

The Board concluded that an entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services.

No effective date is provided to this amendment, because it only affects the Appendix to the I AS 18.

15. Amendment to IAS 36 Impairment of assets

Entities adopting the IFRS 8 must reconsider the allocation of goodwill to cash-generating units because of the definition of operating segment introduced by the IFRS 8. That definition affects the determination of the largest unit permitted by the IAS 36.80 for testing goodwill for impairment.

Until this amendment, there were divergent views regarding the largest unit permitted by the IAS 36 for impairment testing of goodwill.

As per the Board, the amendment is applicable prospectively for annual periods beginning on or after January 1, 2010.

Summary of IFRS Developments

1. Amendments to existing Standards

IAS 39 and IFRS 7 Amendments: Reclassification of Financial Assets

The IASB issued amendments to the IAS 39 *Financial Instruments: Recognition and Measurement* and the IFRS 7 *Financial Instruments: Disclosures* in October 2008, in response to calls from constituents to create a 'level playing field' with the US GAAP regarding the ability to reclassify financial assets.

2. IAS 39 amendment

The amendments permit reclassification of non-derivative financial assets out of the fair-value-through-profit-or-loss category (FVTPL) and the available-for-sale (AFS) category in limited circumstances as per below.

- Entity has ceased to hold the financial asset concerned for trading.
- A financial asset may be reclassified out of the FVTPL or the AFS into "loans or receivables" if the asset has met the definition of "loans and receivables", had it not been classified as at the FVTPL or the AFS at initial recognition.
- A debt instrument that would have met the definition of "loans and receivables" may be reclassified out of the FVTPL or the AFS into "loans or receivables" if the entity has the intention and ability to hold the asset for the foreseeable future or until maturity.
- In 'rare' circumstances, e.g. the current financial crisis, the amendments allow the debt or equity instrument to be reclassified from the FVTPL to the AFS, or from the

FVTPL to the HTM (debt instruments only), if the financial asset is no longer held for the purpose of selling in the near term.

- The amendments do not refer to reclassifications of the AFS debt instruments to the HTM because such reclassifications were already permitted under the IAS 39.
- Financial liabilities, derivatives and financial assets that are designated as at the FVTPL on initial recognition under the 'fair value option' cannot be reclassified.
- The amendments do not permit reclassification into the FVTPL.

All reclassifications are accounted for at the fair value at the date of reclassification. Any gains or losses previously recognized in profit or loss cannot be reversed. The fair value at the date of reclassification becomes the new cost or amortized cost of the financial asset.

In the event of reclassification, additional disclosures are required under the IFRS 7 (2008 revised).

3. IAS 39 and IFRS 7 (amendments) Reclassification of Financial Assets

As per the Board, the amendments are effective beginning on or after July 1, 2008, with specific transitional provision below:

- For any reclassification of a financial asset made before November 1, 2008, the reclassification can be deemed to have occurred on any date between July 1, 2008, and the date of the actual reclassification [limited interest at this point in time].
- Any reclassification of a financial asset made in periods beginning on or after November 1, 2008, will take effect only from the date when the reclassification is made.
- Any reclassification of a financial asset in accordance with the amendments should not be applied retrospectively to reporting periods ended before the effective date.

Inflation in a financial hedged item– the amendment clarifies that an entity may not designate an inflation component of issued or acquired fixed-rate debt in a fair-value hedge because the inflation component is not separately identifiable and reliably measurable. Also, a risk-free or benchmark interest rate portion of the fair value of a fixed-rate financial instrument will normally be separately identifiable and reliably measurable and therefore maybe hedged.

4. IFRIC 9 (amendments)

IAS 39 and IFRIC 9 amendment: *Embedded Derivatives*

In March 2009, the IASB clarified the requirements of the IAS 39 and the IFRIC 9. The Board made it clear that the reclassifications of financial assets under the October\November 2008 amendments to the IAS 39 trigger a (re)assessment for embedded derivatives.

IFRIC 9 was amended such that (re)assessment is prohibited except in the following two circumstances, when it is required:

- When there is a change in the terms of the contract that significantly modifies the cash flows that otherwise would be required under the contract (existing requirement under the IFRIC 9); and
- When there is a reclassification of a financial asset out of the FVTPL category (new requirement).

The assessment of whether an embedded derivative is required to be separated from the host contract and accounted for as a derivative is required when the entity reclassifies a hybrid (combined) financial asset out of the FVTPL. That assessment is made on the basis of the circumstances that existed on the date that:

- The entity first became a party to the contract, or, if later,
- The date of a change in contractual terms (with a significant effect on cash-flows).

As a result of this amendment, there was a modification to the IAS 39 to state that if an entity is unable to measure the fair value of the embedded derivative(s) in a hybrid contract, it would be precluded from reclassification and the entire financial asset would remain classified as at the FVTPL.

As per the Board, the amendments are effective for annual periods ending on or after June 30, 2009. In the absence of any specific transitional requirements, the IAS 8 applies.

5. IFRIC 9: Post-Implementation Revision

In April 2009, the IASB clarified that embedded derivatives in contracts acquired as part of a common control transaction or during the formation of a joint venture are not within the scope of the IFRIC 9. Prior to the amendments, the IFRIC 9 was unclear about whether the reassessment of embedded derivatives in contracts acquired as part of a common control transaction or during the formation of a joint venture fell within the scope of the Interpretation.

As amended, the IFRIC 9 does not apply to embedded derivatives in contracts acquired in:

- A business combination;
- A combination of entities or businesses under common control (as defined in the IFRS 3); or
- The formation of a joint venture as defined in the IAS 31.

The amendments apply prospectively for annual periods beginning on or after July 1, 2009, unless the IFRS 3 (2008 revised) is applied for an earlier period, in which case the amendment would apply from the same date.

6. IFRS 1 Amendment: Restructured version of IFRS 1

The IASB has released a restructured version of the IFRS 1 in December 2008. The new version of the IFRS 1 issued retains the substance of the previous version, but within a changed structure. Material has been reorganized within appendices as follows:

- Exceptions to the retrospective application of other IFRSs (new Appendix B)
- Exemptions for business combinations (new Appendix C)
- Exemptions from other IFRSs (new Appendix D).

The Board has also taken the opportunity to remove out-of-date transitional provisions and make some minor wording amendments to reflect the amendments made in May 2008 regarding investments in subsidiaries, jointly controlled entities and consequential amendments to the IFRS 1 (including updated transitional provisions) arising from other recent developments in Standards – notably the IAS 1(2007) *Presentation of Financial Statements*, *Improvements to the IFRSs* issued in May 2008 and the IFRS 3(2008) *Business Combinations*. The new version replaces the previous version and is effective for entities applying the IFRSs for the first time for annual periods beginning on or after July 1, 2009. Earlier application is permitted.

7. IAS 39 (amendments) Eligible Hedged Items

In July 2008, the IASB made amendments to the IAS 39 to clarify two hedge accounting issues:

- Inflation in a financial hedged item — the amendment clarifies that an entity may not designate an inflation component of issued or acquired fixed-rate debt in a fair value hedge because the inflation component is not separately identifiable and reliably measurable. Also, a risk-free or benchmark interest rate portion of the fair value of a fixed-rate financial instrument will normally be separately identifiable and reliably measurable and therefore maybe hedged.
- A one-sided risk in a hedged item — the amendment clarifies that the intrinsic value (not the time value) of an option reflects a one-sided risk and so an option designated in its entirety cannot be perfectly effective. The time value of a purchased option is not a component of the forecast transaction that impacts profit or loss. So, if an entity designates an option in its entirety as a hedge of a one-sided risk arising from a forecast transaction, hedge ineffectiveness will arise. Alternatively, an entity may choose to exclude time value in order to improve hedge effectiveness. As a result of this designation, changes in the time value of the option will be recognized immediately in profit or loss.

The amendment applies to hedging relationships in the scope of the IAS 39 and clarifies how the principles that determine whether a hedged risk or portion of cash flows is eligible for designation should be applied in particular situations.

As per the Board, the amendments are effective for annual periods beginning on or after July 1, 2009, with earlier application permitted, and they must be applied retrospectively.

8. IFRS 7 - Fair Value Hierarchy

In March 2009, the IASB issued amendments to the IFRS 7 to improve the disclosure requirements about fair value measurements and reinforce existing principles for disclosures about the liquidity risk associated with financial instruments.

The amendments form part of the IASB's response to the financial market crisis with the aim of improving transparency and enhance accounting guidance. The amendments also reflect discussions by the IASB's Expert Advisory Panel on measuring and disclosing fair values of financial instruments when markets are no longer active.

The new disclosures include:

- Clarification that the existing fair-value disclosures must be made separately for each class of financial instrument.

- Disclosure of any change in the method for determining fair value and the reasons for the change.
- Introduction of a three-level hierarchy for fair value measurement disclosures:
  - Quoted prices (unadjusted) in active markets for identical assets or liabilities (Level 1) — for example bid price for asset held or liability to be issued; asked price for asset to be acquired or liability held; or most recent transaction price, etc.
  - Inputs (other than quoted prices considered as included within Level 1) that are observable for the asset or liability, either directly (e.g., prices) or indirectly (e.g., derived from prices) (Level 2) — the fair value would normally derived from valuation technique.
  - Inputs for the asset or liability that are not based on observable market data (unobservable inputs) (Level 3).

Disclosure of which level in the hierarchy was used and any transfers between levels, with additional disclosures whenever level 3 is used including a measure of sensitivity to a change in input data.

As per the Board, the amendments apply for annual periods beginning on or after January 1, 2009, with earlier application permitted. However, an entity will not be required to provide comparative disclosures in the first year of application.

Other Developments

1. ***IFRS for SMEs:*** A separate set of IFRS for the SMEs were developed by the IASB, because the full IFRSs impose a burden on SMEs. Users do not require for the SMEs as sophisticated financial statements as publicly-accountable entities. IFRS for the SMEs is a self-contained standard of less than 255 pages designed to meet the needs of capabilities of SMEs. It includes simpler accounting policy options and allows choosing either expense or capitalization model for borrowing costs. It excludes topics like hyperinflation, equity-settled share-based payment, agriculture, interim financial reporting, lessor accounting for finance leases, EPS, segment reporting and insurance.
2. ***IFRS 9:*** On November 12, 2009, the IASB issued the IFRS 9 *Financial Instruments* as the first step in its project to replace the IAS 39 *Financial Instruments: Recognition and Measurement*. IFRS 9 introduces new requirements for classifying and measuring financial assets that must be applied starting January 1, 2013, with early adoption permitted. The IASB intends to expand the IFRS 9 in 2010 to add new requirements for classifying and measuring financial liabilities, derecognition of financial instruments, impairment, and hedge accounting. By the end of 2010, then, the IFRS 9 will be a complete replacement for the IAS 39. Other sub-projects in the IASB's comprehensive project to replace the IAS 39 are: a) Credit Risk in Measurement of Liabilities, b) De-recognition, c) Impairment of Financial Assets Measured at Amortised Cost, and d) Hedge Accounting.
3. New IFRICs issued by the IASB and their effective date:

Name	Effective Date (annual period beginning)	Application
IFRIC 15: Agreements for the Construction of Real Estate	1 January 2009	Retrospective
IFRIC 16: Hedges of a Net Investment in a Foreign Operation	1 October 2008	Retrospective / Prospective
IFRIC 17: Distributions of Non-cash Assets to Owners	1 July 2009	Prospective
IFRIC 18: Transfers of Assets from Customers	1 July 2009	Prospective

Audit Implications:

What should the audit engagement teams plan for? The audit engagement teams should plan the following:

1. Identification of key changes in the IFRS/ impacts on engagements
2. Communications with client and other related parties.
3. Consult with the IFRS expert in case you feel difficult to understand changes in the IFRS.
4. Impacts on audit report should be analyzed.

Conclusion

Timely identification of the IFRS-related issues ensures completion of CA professionals' engagements in a more efficient and effective manner, as this article discussed the key changes due to the annual improvements project and their consequences. The benefits are: Building confidence and competence in discussing recent developments and changes on the IFRSs and the IFRIC Interpretations with clients and audit engagement teams; and Gaining a high-level understanding of the overall changes and achieving a better understanding of the volume and impact of change on engagement portfolio.

IFRS 3 - Business Combination: An Overview

The IFRS 3 deals with the accounting of business combination. A business combination transaction is an event in which an acquirer obtains control of one or more businesses. A business is defined as an integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return directly to investors or other owners, members or participants. Under IFRS 3, an acquirer must be identified for all business combinations. The IFRS 3, however, does not apply to the accounting of formation of joint venture, acquisition of an asset or group of asset that does constitute business. Also, IFRS 3 does not apply to the acquisition of an asset or a group of assets that do not constitute a business. This article provides an overview of the IFRS 3.

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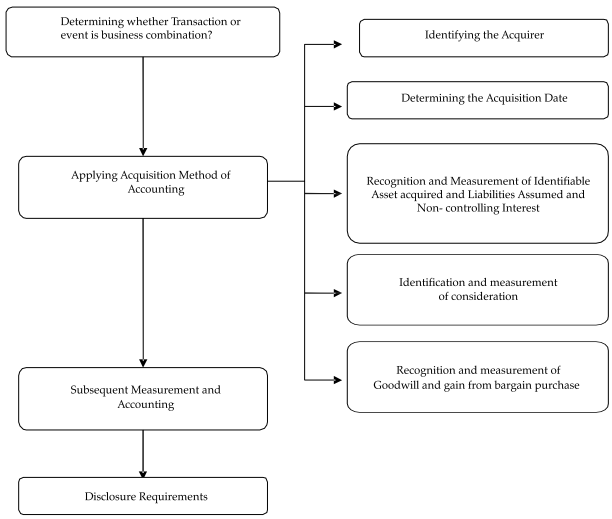
The IFRS (International Financial Reporting Standard) 3 deals with the accounting of business combination, other than those between entities under common control as on the date of acquisition. A business combination transaction occurs when any entity acquires control of one or more businesses. The IFRS 3, however, does not apply to the accounting of formation of joint venture, acquisition of an asset or group of asset that does constitute business. These are not business combinations at all but still, for the sake of clarity, they are excluded from the scope of IFRS 3. The Standard provides the guidance relating to identification of a business combination, identification of the acquirer, determination of the acquisition date, the recognition and the measurement principles of an asset acquired, liabilities assumed and any non-controlling interest in the acquiree, identification and consideration measurement, recognition and measurement of goodwill or a gain from a bargain purchase, subsequent measurement and accounting of such transaction with disclosure requirements.

Table – 1
Steps involved in Accounting of Business



Business Combination and Business

The Standard defines the business combination as a transaction or other event where an acquirer obtains control of one or more businesses. Generally, an entity becomes a subsidiary of another entity when it purchases controlling interest in the equity of first mentioned entity. For purchasing such interest, the consideration may be paid in cash or by issuing equity interests or by assuming liabilities. Sometimes it is also possible that an entity becomes subsidiary of another without transfer of any consideration or by other means, e.g. where the investee repurchases its shares from other parties due to which proportionate share of any entity increases which results in obtaining control over the other and there is any contractual arrangement between entities, according to terms of which one of the entity may control the other.

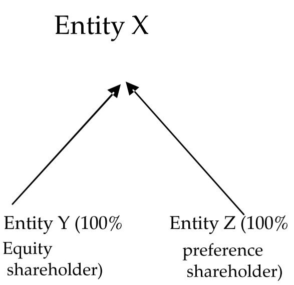
The Standard further defines the business as an integrated set of activities and assets from which economic benefits are gained by the investor or other owners. It also explains that, for determining whether a group of assets and liabilities is a business, one must examine the three ingredients, viz. inputs, process and outputs. If any process, viz. strategic management, manufacturing process, etc., is applied to the inputs, viz. non-current assets, intellectual property, manpower, etc., which result into an output, viz. manufacturing of a product and its trading, providing of any service, the activity so carried out is called business. If there is no process involved along with the asset or group of asset, the acquired group may not be a business, e.g. an entity may acquire only a restaurant garden with an intention to make a commercial complex, and such acquisition of restaurant garden is only an acquisition of asset and not business. Where the entity acquires furniture and fixtures, computers, equipments and other assets along with related processes and the restaurant may have recognised name in the city, it may be concluded the acquisition of a restaurant garden is acquisition of a business. Sometimes, an entity may acquire another entity which is at development stage and is not having any output. Such development stage entities may be a business if there exists a planned principal operation, inputs and processes, a plan to produce output, etc.

The Standard defines the business as an integrated set of activities and assets from which economic benefits are gained by the investor or other owners. It also explains that, for determining whether a group of assets and liabilities is a business, one must examine the three ingredients, viz. inputs, process and outputs.

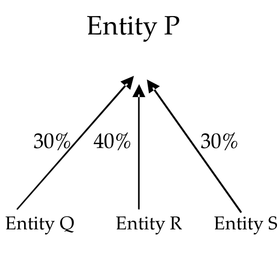
Control:

For determining whether an entity have control over the other, one has to see that whether the entity is able to obtain any economic benefit from another entity's activities by exercising the power to govern financial and operating policies of another entity. The Standard further refers to the guidance provided in the IAS 27: *Consolidated and Separate Financial Statements*, according to which, there is a rebuttable presumption that an entity has control over another entity if it owns more than half of the voting rights of another entity. However, it may be demonstrated that an entity having ownership of more than half of voting rights does not have control. The definition of control uses the words *obtaining benefits* that may be by way of profits, reducing losses, curtailing competition, etc. In a group of entities only one entity can control all other entities.

Therefore, for determining that which of the entity has control over the other in a group, it is required to examine various facts, viz. who initiated the combination, sizes of the entities, formation of new entity, etc. The following diagrams illustrate various situations of control by an entity in a group:



(Diagram 1)



(Diagram 2)

In diagram 1, presuming that only equity shareholders have the right of voting, Entity Y has control over the Entity X. In diagram 2, there may be control by Entity R, subject to the fact that it has power to govern financing and operating policies of the Entity P.

Apart from the control by voting powers, control may also be ascertained by looking to the composition of board of directors. If an entity has power to appoint or remove the majority of directors or power to cast the majority of votes of the board of directors of another entity, it may be concluded that the entity has control over the other.

The Acquisition Method

The Standard provides the Acquisition Method from the standpoint of Acquirer for accounting for business combinations. Under this method, the Acquirer has to recognise various components of business combination, like assets acquired, liabilities incurred, non-controlling interest, consideration and the goodwill or bargain purchase on the date of acquisition.

Acquisition Date:

In accounting for business combination, after identifying the acquirer, i.e. the entity which obtains control in the business combination, determination of acquisition date is another important aspect as various fair values of assets acquired, liabilities incurred, consideration transferred and non-controlling interest are to be determined as on the acquisition date irrespective of the fact that business combination has taken place in stages or by a single transaction. Generally, the date on which consideration is transferred by the acquirer and the assets and liabilities of the acquiree are acquired by the acquirer, is the date of acquisition. Still, for determining the acquisition date, all relevant facts and circumstances need to be considered, viz. is there any agreement suggesting date of acquisition of control, deferment of transfer of consideration though control is obtained at an earlier date, etc.

> **Apart from the control by voting powers, control may also be ascertained by looking to the composition of board of directors. If an entity has power to appoint or remove the majority of directors or power to cast the majority of votes of the board of directors of another entity, it may be concluded that the entity has control over another.**

Some of the business combinations happen without transfer of consideration. In such a case, the date of the transaction or event is taken as date of acquisition due to which business combination has taken place, e.g. the investee buys back the shares of some investors, due to which control of investee comes in the hands of other entity because of change in shareholding pattern. In such a case, the date on which the entity buys back the shares would be the date of acquisition.

Recognition and Measurement of Identif able Asset acquired and Liabilities Assumed

As on the acquisition date identifiable assets acquired and liabilities assumed, separately from goodwill shall be recognised by the enterprise at fair value. No valuation allowance is required to be given as the assets are valued at fair value which is determined after considering any valuation allowance. For qualifying recognition, the asset and liabilities should meet the recognition criteria given in the framework of IFRS. An asset or liability is identifiable if it is either separable or arises from contractual or other legal rights. Thus, even if any asset or liability, that is not recognised in the financial statements of the acquiree but the same is separately identifiable, is required to be included in a business combination, e.g. intangible assets, viz. patents, copyrights, etc., which were earlier not recognised by the acquiree as it was self generated during the course of business, must be recognised by the acquirer in a business combination. For recognizing an asset, the fact that whether the acquirer has intention to use that asset or not is not relevant. Therefore, even if an acquirer has no intention of using the asset, the same will be recognised in the business combination. This is so because the fair-value of the asset is determined from the perspective of market participants and not from the perspective of the acquirer. Of course, the asset so recognised is subject to amortisation and impairment. For buying a business, an enterprise may make payment for various items which may not fulfil the criteria of asset, viz. assembled workforce, contingent contracts, etc. Such items are not recognised as an asset but form part of value of goodwill.

While recognising assets or liability, one must consider only those which exist at the time of acquisition date. Any asset or liability which has arisen after the acquisition date cannot be recognised under business combination. Similarly, if any asset is acquired not as a part of business combination and consideration is separately given for that asset, it is not accounted for under the acquisition method but accounted for separately.

For certain assets/liabilities, there is exception to its measurement principle, that assets/liabilities recognised shall be valued at fair value. These items are reacquired rights, share-based payment awards, assets held for sale, income taxes, employee-benefit plans and indemnification assets. Income taxes, employee-benefit plans and indemnification assets along with contingent liabilities are also exception to the recognition principles. The requirements related to these assets/liabilities are as under:

(i) *Re-acquired rights:* Sometimes in a business combination, the acquirer may get those rights which were granted by it to the acquiree, viz. rights granted through franchise agreement. The Standard recognises them as re-acquired rights. The value of such rights cannot be determined on the basis of assumptions of market participants and, therefore, they are not measured at fair value. The value of reacquired rights shall be recognised as an intangible asset on the basis of remaining contractual term of the contract. For example the acquirer permitted the acquiree to use its franchisee which has been recognised by the acquiree as intangible asset. In a business combination transaction, the franchisee so given is a separate intangible asset. The acquirer should recgonise it separately from goodwill and must be valued on the basis of market conditions on the date of acquisition.

(ii) *Share-based payment awards:* Sometimes in a business combination transaction, an acquirer may issue share-based payment awards in place of share-based payment awards of the acquiree. Such share-based payment awards are required to be allocated towards purchase consideration and post-acquisition services compensation. Any liability or equity is determined according to principles of the IFRS 2 - *Share Based Payment.*

(iii) *Asset held for sale:* The asset acquired under the business combination, which are classified as 'held for sale' on the date of acquisition is to be measured at fair value less costs to sell in accordance with the principles given in the Para 15 to 18 of the IFRS 5 - *Non-current Assets Held for Sale and Discontinued Operations.*

(iv) *Income taxes:* Deferred tax assets and liabilities arisen in a business-combination transaction are recognised and measured in accordance with the IAS 12 - *Income Taxes.* The acquirer needs to assess the potential tax effects of the temporary differences and carry forwards of the acquiree, as on the date of acquisition and account for the same in accordance with the IAS 12 - *Income Taxes.*

(v) *Employee-benefit plans*: Assets and liabilities under the employee-benefit plans are recognised and measured in accordance with the IAS 19 - *Employee Benefits.*

(vi) *Indemnification assets*: In a business-combination transaction, an acquirer may protect itself against any uncertain cash flows due to irrecoverability of an asset acquired or higher payment towards any liability assumed. This results in indemnification asset which is to be recognised by the acquirer. Such asset is recognised on the basis on which indemnified item is recognised.

(vii) *Contingent liabilities*: The IFRS 3 requires contingent liability to be recognised, if it is meeting the definition of liability and its measurement can be done reliably. This is an exception to recognition principle of the Standard.

As on the acquisition date identifiable assets acquired and liabilities assumed, separately from goodwill shall be recognised by the enterprise at fair value. No valuation allowance is required to be given as the assets are valued at fair value which is determined after considering any valuation allowance. For qualifying recognition, the asset and liabilities should meet the recognition criteria given in the framework of IFRS.

Non-controlling Interest in the Acquirer

The Standard provides an option for measuring non controlling interest either at fair value or at proportionate share of the non controlling interest in identifiable assets of the acquirer. Selection of any choice would directly affect the measurement of goodwill as on the date of acquisition, which can be understood from the example given under the headline *Recognition and Measurement of Goodwill and Gain* in this article.

Identification and Measurement of consideration

The consideration transferred in a business combination transaction is required to be measured at fair value. This includes fair values of the assets transferred by the acquirer, the liabilities incurred by the acquirer towards former owners of the acquire and the equity instruments issued by the acquirer as on the date of acquisition.

Recognition and Measurement of Goodwill and Gain from Bargain Purchase

In acquisition of control over any business, there is presumption that element of goodwill is present. However, sometimes, it may be a case of bargain purchase, i.e. payment of consideration is lesser than the value of net asset acquired. The goodwill or the amount of bargain purchase is the difference of:

(a) Aggregation of fair value of consideration transferred, amount of non-controlling interest, if any, and fair value of equity interest acquired earlier, as on the date of acquisition, and,

(b) Aggregate of assets recognised and measured less liabilities recognised and measured in accordance with IFRS 3.

If the difference is positive, the resultant amount is goodwill to be recognised otherwise, the resultant amount is bargain purchase which is transferred to profit or loss. The Standard requires that prima facie if a business is acquired with bargain purchase, then acquirer shall further ascertain that it has recognised all the identifiable assets and liabilities. The Standard requires such reassessment so as to ensure that all available informations have been considered while assessing the asset and liabilities. The amount of computation of goodwill, impact on goodwill due to selection of choice for assessing the amount of non-controlling interest can be understood from an example that H Ltd. acquired S Ltd. in two stages, i.e. in the year 2005, H Ltd. purchased 20 per cent of equity shares of S Ltd. for a consideration of Rs. 10 crore and again in the year 2009, H Ltd. purchased 50 per cent of the equity shares of S Ltd. for Rs. 100 crore. As on the acquisition date, identifiable net asset of H Ltd. is Rs. 150 crore. The fair value of original investment of 20 per cent equity shares is Rs. 40 crore and the fair value of 30 per cent non-controlling interest is Rs. 60 crore. The Goodwill, based on the different method the entity S Ltd. chooses, shall be calculated as follows:

Table - 2

Amount in Rs. (crore)

Particulars	Non controlling interest valued at	
	Fair Value	Proportion of Net Assets
Fair value of consideration transferred	100	100
Non controlling interest	60	45
Interest acquired earlier	40	40
	200	195
Less: Fair value of net asset	150	150
Goodwill	50	45

Subsequent Measurement and Accounting

In general, subsequent measurement and accounting of assets acquired, liabilities assumed or incurred and equity instruments issued in a business combination for acquirer is based on the applicable IFRSs for those items, depending on their nature except in the followings cases, wherein the specific guidance is provided:

(a) *Reacquired rights*: Where a reacquired right is recognised as an intangible asset, it shall be amortised over the remaining contractual period of the contract in which the right was granted. Examples of reacquired rights include a right to use the acquirer's trade name under a franchise agreement or a right to use the acquirer's technology under a technology licensing agreement.

(b) *Contingent liabilities*: After initial recognition and until the liability is settled, cancelled or expires, the acquirer shall measure a contingent liability recognised in a business combination at the higher of:

- **i.** the amount as per IAS 37; and
- **ii.** the amount initially recognised less, if appropriate, cumulative mortisation recognised in accordance with IAS 18 *Revenue*.

Example: Company A acquired the Company B in a prior reporting period. At the time of the business combination, Company A recognised a contingent liability of Rs. 15 lakh in respect of a warranty claim in progress against Company B. On March 31, 2009, the revised estimate of the liability is Rs. 10 lakh and the amount has met the recognition criteria of the IAS 37 to be recognised as a provision.

In this case, the contingent liability has subsequently met the requirements to be reclassified as a provision, and will be measured in accordance with the IAS 37. Accordingly, the liability is measured on March 31, 2009, at Rs. 10 lakh, and the decrease in the recognised liability is recognised through profit or loss during the year ended March 31, 2009.

(c) *Indemnification assets*: At the end of each reporting period an indemnification asset recognised as part of a business combination should be measured on the same basis as that applied on the acquisition date, subject to any contractual limitations on the amount. The acquirer shall derecognise the indemnification asset only when it collects the asset, sells it or otherwise loses the right to it.

(d) *Contingent consideration*: The treatment of subsequent changes to the amount recognised at the acquisition date for contingent consideration depends on the reason for the change. If the change results from additional information about conditions at the acquisition date and it arises within the measurement period, i.e. within 12 months of the acquisition date, the change should be related back to the acquisition date with a possible effect on the goodwill acquired. If the change results from events after the acquisition date, such as meeting an earnings target, reaching a specified share price or reaching a milestone on a research and development project, then:

i. If contingent consideration is classified as equity, then the amount should not be remeasured and its subsequent settlement shall be accounted for within equity.

ii. If contingent consideration is classified as an asset or a liability that is a financial instrument and is within the scope of the IAS 39, the amount shall be measured at fair value, with any resulting gain or loss recognised either in profit or loss or in other comprehensive income in accordance with that IFRS.

iii. If the contingent consideration is classified as a liability or asset but is not within the scope of the IAS 39, it should be accounted for in accordance with the IAS 37 *Provisions, contingent liabilities and contingent* assets or another more appropriate standard.

Sometimes in a business combination transaction, an acquirer may issue share-based payment awards in place of share-based payment awards of the acquiree. Such share-based payment awards are required to be allocated towards purchase consideration and post-acquisition services compensation. Any liability or equity is determined according to principles of the IFRS 2 - Share Based Payment.

Example: If the terms of an acquisition includes that the acquiree's profits for the first full year following acquisition exceeds Rs. 3 crore, the acquirer will pay additional consideration of Rs. 2 crore in cash three months after end of year. Considering the fact of contingency whether the acquiree will achieve this profit, hence the acquisition-date fair value of this contingent consideration is Rs. 50 lakh. At initial recognition, the consideration transferred should be increased by the fair value of the contingent consideration of Rs. 50 lakh, which should be recognised as a liability. If subsequently, the acquiree achieves the earning target, additional consideration of Rs. 1.50 crore (Rs. 2 crore – Rs. 50 lakh) should be recognised as an expense in profit or loss.

Disclosure Requirement

A business combination may result in substantial changes to both the nature of a group and its performance in future periods. The IFRS 3, therefore, requires the disclosure of information to assist in a user's understanding of the nature and financial effect of a business combination that occurs either during the current reporting period or after the end of the reporting period but before the financial statements are authorised for issue.

In addition, information should be disclosed so that users of the financial statements are able to evaluate the financial effect of adjustments made in the current reporting period in respect of business combinations that took place in the current or previous reporting periods. The first group of disclosures has the objective of requiring information about

The Standard requires that prima facie if a business is acquired with bargain purchase, then acquirer shall further ascertain that it has recognised all the identifiable assets and liabilities. The Standard requires such reassessment so as to ensure that all available informations have been considered while assessing the asset and liabilities.

combinations that took place during the period. The name and a description of an acquiree should be disclosed with the acquisition date, the percentage of voting equity acquired and the consideration transferred. The consideration transferred should be broken down into its various elements, like cash and the issue of shares. A note is required to explain the reason for the business combination, the factors that make up goodwill and any intangible assets that did not qualify for separate recognition.

More detailed disclosures are required in respect of any contingent consideration and indemnification assets. Ongoing disclosures are also required in relation to the continuing existence of contingent consideration.

First Time Adoption of IFRS

(a) One of the fourteen exemptions given to first-time adopter pertains to exemption relating to business combination. Accordingly, first-time adopter may elect not to apply the IFRS 3 retrospectively to past business combinations. However, if a first-time adopter restates any business combination, it shall restate all later business combinations and shall also apply consolidation from that date, e.g. if a first-time adopter elects to restate a business combination that occurred on June 30, 2008, it shall restate all business combinations that occurred between June 30, 2008, and the date of transition to IFRSs.

(b) The first-time adopter shall exclude from its opening IFRS statement of financial position any item recognised in accordance with previous GAAP that does not qualify for recognition as an asset or liability under IFRSs.

(c) The first-time adopter shall account for the resulting changes in retained earning except in case of intangible assets that do not qualify for recognition as intangible asset under IFRS, to be adjusted with goodwill.

(d) The carrying amount of goodwill in the opening IFRS statement of financial position shall be its carrying amount in accordance with Indian GAAP (previous GAAP) at the date of transition to IFRSs, after the following two adjustments:

i. Increase the carrying amount of goodwill when it reclassifies an item that it recognised as an intangible asset in accordance with previous GAAP or decrease the carrying amount of goodwill to recognise an intangible asset that was subsumed in recognised goodwill in accordance with previous GAAP,

ii. Impairment testing of the goodwill shall be made at the date of transition to IFRSs and any resulting impairment loss shall be recognised in retained earnings.

IFRS for SMEs

The IASB has issued the IFRS for SMEs (small- and medium-sized entities) in July 2009. Business combinations are the bringing together of separate entities or businesses into one entity. Business combinations between entities under common control are not covered by the IFRS for SMEs. All business combinations are accounted for by applying the purchase method. The steps in applying the purchase method are:

a. identify the acquirer;

b. measure the cost of the business combination; and

c. allocate the cost of the business combination to the assets acquired and liabilities and contingent liabilities assumed at the acquisition date.

The cost of a business combination includes the fair value at the date of exchange of assets given, liabilities incurred or assumed and equity instruments issued by the acquirer, in exchange for control of the acquiree, and any directly attributable costs. These costs are allocated at the acquisition date by recognising the acquiree's identifiable assets, liabilities and contingent liabilities at their fair value at that date, except for non-current assets that are classified as held for sale. These are measured at fair value less costs to sell.

Goodwill (the excess of the cost of the business combination over the acquirer's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities) is recognised as an intangible asset at the acquisition date. After initial recognition, the goodwill is measured at cost less accumulated amortisation and less any accumulated impairment losses. The useful life of goodwill cannot be indefinite; where an entity is unable to make a reliable estimate, the life is presumed to be 10 years.

A business combination may result in substantial changes to both the nature of a group and its performance in future periods. The IFRS 3, therefore, requires the disclosure of information to assist in a user's understanding of the nature and financial effect of a business combination that occurs either during the current reporting period or after the end of the reporting period but before the financial statements are authorised for issue.

Gain on bargain purchase is recognised in profit or loss immediately after management has reassessed the identification and measurement of identifiable items arising on acquisition and the cost of the business combination.

Comparison with Indian GAAP (Major Differences)

In the Indian GAAP, AS 14 - *Accounting for Amalgamation* deals with the accounting for amalgamation and treatment of any resultant goodwill or reserve, which is limited in scope. The major differences between the Indian GAAP and the IFRS are tabulated below:

Table 3

Difference Points	IFRS	Indian GAAP
Scope	The scope of IFRS – 3 is wider and includes both amalgamation and acquisition.	No comprehensive standard. AS 14 applies only in case of Amalgamation.
Method of Accounting	Only acquisition method (purchase method). Use of pooling of interest method is prohibited.	Either purchase method or pooling of interest method.
Acquisition Date	The date on which acquirer effectively obtains the control of the acquiree.	The date of amalgamation as defined in the scheme/court order.
Subsequent Adjustments to Assets and Liabilities	12-month window period is allowed from the date of acquisition.	No adjustment is permitted except certain deferred tax adjustment
Reverse Acquisition	Acquisition accounting is based on substance. Legal acquirer is treated as acquiree and legal acquiree is treated as acquirer.	Acquisition accounting is based on legal form. Legal acquirer is treated as acquirer and legal acquiree is treated as acquiree for both legal and accounting purposes.

Conclusion

A business combination should be accounted for by applying the acquisition method, unless it is a combination involving entities or businesses under common control. Accounting of Business Combination under IFRS is having larger scope and there are pertinent differences between Indian GAAP and IFRS. Even though IFRS-1 provides exemptions regarding retrospective application of IFRS -3 for first time adopter, identification of combination as business verses assets, identification of intangible assets and impairment testing of goodwill will be challenging task for Corporate India during first time adoption.

IFRS in Real Estate – A Technical Area More than Just Accounting & Reporting

As the acronym IFRS (International Financial Reporting Standards) appears with increasing frequency in print, on the Web, and in conversation, real estate (RE) executives have begun to take note of it. RE executives have particular reason to pay attention, as characteristics of their industry make it a prime candidate for early IFRS conversion. Many of the industry's largest players are currently planning or engaged in major IT initiatives, consolidating disparate systems down to a single platform. The benefits in terms of efficiency, productivity, security, and compliance are potentially enormous to companies within the industry. However, much of the work may be for naught if IFRS is not factored into the upgrade. This article explores the concept of IFRS in real estate.

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- **RE is global:** Major RE developers, RE private equity firms, RE owners and operators, and corporate real estate divisions often have operations and assets that span countries and continents.
- **RE is capital intensive:** Major initiatives require significant capital. Accounting and financial reporting provide a vital link between real estate companies and their capital providers.
- **RE is competitive:** In a challenging economy and a highly competitive market, RE companies are continually looking for ways to stay ahead of their rivals.

If the company fits the description above, chances are the management of the organisation is already thinking about IFRS. That's a positive sign, because developments over the last year have shifted the discussion from the abstract and distant to the concrete and near term. "If" is no longer part of the conversation; "when" is now the relevant term.

Transition from Indian Generally Accepted Accounting Practices (GAAP) to IFRS further gained momentum with the set-up of a core group under Chairmanship of the Secretary, Ministry of Corporate Affairs (MCA) with participation from the Reserve Bank of India (RBI), Security and Exchange Board of India (SEBI), the Insurance Regulatory and Development Authority (IDRA), the Institute of Chartered Accountant of India (ICAI), the National Advisory Committee on Accounting Standards (NACAS) and industry representative.

On January 22, 2010, based on the recommendations of the Core Group set up to facilitate IFRS convergence in India, the MCA announced the approach and timeline for achieving convergence with IFRS. This landmark announcement eliminates the uncertainty around IFRS convergence in India.

Two separate sets of accounting standards under the Section 211 (3c) of the Companies Act have been agreed upon by the core Group for convergence of Indian accounting standards with IFRS. First set would comprise of the Indian accounting standards which are converged with the IFRSs which shall be applicable to the specified class of companies in phase as follows. The second set would comprise of the existing Indian accounting standards and would be applicable to other companies, including small and Medium Companies (SMCs).

The Announcement lays down phased approach to convergence. This is similar to the proposed approach of other countries such as Japan and the United States. Convergence with IFRS is planned in three phases as set out below:

Phase 1	Phase 2	Phase3
• Companies included in the Nifty 50; • Companies Included in the Sensex 30; • Companies which have shares or other securities listed on stock exchange outside India; and • Companies (whether listed or not) which have a net worth in excess of INR 1,000 crore.	All companies (whether listed or not) with a net worth in excess of INR 500 crore but less than INR 1,000 crore.	All listed companies with net worth less than INR 500 crore.
1st April 2011	1st April 2013	1st April 2014

If you think the year 2011 (1st April) gives you plenty of breathing room, think again. A conversion effort that is both sane (in the sense of avoiding the fire-drill type atmosphere that characterised compliance with Sarbanes-Oxley and the Y2K problem) and successful (one that can stand up to the scrutiny of regulators, analysts, and your independent auditor) will require a lengthy runway. In mid-2008, the American Institute of Certified Public Accountants announced that it considered a 3-5 year timeline to be reasonable for transition to IFRS. Other organisations have made similar determinations.

Challenges and Opportunities in Real Estate

Conventional wisdom notwithstanding, an IFRS conversion is not primarily an exercise in reshuffling

Companies with global operations or properties usually grapple with numerous statutory reporting requirements under different accounting standards in each country. In such cases, there are significant benefits that can be gained from transitioning the financial reporting of all global subsidiaries and affiliates to IFRS — including potential for reduced lead time in preparing consolidated financial statements, reduced consolidation issues, improved controls, reduced personnel costs, and a centralised approach to addressing statutory reporting issues.

the chart of accounts, nor is it principally a technical accounting and financial reporting matter. In fact, your company is likely to spend significant amounts of time addressing concerns around tax, valuation, treasury, legal, people, technology, and communications. Clearly, a great deal of work lies ahead. Yet, despite these challenges, you may find that the benefits of reporting under IFRS outweigh the costs.

Companies with global operations or properties usually grapple with numerous statutory reporting requirements under different accounting standards in each country. In such cases, there are significant benefits that can be gained from transitioning the financial reporting of all global subsidiaries and affiliates to IFRS — including potential for reduced lead time in preparing consolidated financial statements, reduced consolidation issues, improved controls, reduced personnel costs, and a centralised approach to addressing statutory reporting issues. Transitioning to a uniform set of standards carries the possibility of enhancing shareholder value. Consider these factors:

(a) **Conversion provides a fresh look at current practices:** If your close process includes reconciling multiple GAAPs and dealing with a variety of sub-ledgers, manual adjustments, data hand-offs, and accounting overrides, you may want to consider a fresh look at your policies and procedures. IFRS provides this opportunity.

(b) **Conversion can be a catalyst for streamlining and consolidation:** As your company expands through growth and acquisitions, your information technology systems may become increasingly convoluted. Many companies operate a patchwork of legacy accounting and ERP systems — machines that can't talk directly, leading to error-prone adjustments and reconciliations. Moving to IFRS provides a chance to streamline and consolidate these disparate systems.

(c) **IFRS offers an opportunity to use principles-based accounting:** Many finance professionals have become increasingly frustrated with multiple reporting frameworks and its voluminous rules for dealing with accounting issues. For a decade or more, CFOs and other finance executives have openly pined for principles-based accounting to help standardise and improve the reliability of financial reporting. IFRS answers that wish.

Four Actions for Real Estate Executives:

1. Determine how your standing in the industry will be impacted by a conversion to IFRS. Would reporting under IFRS enhance the presentation of your financial performance and balance sheet to your investors and capital providers?
2. Conduct a competitive analysis. Which of your first- and second tier competitors are, or are going to be, reporting under IFRS?
3. Would it be advantageous to be a leader into this new world of financial reporting? Do you need to adopt IFRS to facilitate comparisons to and benchmarking with your peers?
4. Decide whether early adoption of IFRS aligns with and could be leveraged to support the strategy of your company. Do you have global operations, or do you want to expand your international presence?

(d) **IFRS helps open the doors of the global marketplace:** Adopting IFRS may improve access to foreign capital markets by giving foreign investors greater insight into a company's financial performance. Such investors may be more comfortable with or have more confidence in a globally accepted set of accounting standards. Companies themselves can also benefit from improved ability to benchmark with peers and competitors.

Several European companies are only now starting to explore benefits from IFRS implementation. Due to multiple constraints, the first-year effort in the EU was focused more on "getting it done." Potential benefits in terms of reducing complexity, increasing efficiency, decreasing costs, and improving transparency had to be deferred.

The Roadmap

Whether you plan to charge ahead full steam or take small, measured steps, development of an IFRS implementation roadmap is an important first step. Through this effort, you'll be able to chart your optimal course, determine the pace of your conversion journey, and possibly skirt some detours and potholes.

To start, consider gathering answers to a few preliminary questions:

- Have we inventoried our current IFRS reporting requirements?
- How many local generally accepted accounting principles (GAAPs) do we currently report under?
- How many of our business units (overseas, if any) already prepare IFRS financial statements?
- How might our access to capital be impacted by an IFRS conversion?
- How many of our competitors have converted?
- Do we have a major ERP or finance transformation project in the works?
- Are we involved in or considering a major acquisition?
- What is the level of IFRS knowledge within the company, both domestically and globally?
- What would be the overall impacts on the company of IFRS requirement?
- Have we assessed the costs and benefits of adopting IFRS?

Of course, your IFRS implementation roadmap will likely contain significantly more detail than shown above. Given the far-reaching scope of IFRS, your map-making process may assess the potential impact on each department in your organisation, including finance, human resources, tax, legal, information technology, and investor relations. Other stakeholders may also be involved, including the board, audit committee, shareholders, and your external auditor.

Four Actions for Real Estate Controllers

1. Assess the potential costs and benefits of uniform reporting across your organisation.
2. Create a timeline for IFRS conversion. Highlight the key milestones.
3. Determine your resource requirements — internal and external — for a conversion project. Consider the impact of redeploying internal resources.
4. Collaborate with your Head of ERP/IT to assess system requirements for reporting under IFRS.

By estimating your costs, benefits, and timing up front, you can avoid the rushed approach (and unnecessary expense) that characterised some initiatives such as the Sarbanes-Oxley Act and the Year 2000 issues. A carefully designed roadmap will likely empower your company to convert on its own terms. By taking a measured and informed approach, you improve the likelihood of identifying value in an exercise that otherwise may be reactive and solely compliance driven. The value may show itself in the form of reduced costs of implementation, standardisation and centralisation of statutory reporting activities, enhanced controls over recording of operations of foreign subsidiaries and affiliates, greater standardisation of accounting policy application, faster close processes, and possibly core finance transformation.

The European Experience

In July 2002, the European Parliament passed legislation requiring listed companies to convert to IFRS by 2005. The short time frame and extensive reach of the directive had many companies scrambling to comply. Anecdotal reports from the field suggest that the conversion placed significant resource pressure – human and financial – on finance teams and their companies at large.

A more tangible measurement of the effort can be found by comparing European companies' 2004 (local GAAP) and 2005 (IFRS) financial statements. The latter averaged more than 50 per cent more voluminous than the former; in some instances, reports doubled in length. Much of the increase can be attributed to an increased level of disclosure in the financial statements in areas such as judgments made and assumptions used. Certain accounting issues proved especially vexing during the transition, including asset impairments, financial instruments, lease accounting, and componentization.

> **Measurements of fair value weave their way through many sections of IFRS, transcending many functional areas of a real estate firm, including M&A via purchase accounting or the reporting of investment property at fair value. Fair value also potentially has a direct impact on tax through asset impairment testing, as well as on treasury functions through disclosure and transparency effects.**

Among the lessons learnt from the European experience were the following:

- **The effort was often underestimated:** The original perception that conversion was solely an accounting issue was replaced with a growing realisation that the initiative was much broader, larger, and more complex.
- **Projects often lacked a holistic approach:** Because of the limited view cited above, companies frequently did not take the collateral effects into consideration, such as the impacts on IT, HR, and tax.
- **A late start often resulted in an escalation of costs:** Those few companies that anticipated conversion and took steps to prepare for it were in much better shape than those that did not. Companies that delayed their response paid a price for it, in terms of higher costs and greater diversion of resources.
- **Many companies did not achieve "business as usual" state for IFRS reporting:** The highest quality financial data is obtained when a company fully integrates IFRS into its systems and processes. The compressed time frames precluded this possibility; instead, first-year financials were often produced using extraordinary, labour-intensive, and unsustainable measures.

Several European companies are only now starting to explore benefits from IFRS implementation. Due to multiple constraints, the first-year effort in the EU was focused more on "getting it done." Potential benefits in terms of reducing complexity, increasing efficiency, decreasing costs, and improving transparency had to be deferred.

Four Actions for Real Estate CFOs

1. Assess the potential benefits of presenting

your company's financial data on an IFRS basis.

2. Assess the impact of reporting under IFRS. Consider factors such as volatility of earnings, appropriate IFRS-based performance measures.
3. Access to global capital markets. Examine the potential impact on financing, particularly covenant tests and measures, as well as remuneration and other KPIs in the business and accounts.
4. Create a project management office (PMO) for planning, coordination, and oversight.

Four Actions for Boards of Directors and Audit Committees of Real Estate Entities:

1. Become informed about IFRS. Gain a general overview of the topic through research and/or presentations from external or internal auditors or other resources.
2. Understand management's assessment of the impact of IFRS on the company, including the benefits and costs of adopting, alignment with strategy and other activities/initiatives, and their plans and proposals related to IFRS.
3. Develop and share with management your perspective on IFRS.
4. Understand how management will deal with financial reporting and control risks associated with IFRS.

Two Conversion Approaches

Generally speaking, two approaches to IFRS conversion predominate: all-in and tiered. The former is characterised by a relatively short time frame; simultaneous conversion of all reporting entities; dedicated project teams; and devotion of significant resources. The latter is conducted over a more extended period; with phased conversion of reporting entities; with at least some personnel retaining their "day job" duties; and with a spreading out of project costs. When the European Union converted to IFRS in 2005, it was, for most companies, an all-in effort driven by the tight timelines imposed by the European regulators. Without the luxury of time to convert on a staggered basis, most companies were forced to rush through the process, leading to inevitable inefficiencies and ineffectiveness.

A tiered approach–staged, rational, and measured – to IFRS conversion will likely provide better results. This comes with a seemingly self contradictory caveat: "You'll have to act fast if you want to go slow".

More Than Accounting and Financial Reporting

Without question, the impact of IFRS on the general ledger and the financials will be substantial. But in a relative sense, the accounting may be the easy part. How you handle the non-financial aspects of the conversion may be a more accurate indicator of your success. Among the areas warranting your attention are human resources, legal, M&A, valuation, tax, treasury, and information technology.

Human Resources: IFRS will likely influence your hiring, training, compensation, and termination practices. Consider hiring: How many of your finance staff are currently versed in IFRS? (If you don't know, consider adding a personnel inventory to your IFRS work plan.) Assuming a talent shortfall, how will you make up the difference? If you can't recruit in sufficient numbers, can you train existing staff? You'll need a budget and a plan to do so.

Additionally, many real estate companies calculate bonuses for top executives based on profits. In many cases, reporting under IFRS will change that bottom line. Executive compensation plan revisions may be required to smooth out the differences.

The Investors' Perspective Naturally, the impact of IFRS extends well beyond the finance department. One group that can expect a significant impact is investors.

IFRS is more principles-based and is less prescriptive, and thus requires additional judgment. Accordingly, the disclosures accompanying financial statements become even more important to investors, as they provide information about the decisions made regarding various accounting alternatives and the judgments made by management in preparing the financial statements.

When considering the impact of IFRS, investors may want to consider these questions:

- What are the differences between the GAAP standard I am familiar with and IFRS?
- How do these differences impact my evaluation of the financial performance and position of my investments?
- How do I assess the impact of recording real estate investments at fair value, and the resulting income statement volatility?

Mergers and Acquisitions: Implementation of a single set of accounting standards for all properties, subsidiaries, and joint ventures around the world will allow for streamlined integration of new acquisitions into your company's consolidated financial reporting system. Also, the transparency resulting from fair value reporting of investment properties may impact your strategic business decisions around acquisitions and dispositions based on their likely impact to your financial statements under IFRS.

Tax: As certain foreign jurisdictions require taxes to be paid based on earnings reported in the financial statements, the changes to net earnings due to an IFRS adoption may result in significant fluctuations — increases or decreases — in the foreign taxes owed. This is an area that management would be expected to carefully evaluate as an IFRS adoption is considered.

Adoption of IFRS may also result in changes in profit recognition and ultimately pre-tax income. These changes will likely result in the need to evaluate their impact on the deferred taxes recorded, the timing of reversals of deferred items, and valuation allowances. It is important to acknowledge these changes and understand that the book revenue/expense recognition policies may all need to be reviewed to get them right.

Additionally, the many changes to the financial reporting of assets, liabilities, profits, and losses may result in significant impacts on compliance with regulatory requirements.

Valuation: Measurements of fair value weave their way through many sections of IFRS, transcending many functional areas of a real estate firm, including M&A via purchase accounting or the reporting of investment property at fair value. Fair value also potentially has a direct impact on tax through asset impairment testing, as well as on treasury functions through disclosure and transparency effects. In addition, legal areas may be affected through debt covenants, partnership or joint venture agreements, or even compensation arrangements with employees or management. Estimating, supporting, documenting, and reporting fair value requires a thoughtful process and the allocation of appropriate resources to manage this important aspect of IFRS. Several areas related to fair value estimates may be considered, including the use of qualified specialists; the determination of proper extent and frequency; careful scoping of the analysis and report; and the development of a detailed policy or standard.

Fair value disclosures in financial statements will likely vary in detail; however, they should include information on valuation methods, assumptions (cost of capital, discount rates, capitalisation rates, rental and expense growth rates, etc.), qualification of the valuation specialist, and explanations of fair value conclusions.

When real estate companies evaluate a potential IFRS adoption, the most significant consideration generally relates to the accounting policy choice regarding recognition of investment properties — which under IFRS may be reported at either fair value with unrealised gains and losses reported in earnings or at historical cost.

Treasury: Moving to a global financial reporting model may open up access to new sources of capital. Many global lenders, global private equity firms, and international exchanges require or prefer IFRS reporting due, in part, to its increased transparency into fair values and comparability to other investments or companies. Thus, these sources potentially become new avenues for capital funding, particularly in the current capital markets environment.

Note, however, that greater use of fair value of underlying investment properties may create more volatility in your company's access to capital. That is, not only can reporting under IFRS potentially open up access to additional capital in a favourable fair value environment, but it can also serve to limit the additional capital in an unfavourable fair value environment.

Furthermore, with reporting or disclosure of the fair values of investment properties, management will likely need to understand, evaluate, and manage the expected market reactions to reported volatility in property values. This will represent new territory for most real estate companies.

Additional impacts of IFRS on the treasury function may include the following:

- Companies that choose to present fair value may consider the need to lower their leverage models to ensure that market fluctuations can be adequately absorbed by equity.
- Companies may need to consider and revise existing debt terms for covenants base on financial results which don't make sense or are no longer attainable under IFRS.
- Transparent presentation of the fair value of collateral (whether presented on the balance sheet or disclosed in the footnotes) may alter lenders' evaluation of creditworthiness and

Determining whether an agreement for the construction of real estate falls within the scope of IAS 11 or IAS 18 depends on the terms of the agreement and all the surrounding facts and circumstances, and judgement will be required with respect to each agreement. When IAS 11 applies, the construction contract also includes any contracts or components for the rendering of services that are directly related to the construction of the real estate.

may impact the terms of new debt instruments related to collateral values and covenants.

Information Technology: Expansive real estate holdings equal extensive IT needs. From leasing data to depreciation schedules to tax recordkeeping to recording the fair value of investment properties, there's plenty of financial information for real estate companies to track. The merits of a single consolidated system to do this are well known but, unfortunately, not widely practiced. Rather, a patchwork of legacy systems, home grown programs, standalone machines, and inherited equipment often predominates. Constantly changing portfolios complicate an already far-from-simple picture. In sum, it's a situation calling out for remedy.

Fortunately, real estate companies have heard the call. Many of the industry's largest players are currently planning or engaged in major IT initiatives, consolidating disparate systems down to a single platform. The benefits in terms of efficiency, productivity, security, and compliance are potentially enormous to companies within the industry. However, much of the work may be for naught if IFRS is not factored into the upgrade. Any initiative of such magnitude should not only accommodate present needs, but must be able to seamlessly handle future needs. And, as noted, reporting under IFRS will be an inevitable future need.

The latest versions of many enterprise resource planning (ERP) systems have IFRS capabilities, but adopting them is not akin to flipping a switch. If you don't plan for an IFRS conversion at the earliest stages of your upgrade, you will likely find yourself engaged in a lengthy and expensive reconfiguration effort a few years down the road. Even if a major IT overhaul is not in the works, a change in accounting standards will likely require modifications to your financial reporting systems to accommodate information not currently required under GAAP. It may also be necessary to modify or rework certain business process IT systems, particularly those that are relied upon to accumulate data and feed into the accounting and financial systems.

Technical Accounting Issues for Real Estat Companies

Under IFRS, management will be required to use more professional judgment than they are accustomed to.

The sets of standards differ on a number of points and can significantly affect a company's financial results. Although the extent of these differences is dwindling as a result of convergence, significant differences remain in areas such as investment properties, PP&E, leasing, impairment, income taxes, and revenue recognition. Also, as IFRS generally allows for more choices than GAAP, differences in accounting for similar transactions under IFRS may result. This is particularly evident in the accounting for investment properties under IFRS which allows the choice of accounting using historical cost or fair value.

A – Statements of Financial position

Investment Properties: When real estate companies evaluate a potential IFRS adoption, the most significant consideration generally relates to the accounting policy choice regarding recognition of investment properties — which under IFRS may be reported at either fair value with unrealised gains and losses reported in earnings or at historical cost. The choice to move from the historical cost model under GAAP to a fair value model under IFRS may significantly alter the fundamental look and feel of a real estate company's financial statements. Balance sheets will likely more closely align with the true economics of the company's holdings while income statements will include increased volatility as a result. Even if the fair value reporting option is not elected under IFRS, the fair values of investment properties must still be disclosed in the footnotes to the financial statements (unless not determinable).

Property, Plant & Equipment (PP&E): The main difference between GAAP and IFRS in accounting for PP&E used in the business (as opposed to held for investment, which would be considered investment property) is the requirement under

IFRS to componentized significant parts of real estate and equipment that have different estimated useful lives. That is, each significant part of an asset with a different useful life or depreciation pattern is accounted for and depreciated separately. For example, a newly acquired building would likely not be recorded as a single asset, but rather as several component assets such as a building shell, heating system, and roof. The depreciation of the cost of the building is based on the separate estimated lives for each component, rather than based on a weighted average of the components' lives, which is currently the practice under GAAP.

Furthermore, IFRS provides companies a choice of accounting for PP&E under either the historical cost model (which is the most preferred model under GAAP) or a revaluation model. Although the revaluation model is not widely used under IFRS, it does require companies to re-measure PP&E at fair value and record the change in value directly to equity. However, under this model, depreciation is recorded from the re-valued amount, typically resulting in a higher depreciable basis and higher depreciation expense.

Leases: There are several key characteristics in IFRS in the area of lease accounting, including:

1. IFRS lease accounting standards cover a wider range of transactions. IFRS covers lease arrangements for all assets, with the exception of certain intangibles.
2. IFRS focuses on the transfer of risks and rewards concept for lease classification, IFRS has operating and finance leases classification.
3. In leases of land and building, IFRS requires that the land and buildings elements of a lease be considered separately for purposes of lease classification, unless the land element is immaterial. Whereas, in addition to the significance of the land element, GAAP considers the land and building elements a single unit unless certain specific criteria are met. During the European and certain Indian conversions, this proved to be a particularly time-consuming process; many companies needed expert advice to assist with the value split.

If you are already going through — or recently completed — an enterprise resource planning (ERP) or finance transformation project, now may be the time to consider IFRS adoption. Recent versions of major ERP systems are designed to accommodate IFRS, which can be mapped in, usually with significant cost savings.

Sale of real estate: IFRS does not draw a significant difference between a sale of real estate and a sale of other assets – both follow the concept of transfer of risks and rewards for sale recognition. IFRS/IFRIC provides guidance relating to the sale of real estate.

Sale-leaseback transactions: IFRS applies the principles to all sale-leaseback transactions; that is, it does not draw a distinction between sale-leaseback of equipment and that of real estate. Therefore, more sale-leaseback transactions may qualify for de-recognition of the asset from the balance sheet under IFRS.

Under IFRS, the profit recognition on a sale-leaseback transaction is based on the classification of the leaseback and whether the sale transaction was entered at fair value. If the leaseback is an operating lease and the sale is at fair value, the profit is generally recognised immediately. If the leaseback is a finance lease, the profit is deferred and amortized over the lease term. The profit might also be required to be deferred and amortised based on the relationship between the sale price, fair value, and the carrying amount of the asset sold and leaseback.

Joint Ventures: IFRS requires venturers to record their share of jointly controlled assets and jointly controlled operations, which do not have a legal entity structure, and requires venturers to record their interests in jointly controlled entities. IFRS includes an option to present a venturer's interest in jointly controlled entities under either the equity method or proportionate consolidation.

Initial adoption: IFRS requires one year of comparative financial information to be reported under IFRS based upon the rules in effect at the reporting date.

Generally, companies must apply initial adoption rules retrospectively—with some limited exceptions. Any differences resulting from the change in accounting policies upon the initial adoption date of IFRS are recorded directly through retained earnings. Key adoption differences or exceptions specific to real estate companies include:

- Fair value estimates of investment properties at initial adoption date need to be consistent with estimates made at the same date under GAAP (after adjustment to reflect any difference in accounting policies), unless there is objective evidence that those estimates were in error.

- Contracts (including leases) existing at the date of adoption will require review to determine if they contain a lease on the basis of facts and circumstances existing at either inception of the agreement or the adoption date, and judgment will be required to determine the appropriate classification of leases under IFRS.
- PP&E that previously did not require impairment losses if the undiscounted cash flows exceeded carrying value may require write-down at adoption date if recoverable value is less than carrying value.
- At initial adoption, a company may elect to measure PP&E or investment property at the date of transition to IFRS at its fair value and use that fair value as its deemed cost at that date (if the historical cost model is used for investment property instead of fair value).
- Acquisitions and business combinations prior to the date of initial adoption do not require retrospective application of IFRS related to the assets and liabilities acquired.

B - Income statements

The International Financial Reporting Interpretations Committee (IFRIC) issued IFRIC 15 Agreements for the Construction of Real Estate. The Interpretation addresses the accounting for revenue and associated expenses by entities that undertake the construction of real estate directly or through subcontractors. IFRIC addresses two (related) issues:

- Determining whether an agreement for the construction of real estate is within the scope of IAS 11 "Construction Contracts" or IAS 18 "Revenue"; and
- When revenue from the construction of real estate should be recognised. The Interpretation provides additional guidance on the distinction between 'construction contracts' and other agreements for the construction of real estate. Agreements involving the construction of real estate will need to be examined carefully to determine whether they should be accounted for in accordance with IAS 11 or IAS 18. Entities most affected are likely to be those that undertake construction of multiple-unit developments. For some agreements falling within the scope of IAS 18 and involving the supply of goods, the Interpretation has introduced a new concept, i.e. that IAS 18's revenue recognition criteria may be met 'continuously as construction progresses'. In such circumstances, revenue is recognised by reference to the stage of completion of construction, using the percentage of completion method.

An IFRS project cannot be a distraction from the primary activities of your business. It must be integrated, coordinated, and aligned. It starts now with some preliminary questions and a carefully drawn roadmap. And it ends somewhere in the twenty-teens when you report for the first time under a single unified standard. Whether the journey from here to there is rocky or smooth may be entirely up to you.

Determining Whether agreement is within Scope of IAS 11 or IAS 18

Determining whether an agreement for the construction of real estate falls within the scope of IAS 11 or IAS 18 depends on the terms of the agreement and all the surrounding facts and circumstances, and judgement will be required with respect to each agreement. When IAS 11 applies, the construction contract also includes any contracts or components for the rendering of services that are directly related to the construction of the real estate.

If the contract under consideration meets the definition of a 'construction contract' in IAS 11, then the accounting for the contract is determined in accordance with that Standard. A construction contract is defined as 'a contract specifically negotiated for the construction of an asset or a combination of assets …' [IAS 11] An agreement for the construction of real estate meets the definition of a construction contract when the buyer is able to specify:

- The major structural elements of the design of the real estate before construction begins; and/or
- Major structural changes once construction is in progress (whether it exercises that ability or not).

In contrast, if construction could take place independently of the agreement and buyers have only limited ability to influence the design of the real estate (e.g. to select a design from a range of options specified by the entity, or to specify only minor variations to the basic design), the agreement will be for the sale of goods or the rendering of services and within the scope of IAS 18. The applicable requirements of IAS 18 will be determined by whether the agreement is an agreement for the rendering of services or an agreement for the supply of goods.

Accounting for Revenue From Construction of Real Estate

Construction contracts (within the scope of IAS 11): Where the agreement is a construction contract under IAS 11, and the outcome of the contract can be estimated reliably, revenue is recognised by reference to the stage of completion of the contract activity in accordance with IAS 11.

Agreements for the rendering of services (IAS 18): Where the agreement falls within the scope of IAS 18, and the entity is not required to acquire and supply construction materials, it may be only an agreement for the rendering of services. This may arise, for example, in arrangements where the customer acts in essence as its own general contractor and enters into agreements with individual suppliers for specific goods and services. Where the entity is responsible only for assembling materials supplied by others (i.e. it has no inventory risk for the construction materials), the agreement is an agreement for the rendering of services. In such circumstances, if the criteria in IAS 18 are met, revenue is recognised by reference to the stage of completion of the transaction using the percentage of completion method.

The requirements of IAS 11 are generally applicable to the recognition of revenue and the associated expenses for such a transaction.

Agreements for the sale of goods (IAS 18): An agreement for the construction of real estate will be an agreement for the sale of goods under IAS 18 if it involves the provision of services together with construction materials. For such contracts, the applicable recognition criteria are those set out in IAS 18.

The Interpretation focuses on the criteria that revenue can only be recognised when the entity has transferred to the buyer control and the significant risks and rewards of ownership of the goods, and distinguishes between circumstances in which these criteria are met 'at a single point in time' and 'continuously as construction progresses'.

If transfer of control and the significant risks and rewards of ownership of the real estate in its entirety occurs at a single point of time (e.g. at completion, upon or after delivery), revenue is recognised only when all the criteria in IAS 18 are satisfied. Assuming that all of the other criteria in IAS 18 are met, this will be upon the occurrence of that single critical transfer of control and the significant risks and rewards of ownership. The Interpretation also envisages that the entity may transfer to the buyer control and the significant risks and rewards of ownership of the work in progress in its current state as construction progresses. In this case, if all of the criteria in IAS 18 are met continuously as construction progresses, revenue is recognised by reference to the stage of completion using the percentage of completion method. The requirements of IAS 11 are generally applicable to the recognition of revenue and the associated expenses for such a transaction.

Smoothening the Transition

If you decide an accelerated IFRS conversion is desirable, here are a few considerations for smoothening implementation:

Leverage existing projects: If you are already going through — or recently completed — an enterprise resource planning (ERP) or finance transformation project, now may be the time to consider IFRS adoption. Recent versions of major ERP systems are designed to accommodate IFRS, which can be mapped in, usually with significant cost savings.

Conduct a trial run: Implementation might be easier if you take a bite-sized approach starting with a single country or reporting entity. Use existing reporting requirements and local country IFRS requirements to your advantage. For example, subsidiaries in countries adopting IFRS over the next three years may be good candidates for your trial run. Learn from this initial conversion exercise, and apply the lessons learned to your global rollout down the road.

Consider shared services centres: IFRS provides a compelling reason to establish shared services centres to potentially consolidate dozens of local GAAPs down to a single reporting standard.

Geographically-dispersed finance offices could be drastically reduced or even eliminated in favour of a central finance function, strategically located to take advantage of tax incentives, payroll savings, and facilities cost reductions. In many cases, this concept is already aligned with the strategic direction real estate companies have taken or are currently considering relative to their finance function.

Strengthen controls: Many real estate companies have operations located across the globe. A decentralized structure can sometimes lead to reduced oversight and weakened controls. IFRS offers the opportunity to implement standardized frameworks and processes to enhance the overall control environment.

Refresh your policies: Conversion to IFRS drives a need to revisit revenue recognition, impairment, share-based payments, cost capitalization, and other accounting policies. In other words, IFRS provides a refresh exercise for accounting policy implementation, with the aim of more accurate and timely financial reporting.

Improve your access to capital: When it comes to raising capital, trends are clearly global. IFRS can potentially improve liquidity and access to capital by offering greater transparency, in the form of full and better disclosure, to investors.

Access to capital may also be enhanced by virtue of aligning with a common standard. Markets and investors have been demanding a common standard for years, and IFRS has increasingly served that need. As such, companies reporting under IFRS may have an improved ability to access other capital markets that have adopted the standard.

The Business Case for IFRS

Not everyone is sold on the merits of IFRS. If you find yourself needing to convince others, consider some of these talking points:

- **Global positioning:** We do business globally; our brand is international; we are expanding into new markets. Our financial reporting should be a reflection of this operational reality.
- **Cost savings:** We are currently reporting under multiple standards —U.S. GAAP, local GAAPs, and IFRS. Consolidating to a single reporting standard and eliminating the large number of accounting reconciliations will yield potentially significant savings.
- **Inevitability:** IFRS is coming. If we start soon, we can implement a phased, efficient, and orderly process and likely avoid the chaos that has typified other major projects.
- **Access to global capital markets:** Aligning with the global reporting standard may bring the company to the attention of international investors and open up new sources of capital.
- **Alignment:** We are already undergoing a major [ERP/finance transformation/IT system/ fill in the blank] project. If we integrate our IFRS conversion effort with this project, we can make better use of our resources while ensuring that the two work harmoniously together.
- **Internal control:** Accounting policies and procedures will be refreshed during an IFRS conversion project; the number of financial reporting standards used and reconciliations required will drop dramatically. Net result: improved accuracy and timeliness of financial reporting.

Time for Leadership

You are in an enviable position because you possess knowledge that many others in your organization may not: the movement toward IFRS is inexorable, and the initiative involves multiple corporate functions, not solely finance.

So you have a choice: either sit back and wait for it to happen (with all the attendant uncertainty and risk), or mobilize your company to attempt to extract every possible benefit and dodge every avoidable obstacle.

By starting now, you will likely spread out your costs, get the jump on your competition, and reel in scarce talent before it vanishes. You can avoid the fire-drill atmosphere that characterises most last-minute projects. You can improve your processes and systems. You can integrate with other initiatives, such as an ERP upgrade or a merger or acquisition. Most important, you can do it on your own terms, at a pace that suits your company and its circumstances. Real estate companies are characterised by intensive activity that places major demands on financial and human resources. An IFRS project cannot be a distraction from the primary activities of your business. It must be integrated, coordinated, and aligned. It starts now with some preliminary questions and a carefully drawn roadmap. And it ends somewhere in the twenty-teens when you report for the first time under a single unified standard. Whether the journey from here to there is rocky or smooth may be entirely up to you.

Promoting the Interest of Stakeholders

Internal/Concurrent Audit of Investment Functions of Insurance Companies

Owing to the liberalisation and globalisation of the insurance sector, now-a-days insurers have a huge amount of funds collected from the insured in the form of premium to be invested in private and corporate sectors, housing and infrastructure sectors, etc. In view of the voluminous funds, it is imperative that a periodic review of investment functions of insurers be carried out through Internal Audit or Concurrent Audit with the aim of addressing 'safety' of policyholders' funds and supporting a good quality investment portfolio towards 'Solvency Margin'. This article provides an overview of the internal/concurrent audit of investment functions of insurance companies.

(Contributed by the Secretariat, Committee on Banking, Insurance and Pension. The committee can be contacted at cobip@icai.org)

Investment department of insurance companies manages investments of the companies, comprising both "shareholders" and "policyholders" funds. Owing to the liberalisation and globalisation of the insurance sector, now-a-days insurers have a huge amount of funds collected from the insured in the form of premium to be invested in private and corporate sectors, housing and infrastructure sectors, etc. This necessitated the regulators to frame regulation to make insurers properly use the freedom provided, but at the same time, through exposure norms, ensure that such flexibility is not used beyond permitted levels. Therefore, it is required to regulate the investment functions of insurers, even in the market driven economy, as the money involved in insurance business represents huge 'public savings'. Moreover, what the public invests in insurance companies is out of the savings of policyholders and not out of surplus, unlike in case of deposits with banks. Because of this fact, the regulations keep 'policyholders' protection' as the prime concern. But the regulator of the insurance sector in our country i.e. Insurance Regulatory and Development Authority (IRDA), responsible for developing the insurance sector, allows investing in different investment avenues, by weighing the various risks associated to efficiently serve the policyholders and also ensure an orderly growth of insurance business. Let us have a quick look on the total investments made by the insurers, both life and non-life separately, for public and private sectors during the Financial Year 2008-09.

The Insurance Regulatory and Development Authority (IRDA) vide its Circular dated 22nd August, 2009, has mandated the insurers (both Life and General Insurance Business) having Assets Under Management (AUM) [both shareholders' and policyholders' funds taken together] over Rs. 1000 crore to appoint a firm of the Chartered Accountants as Concurrent Auditor to have its investment transaction and related Systems audited at least once in three years. Other insurers have an option to get its investment transaction and related systems audited either through internal resources or by a firm of chartered accountants on a quarterly basis.

Total Investments of the Insurance Sector

(As on 31st March) (Rs. Crore)

INSURER	Life		Non-Life		Total	
	2008	2009	2008	2009	2008	2009
Public Sector	*678403*	*799593*	*47216*	*47782*	*725619*	*847375*
	(21.32)	*(17.86)*	*(6.89)*	*(1.20)*	*(20.26)*	*(16.78)*
Private Sector	*87567*	*116772*	*9064*	*11111*	*96630*	*127883*
	(84.68)	*(33.35)*	*(45.91)*	*(22.59)*	*(88.76)*	*(32.34)*
Total	**765969**	**916365**	**56280**	**58893**	**822249**	**975258**
	(26.78)	*(19.63)*	*(11.70)*	*(4.64)*	*(25.62)*	*(18.61)*

Note: Figure in brackets represents growth in per cent over the previous year.

(*Source:* *IRDA Annual Report 2008-09*)

Importance of the Investment Functions

In view of the above-mentioned voluminous funds, it is imperative that a periodic review of investment functions of insurers be carried out through internal audit or concurrent audit with the aim of addressing 'safety' of policyholders' funds and supporting a good quality investment portfolio towards 'solvency margin'. It is known that the internal/concurrent audit is an examination, which is contemporaneous with the occurrence of transactions or carried out as near as there to as possible. It attempts to shorten the interval between a transaction and its examination by an independent person not involved in its documentation. By nature, the internal audit and concurrent audit are very much similar as both are initiated by the management itself. But there is a basic difference between internal audit and concurrent audit i.e. concurrent audit is regular audit of any transactions while internal audit is a periodic audit. The audit is expected to cover all the transactions, without any exception, recorded during the period covered in the Audit Report. Such audits prove to be a very good review mechanism in the hands of the management as well as the regulator to ascertain whether the transactions/decisions are within the policy parameters laid down by the "Investment Committee" formed by the board, and are in compliance with the terms and conditions for exercise of delegated authority and do not violate the guidelines of IRDA and the Insurance Act.

Introduction of Internal/Concurrent Audit

The Insurance Regulatory and Development Authority (IRDA) vide its Circular dated 22nd August, 2009 has mandated the insurers (both Life and General Insurance Business) having Assets Under Management (AUM) [both shareholders' and policyholders' funds taken together] over Rs. 1000 crore to appoint a firm of the Chartered Accountants as Concurrent Auditor to have its investment transaction and related systems audited at least once in three years. Other insurers have an option to get its investment transactions and related systems audited either through internal resources or by a firm of chartered accountants on a quarterly basis. But in former case, if the internal auditor is an employee of the insurer, the internal auditor shall be a Chartered Accountant and the internal audit report shall be signed by the head of internal audit cell. An insurer who gets covered under AUM clause of over Rs. 1000 crore for the first time, for the purpose of applicability of internal/concurrent audit, will continue to have the investment functions concurrently audited, even if the AUM falls below Rs. 1000 crore, subsequently.

Objectives of Internal/Concurrent Audit

The objectives of IRDA behind regulating the investments of the insurance companies through the internal/concurrent audit of investment functions of insurance companies are as under:

- To ensure the safety of funds, which belong to the policyholders
- To maintain quality of invested assets to support the prescribed solvency parameters of the insurer
- To prohibit insurers from investing the funds in the high risk investments despite lower interest rate regimes
- To compel insurers for proper diversification

The auditor is required to obtain assurance whether the investment policy and SOP are framed to provide adequate control over investment operations of the company, investment policy and SOP of the company are in compliance with the minimum requirements of IRDA issued from time to time and other applicable statutory requirements and the transactions relating to the investments are in line with the applicable IRDA regulations and guidelines; investment policy is approved by the Board of Directors of the company and all the transactions are covered by the Standard Operating Procedures approved by the Investment Committee of the company.

of the investment portfolio in order to prevent them from taking a controlling stake, out of policyholders' funds, in any company by limiting exposure either to 'Debt' or 'Equity' mode
- And last but not the least, to fulfill the need of earmarking some portion of investible funds for social obligations and channelising the savings of the people coming to insurance companies by way of premium into community development, infrastructure development, socially oriented investments, provision for basic amenities in rural areas, etc.

Methodology of Internal/Concurrent Audit

The Internal/Concurrent audit is expected to cover 100 per cent of transactions of all fund(s) as per the periodicity prescribed. The scope of the audit is envisaged on:
- Confirming the implementation of Investment Risk Management Systems and Process, as committed by Insurers Board, listing the proof based on which such confirmation is made.
- Confirming the implementation of Audit Committee of the Board's recommendation of previous quarter.
- Review of the Standard Operating Procedures & Systems supporting the investment process.
- Review of investment related transactions and operations.
- Audit Report & Certification.

Key Issues in Internal/Concurrent Audit

The auditor is expected to review the investment policy and Standard Operating Procedure (SOP) of the insurer for compliance with IRDA guidelines issued in this regard and investment related transactions and operations covering the following:
- Extensively the Front Office, Mid Office & Back Office functions, the Investment domain requirement and Systems and Process supporting the investment transactions.
- Follow-up of all previous pending audit observations.
- All categories of investments permissible, falling under both shareholders' and policyholders' funds.
- All transactions/operations and have the same periodicity as that at which such transactions are recorded.

The frequency of the audit shall be daily/weekly/monthly as required by the level of transactions at the insurer's level. However, a consolidated report shall be prepared once every quarter.

Expectation from Internal/Concurrent Audit

The auditor is required to obtain assurance whether the investment policy and SOP are framed to provide adequate control over investment operations of the company, investment policy and SOP of the company are in compliance with the minimum requirements of IRDA issued from time to time and other applicable statutory requirements and the transactions relating to the investments are in line with the applicable IRDA regulations and guidelines; investment policy is approved by the Board of Directors of the company and All the transactions are covered by the Standard Operating Procedures approved by the Investment Committee of the company. The auditor is also required to certify that the company has complied with the applicable IRDA regulations, investment policy, all transactions have followed the procedure laid down in the Standard Operating Procedures approved by the Investment Committee, covering front, mid and back offices and has taken cognizance of, addressed and resolved all issues of non-compliance, reported in the certificate issued by the Chartered Accountant appointed for reporting on status of implementation of Investment Risk Management Systems & Process Audit (based on proof of implementation given by the insurer) and the issues reported by the Concurrent/Internal audits in the previous periods, subject to report if any unresolved issues remain.

Contents of Internal/Concurrent Audit Report

The internal/concurrent audit report shall mandatorily contain the following points and even if there is no observation on any of these points, it shall be clearly reported by way of a NIL Statement to that effect:
- Transactions recorded but NOT covered by SOP.
- Issues having impact on Systems or Process

but NOT covered by SOP with procedure for handling such issues in front, mid and back office.

- Transactions which have breached:
  - i. Internal norms;
  - ii. Regulatory norms (including circulars & guidelines issued from time to time);
  - iii. Act (violations).
- Issues having impact on the Systems or Process, COVERED by SOP with suggested amendment to the SOP covering front, mid and back office.
- Issues identified and resolved having NO impact on Systems or Process.
- Transaction following different SOP, falling under a single category (as per IRDA guidelines on category of investment), or under different fund(s).
- Audit Confirmations on the following specific issues:
  - i. Whether the insurer had classified various risks for investment impact reporting. Have the same been approved by Investment Committee?
  - ii. Have the Dealing Employee Guidelines been properly implemented as required under the guidelines?
  - iii. Whether the insurer had complied with commitment of implementing the Investment Systems and Process, as communicated to IRDA?
  - iv. Split between shareholders and policyholders funds, in the case of Life Insurance Companies and earmarking of Securities between life (par & non-par), pension & group (par & non-par), unit linked fund(s).
  - v. If funds have been split between share-holders' funds and funds representing solvency margin, are the same identified at custodian level with earmarked securities?
  - vi. Reporting matrix of CIO, CRO and CFO
  - vii. Compliance to exposure norms at individual fund level (particularly for ULIP funds).
  - viii. Is 'units' in the case of ULIP business reconciled through the system between Policy Admin System, Actuarial System and Investment System (without manual intervention).

A checklist shall be prepared by the auditor and to be annexed with the audit report covering all the areas as envisaged in the scope of the audit. The ICAI, through its Technical Guide on Internal/ Concurrent Audit of Investment Functions of Insurance Companies, has recommended Audit Checklist (separately for life and non life insurers) with the periodicity of verification and suggested business impact.

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The audit report shall take into consideration the feedback of Investment Committee, before issuing the same to the Audit Committee of the Board. A copy of the report, with all necessary revisions, is required to be filed along with Form-4 as prescribed under IRDA regulations. Form 4 shall be certified by the CEO/CIO/CFO of the company prior to its filing with the IRDA.

It is anticipated that through Internal/Concurrent Audit of the investment functions of insurance companies as mandated by the Authority, its objectives, as detailed above, would be achieved.

An Index to the Audit of Educational Institutions

In recent times, higher education has attracted unprecedented attention because of the evolving global knowledge society and the Central Government's education policy. Prime Minister Dr. Manmohan Singh has described the Eleventh Five Year Plan as "Educational Plan". Huge accumulation of money due to levy of education cess and launching of Scholarship Funds by state governments has led to liberalisation of the educational loans, more grants from the University Grants Commission to both government and aided colleges and spurt of new institutions. To ensure that educational institutions comply with the government policy, a quality audit of these institutions is a must. This article delves into audit of educational institutions and related issues and aspects.

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In his report, Dr. D. C. Kothari has rightly pointed out that the 'destiny of India is now being shaped in her class room'. This, we believe, is no more rhetoric. In a world based on science and technology, it is education that determines the level of prosperity, welfare and security of the people. To have better involvement of the Centre in imparting quality education to all the people, irrespective of their religion and region, the Centre has included the education in the concurrent list as "Education including technical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of the list I'. Constitution was also amended to provide compulsory education up to 14 years of age.

India is the second largest country in terms of population, having a population that exceeds 110 crore. Naturally, it can't afford to provide employment to all. Hence, many people have to move to foreign countries but only those who are very well qualified can do so for gainful employment. Due to heavy demand for courses related to present day professional requirements, there has been steady rise in the number of educational institutions, being set up both by government and private sector. There is no statutory requirement of auditing and reporting on its financial statements. If not, the same is required by their constitution

Now-a-days, even though they are not statutorily required to be audited, the educational and other governmental authorities insist upon audited statements. Naturally, there should be high demand for auditors in the area of education. As the educational institutions are surviving mainly on donations, fees income from students and grants from governments, their accounts need to be properly maintained, audited and certified by a chartered accountant.

under which they are functioning such as Societies Registration Act, Indian Trust Act, Companies Act, etc. But now-a-days, even though they are not statutorily required to be audited, the educational and other governmental authorities insist upon audited statements. Naturally, there should be high demand for auditors in the area of education. As the educational institutions are surviving mainly on donations, fees income from students and grants from governments, their accounts need to be properly maintained, audited and certified by a chartered accountant.

It is expected from an auditor of any entity to have the knowledge of all related provisions and the acts that might have impact on the working of educational institutions. For example, Companies Act, Societies Registration Act, Indian Trusts Act, Income-tax Act, Central Excise, Customs, Service Tax, VAT, Factories Act and other laws connected with that like EPF, ESI, etc. But in the present case all acts connected with the manufacturing or service activities do not come in picture.

There are many crucial points that need to be taken into account for effective audit of educational institutions. The auditor has to issue various certificates connected with such institutions' functioning such as Income & Expenditure Account, Receipts & Payments Account and Balance sheet. They may also be required to certify the utilisation certificates for the assistance/various grants received from the government and other various sponsors of these projects.

The main sources of income of any government institution/aided institution are the Teaching Grant to meet the salaries of the teaching and non-teaching staff, and the Autonomy Grant for the purchase of office equipment, furniture, books and journals, renovation, office salary expenses of regular Controller of Examinations, etc. Each head of Expenditure has ceiling amount within which the institution is expected to spend. The auditor has to go through carefully the terms and conditions of sanctioning to ensure that the expenditures have been done for their avowed purposes only.

In case of capital assets purchased, such as equipment, furniture, etc., they should be entered in the assets Register. In case of library books, the same should be entered in the Accession Register. The UGC expects the institution to spend the allotted grant within that financial year.

Next source of income is Fees Collection from the students. This is being collected under two heads, one as Tuition Fees and another as Special Fees. Tuition fees collected is adjusted against Teaching Grant receivable. The Special Fees is collected for various allowed purposes such as library, sports, examination, convocation, etc. The amounts received under various heads have to be credited to the respective heads and should be spent for that specific purpose only. It can carry over 20 per cent of its receipts to the next financial year and it has to be spent within next April/May, the main intention of it is that there should not be dearth of funds until the collection of fees for the next academic year. All the amounts received should be deposited in the Scheduled Banks only. Either the principal or the secretary/corrsepondent alone should have the drawing powers. All the receipts from students should be entered in a daily fee collection register and the total receipts of a particular date should be entered in the main cash book. All the transactions in the bank /cash register should be verified with the bank statement. At the month end, bank reconciliation statement should be prepared. All cash withdrawals should be verified with the cash book. Except petty expenses, all payments should be made only by cheque or transfers. At the year end, confirmation of balance by banks should be obtained.

In addition to the above, UGC and other institutions such as Defence Laboratories and other government departments sanction amounts for carrying out project works/seminars, etc. In such

Another vulnerable point at which pilferages are rampant is library. The auditor should verify Accession Register in which all the purchases are entered. Each book is allotted two numbers — one accession register number and another call number. In addition to regular purchase of books out of Autonomy Grant, books that are purchased for the use of project works and books that are donated also should be entered in accession register. Then the books are arranged in respective racks. The auditor should test check physically at least 20 per cent of the books available.

cases, the auditor has to verify the sanction letter for its terms and conditions. He has to verify that amounts spent have been complied with the terms and conditions of its sanctioning. A separate bank account has to be opened for each project work and the project coordinator normally authorised to spend the amount for project purpose. All payments should be properly supported by bills/external evidences and on no account self declaration should be accepted.

Another vulnerable point at which pilferages are rampant is library. The auditor should verify Accession Register in which all the purchases are entered. Each book is allotted two numbers — one accession register number and another call number. In addition to regular purchase of books out of Autonomy Grant, books that are purchased for the use of project works and books that are donated also should be entered in accession register. Then the books are arranged in respective racks. The auditor should test check physically at least 20 per cent of the books available. Normally, the management should arrange for physical verification of all the Books by its own staff and list out the missed Books. Sometimes the staff might have taken some books for reference but the auditor should insist upon to return of the books otherwise the cost should be recovered. Similarly, some students might not have returned the books before due date. In such cases also, they should be asked to return the books otherwise the cost has to be recovered. The auditor may also insist upon the authorities to prepare such statement as below at the year end:

Total number of Books as per Accession Register	....
Less: Books lost but the cost collected	....
Books lost and written off	....
Books that are issued but not returned by Staff	....
by Students	....
Books lost but not written off	....
Books physically available	....

At the year end, the Auditor has to prepare a check list as below:

Income-tax Act, 1961

Whether either of the provisions of the following sections of the Act are applicable to the institution:

Section 10(23C)(iiiab): Any University or other educational institution existing solely for educational purposes and not for profit and which is wholly or substantially financed by the government.

(iiiad): Any University or other educational institution existing solely for the purpose of education and not for profit if the aggregate annual receipts of it do not exceed Rs. 1 crore.

(vi): Any University or other educational institution existing solely for educational purposes and not for profit, other than those mentioned in clauses (iiiab) and (iiiad) and which is approved by the prescribed authority.

In appropriate cases, the auditor has to ascertain that tax has been deducted at source at the time of payment of:

(i) Salary under the Section 192
(ii) Rent under the Section 194
(iii) Payments to contractors under the Section 194C

And wherever the provisions of the Chapter XVII are applicable.

As per provisions of the Section 206C of the Income-tax Act 1961, every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot shall collect an amount @2 per cent as Income Tax. Normally educational institutions lease out such parking lots such as cycle sheds. Here also a question arises whether the parking lot referred to is car parking alone or cycle shed also because as per Oxford Advanced Learner's Dictionary' 'parking lot' means an area where people can leave their cars. The auditor has to decide prudently.

Another point of dispute between local fund authorities and the educational institution is with regard to levy of property tax. In the recent judgement of the Madras High Court with regard to levy of property tax, the court held that the generality of the purpose stated as "for the purpose of education" clearly supports the case that irrespective of the character whether they were aided or unaided or run on self-finance pattern, free or restricted, recognised or otherwise the purpose of the building alone qualifies claim for exemption.

In another judgement of the Madras High Court, in the case of Sri Ram Educational Trust the Bench held that "it is not possible to accept the plea of the local body that the charge for the stay in the hostel for the facility therein must be treated as rent. The overall fee charged for the facilities offered as part of undergoing schooling therein and does not make a student a tenant. Consequently the hostel premises cannot be said to yield rent to justify the levy of property tax. Thus, they are not liable for property tax. But of course, the institutions have to pay water tax. They also have an obligation to collect professional tax from their staff and remit it to the government.

The Auditor also should satisfy himself that all the properties of the institution such as buildings, equipments, furniture, library books, etc. are properly insured. Further, now-a-days the institutions take individual insurance policies on the students' life and they collect the same from the students to avoid any liability on account of death due to accident, etc.

For the welfare of the inmates of the hostel, the institutions run dispensary with the essential drugs used in case of emergency and also engage regular

Most of the educational institutions run hostels and canteen for the benefit of its students. This is another area for making frauds, pilferages, etc. as it involves purchases of thousands of rupees worth of stores such as grocery, vegetables, milk, fuel, etc. Normally, purchases are made through invitation of tenders for a particular month. The Auditor has to verify the bills with the rates quoted by the approved supplier. He should ensure their entries with the Stock Register.

consultant physicians. The Auditor has to verify that the payments made to the physician are according to the number of visits as per the security guard's inward register.

Most of the educational institutions run hostels and canteen for the benefit of its students. This is another area for making frauds, pilferages, etc. as it involves purchases of thousands of rupees worth of stores such as grocery, vegetables, milk, fuel, etc. Normally, purchases are made through invitation of tenders for a particular month. The Auditor has to verify the bills with the rates quoted by the approved supplier. He should ensure their entries with the Stock Register.

At the month end, all issues for boarding plus other overheads such as electricity, etc. are added to arrive at the amount payable on dividing basis per boarder. The auditor has to verify the correctness of the working sheet and ensure that no loss is incurred by the management on account of non-recovery of any such recoverable amount.

The auditor should ensure that sufficient caution deposit is collected from the inmates of the hostel to meet the contingency of non-recoverable of the dues from him. The fees for the amenities provided such as room, furniture, medical, library, security, maintenance, etc are collected from them per semester.

If any new construction is going on/or completed during the year, the auditor has to verify the approved contractor's bills duly authenticated by a duly qualified Consulting Engineer. He should also vouch for recovery of the materials supplied by the management, TDS and retention money, etc. and similarly in the case of building maintenance, machinery maintenance, equipments maintenance and general maintenance.

Now-a-days most of the institutions maintain vehicles for the transportation of their staff and students. The institutions collect fees from the users at appropriate rates. The auditor has to verify the collections and that there is no loss of revenue on this score.

It is suggested to obtain the list of students strength for each course per semester and to verify the fees collection tallies with the students strength. If there is any variation, a reconciliation statement has to be prepared with the dropouts and additions.

Normally there might be accumulated surplus funds. The auditor has to take cognizance of this fact and report to the management the amounts lying idle, if any.

Certain recurring expenses have to be met by the management such as salary of menial staff for the routine maintenance of building, equipments, garden, petty expenses like travelling, entertainment, etc. The auditor should verify the payments and to have better control over its spending it is better to suggest preparation Annual Budget.

Realising that any Degree alone would not be sufficient to secure a job, even the government as well as aided institutions, and other private charitable institutions claim exemption under the Section 10(23C) of the IT Act, conduct courses such as Fine-Arts, vocational courses, personality development, etc. But by its Notification N0.7/2003 dated June 20, 2003, the Central Excise Department has brought into its Service Tax net "commercial training, coaching center which has been defined in the Sections 65(26) and (27) of the Finance Act 1994, but exempts pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force. But in the case of *Wigan & Leigh college (India) Ltd vs. Joint commissioner of Service Tax Hyderabad*, the denial of benefit under Notification No. 0/2003-ST with the plea that the applicant was not registered with the AICTE is not correct as there is no such stipulation in the said notification and the trainees are imparted with the skills that enable them to seek employment or undertake self employment. Instead of taking the risk whether to collect service tax or not it is advisable for the auditor to verify whether the institutions, which offer such courses, are recognised by law or else it has to collect and pay service-tax.

In case of staff other than those who are under GPF, the institution is liable for contributing EPF for its members. The auditor has to verify the contributions.

The Auditor has also to verify the correctness of the Returns, such as IT Return, TDS Return, EPF Return and for that matter all other Returns that might have to be submitted to the connected Authorities.

It is advised that the auditors should well train their assistants to audit the educational institutions, which are vulnerable for committing frauds, pilferages and misappropriations due to the absence of proper overview of its day-to-day affairs by the representative of the management. Hence the Auditors' responsibility is more onerous since its affairs are subject to vigilant audit by the government auditors annually by the connected government departments.

Cross-Border Movement of Personnel — Service PE Issues

The increase in foreign investments in Indian economy has led to significant cross border movement of personnel. Cross-border movement of personnel has its own exposures. Presence of personnel of foreign entity in India for more than a specified period may expose the foreign entity to creation of a Service Permanent Establishment ('Service PE') in India. The concept of Service PE is a departure from the general rule that the foreign entity should have a fixed base in India for creation of PE as a PE may be constituted by mere rendering of services. This article attempts to analyse the concept of Service PE as enumerated under the tax treaties and the readers would need to also analyse the taxability under the Income-tax Act, 1961 ('Act'), before arriving at a conclusion.

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

The Indian economy over the last half a decade or so has been on a considerable upswing, fuelled to an extent by the upsurge in the foreign investments to expand the existing facilities or to set up new facilities or industries. The increase in foreign investments has led to significant cross border movement of personnel. It is generally seen that the Indian party enters into a technical collaboration agreement or support service agreement with the foreign entity to help set up their project or incorporate latest technology. To provide the services for the Indian project, the foreign entity sends its technical or managerial personnel.

However, cross-border movement of personnel has its own exposures. Presence of personnel of foreign entity in India for more than a specified period may expose the foreign entity to creation of a Service Permanent Establishment ('Service PE') in India. Service PE can get triggered by merely providing of services in host country beyond a particular threshold of period even if the foreign entity has no fixed place of business in India. Therefore, the concept of Service PE is a departure from the general rule that the foreign entity should have a fixed base in India for creation of PE as a PE may be constituted by mere rendering of services.

Concept and Background of Service PE

Before analysing Service PE, it would be useful to broadly understand the concept of a PE. A tax treaty is normally signed between two countries to allocate and decide the taxing rights amongst both the nations for various streams of income. Generally, the business receipts of the seller/service provider (other than certain specific receipts like technical service fees) are taxable in the country where the seller/service provider is a

The intention behind inclusion of the concept of a PE in treaties is to determine the taxing rights of the countries over the income earned by an entity of home country from significant operations in a host country. A PE has been generally defined under the tax treaties as a fixed place of business through which the enterprise carries on its business wholly or partly.

resident. However, in certain specific situations say like the existence of the PE, the said receipts are also taxable in the source country. Thus, the intention behind inclusion of the concept of a PE in treaties is to determine the taxing rights of the countries over the income earned by an entity of home country from significant operations in a host country. A PE has been generally defined under the tax treaties as a fixed place of business through which the enterprise carries on its business wholly or partly. A few illustrations of PE are an office, a branch, factory, workshop, a mine or an oil or gas well or a place of extraction of natural resource, etc.

As mentioned above, the concept of Service PE goes beyond the requirement of a fixed place of business. The Service PE article is covered in the United Nations (UN) Model Convention, though it does not find place in the Organisation for Economic Cooperation and Development (OECD) Model Convention as well as the United States (US) Model Convention. The rationale for including the Service PE clause appears to tax significant economic activity in the host country which occurs through presence of personnel in that country. India too has entered into treaties with many countries that contain the provisions relating to constitution of Service PE. The rationale for including the Service PE clause appears to tax significant economic activity in the host country which occurs through presence of personnel in that country.

To understand the concept of Service PE, it may be useful to refer to the Article 5(3) of the UN Model Convention, which lays down the provisions for creation of a PE from rendering of services in other country which is as under:

"(a) …….

(b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a contracting state for a period or periods aggregating more than six months within any twelve-month period."

The above concept lays down that a service PE would be triggered in the other country on fulfillment of the following conditions:

i) The <u>services are rendered</u> by the company belonging to one country in other country;

ii) The services are rendered for a total period of more than six months in a twelve month period;

iii) It renders services through its <u>own employees or some other personnel engaged by it</u>;

iv) It renders services including <u>consultancy services</u>, in other country; and

v) The services are rendered for the <u>same project or a connected project</u>.

Therefore, if the above-mentioned conditions are fulfilled by the foreign entity, then it may constitute a service PE in the host country. In case it has a Service PE, the profits which are attributable to that PE would be taxable in the host country.

Further, whilst the UN Model Commentary has a six-month threshold for constituting Service PE, it is generally seen that certain tax treaties signed by India lay down a stricter threshold limit for triggering the Service PE in case of associated enterprises. For example, the India-USA treaty specifies that rendering of services to an associated enterprise for even a single day would trigger a Service PE whereas the corresponding limit in relation to non-associated enterprise is 90 days within any 12 months.

The concept of Service PE is unique in the sense it does not follow the basic criteria of a fixed place of business for constitution of PE. Further, very limited guidance is available on the same in the Model Commentaries or otherwise and the clause is absent in the OECD Model Convention (though the same is proposed to be included in the revised model, discussed later in the article). Therefore, some issues generally arise while interpreting the provisions of Service PE which are analysed hereunder:

1. Which services would get covered under the ambit of Service PE?

At the outset, it is necessary to evaluate as to which services would be covered within the ambit of Service PE. The Model commentary relating to the provisions of the UN Model does not shed any light on which services would get covered under the scope of Service PE clause. However, the use of words *'The furnishing of services, including consultancy services'* suggests that the intention is to include rendering of services of all types within the scope of Service PE.

Services which are in nature of stewardship activities should not be considered for the purpose of determining whether a Service PE is triggered or not. In this regard, the Supreme Court in its landmark decision in the case of *Morgan Stanley (292 ITR 416)*, held that performing of stewardship activities by the foreign company should not be considered as services for the purpose of Service PE clause as such stewardship activities are essentially shareholder activities.

Services covered as Fees for Technical/Included services generally excluded from ambit of Service PE

In this regard, further it may be noted that most of the treaties signed by India also have an Article relating to taxation of Fees for Technical/Included services which seeks to tax the rendering of services by a foreign company on a gross basis. Therefore, to avoid any conflict on the scope of either Article, Service PE clause of the treaties entered into by India specifically excludes services which are covered under the Article relating to Fees for Technical Services from the ambit of Service PE. For example, the Service PE clause of the India-US treaty specifically excludes from its scope services which are covered under Article 12 relating to Royalties and Fees for Included Services. The same is as under:

"(l) the furnishing of services, other than included services as defined under Article 12 (Royalties and Fees for Included Services), within a Contracting State by an enterprise through employees or other personnel………."

Similarly in treaties entered by India with other countries as well, the Service PE clause seeks to tax only those services which do not get covered under the ambit of article relating to Fees for Technical Services or Fees for Included Services.

Illustration – USA Inc. enters into an agreement with India Ltd. under which its employees would visit India for 200 days during the Financial Year 2009-10 to render technical services which make available technical knowhow to India Ltd. In this illustration, whilst the stay of the personnel exceeds the threshold period specified under the India – USA tax treaty for the Service PE clause, the said service would not constitute a Service PE in India as the same would be separately taxed as Fees for Included services under Article 12 of the tax treaty, on a gross basis.

Whether stewardship services included?

Stewardship activities refer to a wide range of activities undertaken by a shareholder solely because of its ownership interest in one or more group members, which may include provision of services to a group entity. In other words, it refers to an intra-group activity, which may be performed relating to group members even though those group members do not need the activity (and would not be willing to pay for it were they independent enterprises).

Services which are in nature of stewardship activities should not be considered for the purpose of determining whether a Service PE is triggered or not. In this regard, the Supreme Court in its landmark decision in the case of *Morgan Stanley (292 ITR 416)*, held that performing of stewardship activities by the foreign company should not be considered as services for the purpose of Service PE clause as such stewardship activities are essentially shareholder activities. Stewardship services are generally rendered to protect the interests of the foreign company and these do not involve rendering of any service to the Indian concern. Therefore, the same may not be considered while evaluating whether a Service PE has been triggered.

Whether Deputation services are included?

Deputation in general means to appoint or assign someone to perform an assignment or service. In the context of cross-border movement of personnel, deputation means assigning an employee to some other company in a foreign territory to perform a service or undertake an assignment. During the term of the deputation period, the employee may either remain on the payroll of its original employer or if the payroll is shifted to service recipient, then such employee continues to exercise lien over his original job. The issue is whether the deputation of employees tantamount to 'furnishing of services' so as to covered under the Service PE clause. The Supreme Court in the case of *Morgan Stanley (292 ITR 416)* has held that deputation services rendered by a foreign entity would be considered for the purpose of determining constitution of a Service PE where the deputed employee performs the services under the supervision and control of the foreign entity and the employee holds a lien on his employment in the foreign company. Accordingly, deputation structures would need to be carefully evaluated to assess Service PE exposure.

2. Services to be rendered for a total period of more than six months within any 12 month period

What constitutes a month for calculating the period of six months?

The UN model convention provides for rendering of services for a total period of six months in any 12-month period to trigger a Service PE. However, the commentary does not explain what would constitute a 'month' for the purpose of this clause or how the period of six months is to be calculated.

Use of the word 'month' in the Service PE clause leads to a question as to whether the term month is to be interpreted as a calendar month or a period of 30 days. While technically it may be possible to consider month as a calendar month, it would lead to practical difficulty of how to consider part of a month. For example, if a foreign company renders service in India from 5th September to 4th October, then following interpretations are possible:

a) Services are spread over two calendar months, therefore, the period would be considered as two months; or
b) Services are not rendered over any completed calendar month, therefore the period should not be considered; or
c) Only the month of September should be considered as services are rendered for more than half the month or more than 15 days

Considering that interpreting 'month' as a calendar month would lead to the above confusion, it is possible that 'month' is considered as a period of 30 days. However, this issue is generally avoided in the Indian context, since the Service PE clause in most of the Indian treaties specifically mentions the period specifically in number of days barring a few exceptions.

Period of six months within any 12-month period

The UN Model specifies that the threshold period of six months should be computed within 'any 12-month period'. Accordingly, the period of 12 months is to be computed on a rolling basis i.e. say the first personnel arrives in February 1, 2009, the period of six months within the overall 12 months would be computed starting from the month of arrival up to 12 months.

However, the issue which merits discussion is whether the Service PE would be triggered in the Financial Year 2008-09 when the stay is only for two months or whether the PE would be triggered only when the six-month period is crossed in the Financial Year 2009-10.

In this regard, reference may be drawn to the Protocol to the India–USA tax treaty which provides that when the time period extends over two taxable years, the permanent establishment would not exist in the year where the stay is less than 30 days. Accordingly, the permanent establishment would exist only in the other taxable year and only on that income arising during that year.

Also, another interesting variant is in the India–Singapore tax treaty where the threshold limit is to be calculated within a fiscal year instead of the rolling period of 12 months. Accordingly, whilst the aggregate stay of the Singapore Company's personnel in India may exceed the threshold period, as long the same is within the specified threshold in each fiscal year, there would not be any service PE exposure.

Whether 'day' can be considered as man-day?

There was confusion as to when more than one personnel of the foreign company provided services simultaneously, whether the day should be counted as one or whether day should be interpreted as a man-day i.e. aggregating the total days of providing service by all the personnel. While the intention was to always consider 'day' as a singular day irrespective of the number of personnel deputed by foreign company on that particular day, arguments were made in some quarters that 'day' should be construed as man-days and therefore, if more than one personnel was present on a particular day, it should be construed as more than one day depending upon the number of personnel.

In this regard consider a situation where a USA entity deputes its two employees X & Y to India. Employee X of US entity rendered services in India from 1st April to 25th May. Employee Y rendered services from 10th May to 20th June. In such a case, if one day was to be construed as one man-day, then the total days can be counted as 96 days (55 days of X and 41 days of Y); or if one day was to be construed as a singular day then total days can be counted from 1st April to 20th June i.e. period during which the US entity through its employees rendered services. In that case, the total days would come to 81 days.

In the above example, if the first method is to be followed then as per the Service PE clause of India-

The issue which merits debate is whether the tax treaty may create burden which is not present even under the domestic law of India. For instance, as a one day visit may not trigger a 'business connection' under the Section 9 of the Indian Income-tax Act, 1961 ('Act'), it is possible in such situations to rely on the domestic law and avoid PE situations.

US treaty, the US entity would form a Service PE in India. However, Service PE would not form if the latter method was followed.

In this regard, reference may be made to the decision of the Mumbai Tribunal in the case of *Clifford Chance, United Kingdom Vs Deputy Commissioner of Income-tax (2002) 82 ITD 106*, which in the context of Article 15, stated as under:

"In our opinion multiple counting of the common days is to be avoided so that the days when two or more partners were present in India, together, are to be counted only once. Multiple counting would lead to absurd results. For example, if 20 partners were present in India together for 20 days in one fiscal year, multiple counting would result in 400 days. There cannot be more than 365 days in a year. Therefore, this system of multiple counting leads to absurdity. Therefore, it should be avoided."

While the ratio was laid down in context of Article 15, considering that the analogy is pretty much the same in case of provision relating to Service PE, the same view can be adopted even in the case of Service PE. The above decision is pretty much the settled position but considering that the decision has been rendered in context of Article 15 of the treaty and the fact that the decision has been rendered by the Tribunal, the position as it stands now may be challenged in future.

Rendering of service for even one day may constitute a Service PE

Some of the treaties entered into by India contain provisions where a Service PE may be constituted even by rendering services for a single day to an associated enterprise. For example, the provisions under the India-USA treaty may be referred to, which are as under:

"(l) the furnishing of services, other than included services as defined under Article 12 (Royalties and Fees for Included Services), within a Contracting State by an enterprise through employees or other personnel, but only if:

(i) ……..

(ii)The services are performed within that State for a related enterprise (within the meaning of paragraph 1 of Article 9 (Associated Enterprises))."

The above sub-clause under the India-USA treaty does not specify any threshold limit for forming of a Service PE in case the services are rendered to an associated enterprise. Accordingly, where the services have been rendered to an associated enterprise even for a single day, a Service PE may get triggered. India's treaties with Australia and Canada also contain similar provisions where a Service PE may get triggered for services rendered for a single day.

In absence of sufficient clarification/ judicial precedents, the issue whether 'other personnel' in respect of Service PE would cover only individuals or also cover companies remains open for debate. Nonetheless, it can be reasonably construed that a Service PE would be triggered only where the 'other personnel' work under the instructions of the foreign company and the foreign company is in turn responsible for the work of the 'other personnel'.

The issue which merits debate in this scenario is whether the tax treaty may create burden which is not present even under the domestic law of India. For instance, as a one day visit may not trigger a 'business connection' under the Section 9 of the Indian Income-tax Act, 1961 ('Act'), it may be possible in such situations to rely on the domestic law and avoid PE situations.

3. Services rendered by own employees or any other personnel engaged by foreign entity

The UN Model commentary states that the services should be rendered by the employees of the foreign entity or can also be rendered by other personnel engaged by it. The use of the words 'any other personnel engaged' by it enhances the scope of the Service PE clause substantially. Therefore, in a situation where the foreign entity hires a sub-contractor in India to perform a set of service and if the services are rendered beyond the specified period then also the foreign entity may trigger a Service PE in India irrespective of the fact that not a single employee of the foreign entity might have been present in India.

The question that arises then is whether any person hired by a foreign company can trigger a Service PE. The issue has not been subject matter of a detailed discussion before the judiciary, though in the context of paragraph 3 of Article 5 of the OECD Model convention (Construction or Installation PE), Commentary provides that *'…If an enterprise (general contractor) which has undertaken performance of a comprehensive project subcontracts parts of such a project to other enterprises (subcontractors), the period spent by a subcontractor working on the building site must be considered as being time spent by the general contractor on the building project…'*

Further, attention is invited to the decision of the Mumbai ITAT in the case of *Lucent Technologies*

International Inc vs. DCIT (28 SOT 98) wherein the ITAT held that the term 'other personnel' would cover persons over whom the enterprise would have control and as the US company provided services to its Indian subsidiary through employees of its affiliate concerns over whom it had control, the same would constitute a Service PE.

Whether 'other personnel' include a company or not?

An attendant question would be whether the term personnel would cover only individuals or would also cover companies. The OECD Model Convention at para 10 to Article 5 states in the context of fixed place PE that personnel would include both, the employees as well as other persons receiving instructions from the enterprise (e.g. dependent agents). However, a similar clarification in context of Service PE is not provided in the commentary to the Model Convention. Accordingly, in absence of sufficient clarification/judicial precedents in this regard, the issue whether 'other personnel' in respect of Service PE would cover only individuals or also cover companies remains open for debate.

Nonetheless, it can be reasonably construed that a Service PE would be triggered only where the 'other personnel' work under the instructions of the foreign company and the foreign company is in turn responsible for the work of the 'other personnel'.

4. Services are rendered for the same or connected project

The UN Model states that the services are to be rendered for the same or a connected project. Therefore, where the foreign entity renders services in other country for more than a specified period of time but the services have been rendered for separate and unrelated projects, then time spent on all the projects should not be aggregated to decide whether Service PE is triggered or not. The UN commentary on the model also suggests that it is not appropriate to add together unrelated projects.

A view could be adopted that PE is not limited to a Fixed place PE and may include other types of PE such as Service PE, whereas the other view could be that what has not been expressly provided under the Statute should not be read into, and hence PE under the Act should be limited to a Fixed Place PE. In absence of adequate precedents in this regard, the issue may merit further deliberation.

However, it should be noted that in many of treaties entered by India (viz. treaties with USA, UK, Singapore, Australia, Canada, etc.), the Service PE clause does not contain the phrase 'same or connected project' and, therefore, the time spent on all the projects even though they may be unrelated and separate projects may need to be aggregated.

5. Definition of PE under the Act – whether includes Service PE?

Whilst the tax treaties have a concept of PE, the Indian Income Tax law has a concept of 'business connection' which is wider in ambit than the concept of PE. Finance Act, 2003 inserted the Section 44DA which laid down special provisions for computing income by way of royalties or fees for technical services rendered by a non-resident entity through a 'permanent establishment' situated in India. For the purposes of the Section 44DA, PE has been defined to *include a fixed place of business through which the business of the enterprise is wholly or partly carried on*. The above definition is an inclusive one and, therefore, the issue is whether the same also includes Service PE. A view could be adopted that PE is not limited to a Fixed place PE and may include other types of PE such as Service PE, whereas the other view could be that what has not been expressly provided under the Statute should not be read into, and hence PE under the Act should be limited to a Fixed Place PE. In absence of adequate precedents in this regard, the issue may merit further deliberation.

Important Judicial Developments on Service PE

Morgan Stanley (292 ITR 416)(SC)

In one of the most important and landmark decisions in the context of Permanent Establishment in India, observations made by the Honourable Supreme Court while rendering the decision have been adopted as a criteria for determining whether rendering of services leads to formation of Service PE or not. To summarise the findings of the Supreme Court, it held that the foreign entity must render service in India. Additionally, it should fulfill the following conditions:

a) The foreign entity is responsible for the work of its employees or the personnel engaged by it; and
b) The employees rendering services on behalf of the foreign entity remain on the payroll of the foreign entity or they continue to hold lien on their employment with the foreign entity.

Therefore, where the foreign entity has deputed its employees to India for rendering services and the employees while rendering services remain on the

Where the foreign entity has deputed its employees to India for rendering services and the employees while rendering services remain on the payroll of the foreign entity and work under the control and supervision of the foreign entity or the foreign entity is responsible for their work, then the foreign entity would create a Service PE in India.

payrolls of the foreign entity and work under the control and supervision of the foreign entity or the foreign entity is responsible for their work, then the foreign entity would create a Service PE in India.

Further, it is not necessary that the employees remain on the payrolls of the foreign entity. In case the employees have been shifted to the payrolls of the Indian company but the employees at all time retain the right over his original employment, then also a Service PE may be created. It is interesting to note that the Indian company is referred as the Service PE by the Supreme Court and not the employees of the foreign enterprise.

The Honourable Supreme Court, as discussed earlier, also distinguished Stewardship activities from rendering of services and held that Stewardship activities should not be considered as service while evaluating whether a Service PE is constituted or not.

Tekmark Global Solutions LLC [2010] 3 taxmann.com 38 (Mum – ITAT)

In the facts of the case, Tekmark Global Solutions LLC ('Tekmark') deputed its employees to an Indian company. The employees worked under the supervision and control of the Indian company. However, they continued to remain on the payrolls of Tekmark while they rendered services in India. Tekmark recovered their salary costs from the Indian company.

The ITAT while rendering its decision held that Tekmark had only deputed its employees to the Indian company and it did not provide any technical service to the Indian Company. Further, the employees worked under the direction and supervision of the Indian Company and Tekmark did not have any control over its employees. Further, Tekmark only received a reimbursement of the salary costs of its deputed employees and did not earn any income from the said arrangement. Therefore, it was held that Tekmark did not constitute a Service PE in India.

The above ruling confirms that mere deputation of employees to India would not constitute a Service PE in India so long as the foreign company is not responsible for the work of its employees (or the employees do not work under the supervision and control of the foreign entity), even though the employees may continue to be on the payrolls of the foreign entity.

Way Ahead

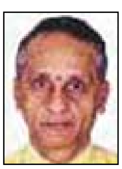
As mentioned earlier, the OECD Model does not contain a Service PE clause. However, as the economies of the developing countries grow and there is an increased cross-border exchange of personnel, OECD has proposed to introduce the concept of Service PE in the draft OECD Commentary. Accordingly, even the OECD also recognises to move beyond the 'fixed place' PE situations to a scenario where mere presence of personnel would lead to a PE. Further, as India moves outbound to acquire business overseas, the Indian groups would also need to be aware of the increasing exposures of constituting Service PEs abroad.

Considering the tax risk posed, the companies would need to carefully evaluate their cross border deputation structures so that it is not 'trapped' in the 'web' spun by the Service PE clause.

The OECD Model does not contain a Service PE clause. However, as the economies of the developing countries grow and there is an increased cross-border exchange of personnel, OECD has proposed to introduce the concept of Service PE in the draft OECD Commentary. Accordingly, even the OECD also recognises to move beyond the 'fixed place' PE situations to a scenario where mere presence of personnel would lead to a PE.

Beat the VAT; Say 'Fryum' is *Papad*

Interesting questions often come up in judicial courts world wide, simply because no one can define everything and, if defined, sometimes it has its inherent imperfections. But, for this, a lot of tax disputes would have vanished. Suppose, if we have one single average rate of tax for all goods, many of the tax disputes and tax advisors would disappear from the scene. In some of such interesting cases, the courts, for tax purposes, have held that 'Fryum' are snacks and not *papads*; ice-cream is a milk-product and not a confectionary item; Carbon paper is not a paper as per the common understanding of the product. Read on to know more.



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If you have a knack, you can say 'Fryum' is not a snack and save a significant amount of VAT on it. Our women would have never thought that *papads* would become an issue demanding the attention of scarce resources of the Supreme Court of India.

But it is, as it would make a difference to the bottom line of TTK Healthcare Ltd., which approached Karnataka High Court on an unfavourable ruling by the Authority for Advance Ruling and Clarifications under the Karnataka VAT Act, 2003. But it lost its case, as the High Court held 'Fryum' are snacks and not *papads*. The High Court seems to have considered that the *papad* is generally thin, round and flat in size whereas 'Fryum' are in various sizes

There are umpteen judicial pronouncements in India and worldwide which have well established the Judicial Principle that is commonly known as "Common Parlance Test". This principle clearly says that the law makers while levying a tax or otherwise do not consider factors like its technical terms, ingredients, method of processing, use or characteristics, shape or size but go by the commonly known name of a product. So, what is important is by what name the product is known to the people.

and shapes like circular and rectangular.

But the company seems to maintain that 'Fryum' are papads by holding to the view that the ingredients for making the papad and 'Fryum', the process of making them and the consumption pattern for both are identical. The cereal-based ready-to-fry snack pellets are sold by the company under the brand name 'Fryum'.

Note that *papads* are exempt from the Karnataka VAT, whereas snacks are subject to a VAT @12.5 per cent. So, for the company and tax authorities, it is worth fighting the legal battle by even approaching the Supreme Court.

Such interesting questions often come up in judicial courts worldwide, simply because no one can define everything and, if defined, sometimes it has its inherent imperfections.

But for this, a lot of tax disputes would have vanished. Suppose, if we have one single average rate of tax for all goods, many of the tax disputes and tax advisors would disappear from the scene. But reality is otherwise and the business of "tax disputes" thrives.

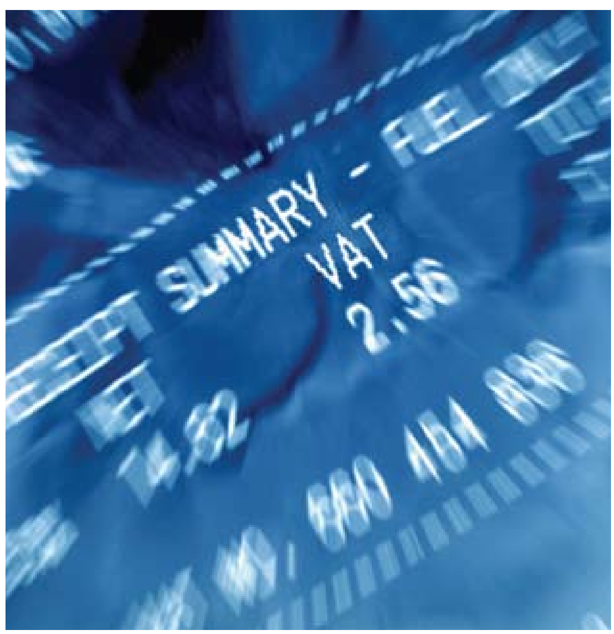
TTK Health Care's Case

Indeed, 'Fryum' was in news even in earlier Supreme Court Judgment (*Commissioner of Commercial Taxes and Others vs. TTK Health Care Ltd, Appeal (Civil) 309 of 2002* decided on 11th April, 2007) but in a different context. The Commissioner of Commercial Taxes, M.P., ruled that the above item was not a "cooked food" and neither it was a papad nor namkin nor cereals. The company sought to classify it as "cooked food", so that it attracts only 4 per cent sales tax as against classifying under "Others not mentioned in any of the other schedules" attracting higher rate of sales tax.

The Supreme Court in the above case held that "cooked food" is a consumable ready to eat and 'Fryum' is semi-cooked or under-cooked food as it needs to undergo further cooking process prior to its consumption and the company thus lost its case.

Common Parlance Test

There are umpteen judicial pronouncements in India and worldwide which have well established the Judicial Principle that is commonly known as "Common Parlance Test". This principle clearly



says that the lawmakers while levying a tax or otherwise do not consider factors like its technical terms, ingredients, method of processing, use or characteristics, shape or size, etc., but go by the commonly-known name of a product. So, what is important is by what name the product is known to the people.

Seldom, the trade name of a product may differ from its common name and, in such cases, the trade name shall be considered. Trade name is the name under which the product is bought and sold in the market place.

If one goes to a retailer and asks for *papad*, no man can think that he would offer you 'Fryum'. So, it is just a knack to say that the 'Fryum' is not a snack.

In one case in 1961, the Supreme Court observed that "The rule of interpretation in such cases is that particular words used by the Legislature in the denomination of articles should be understood according to the common commercial understanding of the term used and not in their scientific or technical sense, for the Legislature does not suppose our merchants to be naturalists or geologists or botanists." Such views were expressed by the Superior Courts in Western countries also.

Justice Pollock, in *Grenfell vs. IRC (1876) 1 Ex D 242* said that a word in Statute should be construed as per its Popular Sense and not in the strict legal or technical sense.

Principle of Popular Sense

Over 125 years ago, Justice Pollock, in *Grenfell vs. IRC (1876) 1 Ex D 242* established the fundamental concept of understanding and interpreting the legislature intent of a word in Statutes. He said a word in Statute should be construed as per its popular sense and not in the strict legal or technical sense. "Popular Sense" means that which people conversant with the subject matter with which the statute is dealing, would attribute to it. Legislature does not suppose our merchants to be naturalists, geologists or botanists.

Application of Common/Trade Parlance Test

Of Course, the Common/Trade Parlance Tests apply in cases where the Law is silent on the definition/interpretation of an item.

The VAT law of the Karnataka State exempts *papads* from VAT for the economic reason to encourage cottage industry but it is another matter that *papads* are also made and sold by the large corporates now a days and the law fails to address this issue.

For tax purposes, a pencil is taxed under stationery irrespective of the fact that a person may buy it for use to scratch his back! Similarly, if you buy cellotape, you may use it for packing goods, yet it is taxed as stationery item as it is known in the market, as such and not as packing material.

Courts held ice-cream as a milk-product based on common commercial understanding of the term and refused to accept it as a confectionary item.

Carbon paper is not a paper as per the common understanding of the product. So, it cannot be classified as a paper.

Seldom, the trade name of a product may differ from its common name and, in such cases, the trade name shall be considered. Trade name is the name under which the product is bought and sold in the market place.

Royalty and Fees for Technical Services: Treatment in DTAAs and the Indian Income-tax Act, 1961

At its core, this article concerns itself with the interaction between tax treaties and domestic law, and whether Indian law presents a case of treaty override, the discussion being restricted to the subject matter of royalty payments and fees for technical services (FTS). The true significance of this paper, however, lies in the fact that in order to achieve this goal, the reader will be informed of Indian domestic law on international taxation, a comparative analysis of certain important DTAAs to which India is a party, and the latest trend in the judicial interpretation of these DTAAs.

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In this article, the reader would be imparted with the knowledge of the provisions of the Indian Income-tax Act, 1961 that apply to non-residents, nature of a few DTAAs that India is a party as well their implementation within the domestic framework. The article would specifically deal with the context of royalties and fess for technical services only. At this juncture, the author also wishes to note that for the sake of simpler understanding, the author has generally assumed that the non-resident does not have a permanent establishment within the territory of India.

Domestic Law (Indian Income-tax Act, 1961)

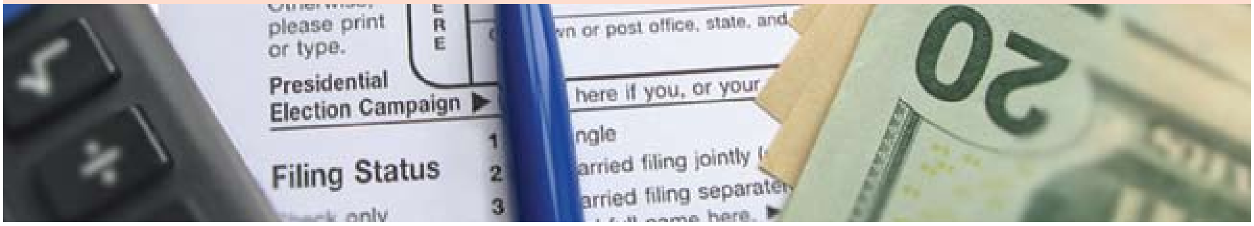
Since the subject matter of the article is International Taxation, the scope of discussion is restricted to just non-residents in India. Under the Income-tax Act, 1961 (IT Act), the scope of taxable income differs depending on whether the assessee is "ordinarily resident in India" or just "resident in India" or is a "non-resident in India."[1] In case of an assessee who is ordinarily resident in India, all income from whatever source derived would be assessable to tax in India, which:[2]

a. is received or is deemed to be received in India in such year by or on behalf of such person; or

[1] Section 6

[2] Section 5.

Once either of the conditions specified in sub-clauses (a) and (b) of the Section 9(1)(vi) is satisfied, irrespective of whether the payment is done by a resident or a non-resident, the income would be taxable in India for the non-resident assessee.



b. accrues or arises or is deemed to accrue or arise to him in India during such year ; or

c. accrues or arises to him outside India during such year :

If the assessee is just a resident or a non-resident, all income except income that accrues or arises outside India is not assessable to tax.[3] Of the income that is included in the total income of a non-resident, the income that is "deemed to be received in India" is restricted to pension scheme or provident fund scheme.[4] There is no confusion surrounding income actually received or accrues or arises in India. The actual controversy arises to income that is deemed to accrue or arise in India, which is covered in the Section 9. Section 9 includes within its various clauses, provisions dealing with royalties and FTS.

At this juncture, it would be useful to clarify that after the amendment of Finance Act, 2010, the moment an income is categorized as royalty or FTS, such income shall be included in the total income of the non-resident, whether or not

i) the non-resident has a residence or place of business or business connection in India or

ii) the non-resident has rendered services in India.

[Explanation to the Section 9(2)]

Royalty

Section 9 enlists the various incomes that shall be deemed to arise or accrue in India and two clauses of Section 9 are directly relevant to the discussion. Section 9(1)(vi) holds that income by way of royalty payable to the non-resident by:

a) the Government; or

b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India.

Would be taxable in India.

In both sub-clauses (a) and (b) of the Section 9(1)(vi), the focus is on whether the royalty payment was for the purposes of:

- a business/profession in India; or
- earning any income from any source in India.

Once either of these conditions is satisfied, irrespective of whether the payment is done by a resident or a non-resident, the income would be taxable in India for the non-resident assessee. What has to be looked into for the application of the Section 9(1)(vi) in each cases is the source of the royalty; if the source of the royalty is in India, then the royalty payment is taxable.[5] In the above said case, the royalty payment was arising from certain export sales. Since the export sales took place outside India, they were held as not taxable. On the other hand, for instance, royalty paid for information used in India would be taxable; royalty paid for rights that would be exercisable in India would be taxable.

Explanation 2 to the Section 9(1)(vi) clarifies the meaning of royalty and provides a rather exhaustive definition of 'royalties'. In essence payments made for the:

- *Transfer or licensing* of any or all rights relating to, or the *right to use*, *intellectual property* of any kind (defined broadly) (except those concerning the prospecting, extraction or production of mineral oils, or for the sale, distribution or exhibition of cinematographic films); or

3 Proviso to Sections 5(1) and 5(2)
4 Section 7
5 *See The Commissioner of Income-tax v. Aktiengesellschaft Kuhnle Kopp and Kausch W. Germany by BHEL, [2003] 262 ITR 513* (Mad).

- *Imparting of information* as regards intellectual property of any kind (defined broadly) or any industrial, commercial or scientific equipment.

Would amount to royalty under this clause.

Delving further into the finer aspects of the definition, cases have held that simply because the information is of a commercial nature, does not mean that the payment would automatically become royalty; for the payment to be considered as royalty, the information must involve some sort of expertise, skill or know-how or the like.[6] Second, the definition excludes any consideration which would be the income of the recipient chargeable under the head Capital gains. As per case-laws, the imparting of information and technical know-how for the purposes of manufacturing certain instruments, which could be used on a potentially infinite time-period was held to be of capital nature.[7] Relying upon this, it has also been held that any complete transfer of technical know-how, wherein the seller does not retain any right or ownership over the technical know-how would be of a capital nature.[8]

The Supreme Court has expressly held that when the payment was actually in return for the license to use an intellectual property and which was limited in time, was a revenue receipt and not of capital nature.[9] The Supreme Court has noted that to decide as to whether a particular payment is of capital nature or a revenue receipt, various factors are to be considered:[10]

- whether the receiver obtains a completely new plan with a completely new process and completely new technology for manufacture of the product or whether it was for the betterment of something already in existence;
- whether the improvisation made, is part and parcel of the existing business or a new business was set up with the so-called technical know-how;
- whether on expiry of the period of agreement the assessee is required to give back the plans and designs which were obtained;
- whether the receiver is under any obligation of confidentiality;
- whether the receiver has obtained ownership over the technical know-how or patent etc.

One can clearly notice the absurdity in this position of law. The statute broadly defines royalty to include payments made for 'transfer' of all or any rights (including the granting of a licence) in an intellectual property. Logically, the term *'transfer'* is to include something apart from a mere license, i.e. assignment. But such an assignment would make the transaction of a capital nature, thereby excluding it from the definition of royalty per se. Second, as regards the imparting of information concerning scientific knowledge or technical know-how etc., whether the payments would be of a capital nature or not depends on whether the information was imparted with any obligation of confidentiality; whether the non-resident retains ownership over the knowledge and other such relevant considerations under the contract.

When the payment is of a capital nature, it is automatically excluded from the definition of royalty. In which case, the payment would be taxable if the other criterion in Section 9(1)(i) is satisfied – the transfer of a capital asset situated in India. In one decision on this matter, the Authority for Advance Rulings has indicated that in case of intangible property, the situs of the property is determined by the tangible medium onto which it is loaded.[11] Although intangible property such as know-how can be recorded on multiple tangible mediums, the decision seems to indicate that the presence of even one copy would be sufficient for the purposes of Section 9(1)(i).[12]

Therefore, the term 'royalty' has been held to connote a situation where the exclusive owner of something provides a limited, temporary use of it. Hence, when diagrams and other technical details of the workings of a machine are given along with the machine itself, where the intention of supplying that information was incidental to the actual contract of supplying the machinery – only to ensure that the buyer is satisfied that the machine will work as per the specifications provided by the buyer – such that design supplied is not to enable the receiver to commence the manufacture of the machinery itself, the payment will not amount to royalty.[13]

6 *See CIT v. H.E.G., 263 I.T.R. 230 (M.P.); Cushman and Wakefield (S) Pte. Ltd. v. DIT (International Taxation)*, A.A.R. No. 757 of 2007, Decided On: 04.07.2008
7 *See Scientific Engineering House (P.) Ltd. v. Commissioner of Income-tax [1986] 157 ITR 86 (SC)*.
8 *In Re: Pfizer Corporation, [2004] 271 ITR 101 (AAR)*.
9 *See Commissioner of Income Tax v. I.A.E.C. (Pumps) Ltd, [1998] 232 ITR 316 (SC)*.
10 *Jonas Woodhead and Sons (India) Ltd v. Commissioner of Income Tax, [1997] 224 ITR 342 (SC)*; *Commissioner of Income Tax v. J.K. Synthetics Limited, [2009] 176 TAXMAN 355 (Delhi)*.
11 *In Re: Pfizer Corporation, supra*
12 *Id.*
13 *Commissioner of Income-tax v. Neyveli Lignite Corporation Ltd., [2000] 243 ITR 459 (Mad)*; *Commissioner of Income-tax v. Mitsui Engineering and Ship Building Co. Ltd., [2003] 259 ITR 248 (Delhi)*.

If a given payment amounts to royalty or FTS under a DTAA as well as under the IT Act, then one would have to check the rate of applicable tax under the Indian domestic law and the rate prescribed in the DTAA. If the applicable rate under the IT Act is lower than the DTAA or the rate in the IT Act is lower than the maximum set forth in the DTAA, the rate under the IT Act will apply. Else, the rate prescribed in the DTAA or the maximum rate prescribed therein would apply.

At the same time, merely granting access to something over which there is Intellectual Property protection is not sufficient; the licensee has to be granted, at least, one part of the bundle of the rights that Intellectual Property protection provides the owner. For instance, although a customer is allowed to view and collect data from the copyrighted work of a non-resident (a database containing corporate information) through the internet, so long as no proprietary right or exclusive right which the non-resident has with respect to the copyrighted work, has been made over to the customer, the definition of 'royalties' is not satisfied.[14]

Fees for Technical Services (FTS)

Similar to Section 9(1)(vi), clause (vii) holds that income by way of FTS payable to the non-resident by:

a) the Government; or
b) a person who is a resident, except where the fees are payable in respect of services utilised for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or
c) a person who is a non-resident, except where the fees are payable in respect of services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India.

Here again, the focus is on whether the fee paid was for the purposes of:

- a business/profession in India; or
- earning any income from any source in India; or
- services are utilized in India.

Once either of these conditions is satisfied, irrespective of whether the fee payment is done by a resident or a non-resident, the income would be taxable in India for the non-resident assessee. If one reads the Section 9(1)(vii)(c) carefully, it deals with "…where the fees are payable *in respect of services utilised in a business or profession carried* on by such person *in India."* The Supreme Court has interpreted this provision, allegedly in light of Section 5 as well as the object and purpose of the Act, and held that to satisfy this provision, the service has to be rendered in India as well as utilized in India.[15] This is termed as the *'territorial nexus'* doctrine. This continues to be the principle of law applicable as regards the provision of services.[16] Finance Act, 2010 has substituted the Explanation to the Section 9(2) of the Act with retrospective effect from 1st April, 1976, to override this judgment of Supreme Court by providing that irrespective of place of rendering of services, if services are utilized in India, same shall be taxable in India.

Explanation 2 to the Section 9(1)(vii) clarified the scope of the phrase 'fees for technical services'. In essence payment for any service of the following nature would fall within the definition:

- managerial; or
- technical; or
- consultancy services;
- including the provision of services of technical or other personnel

The definition excludes payment for any construction, assembly, mining or like project undertaken by the recipient or which would be chargeable as 'Salaries' for the recipient.

The terms 'managerial', 'technical' and 'consultancy' have not been defined in the IT Act. Case-laws suggest that the phrase "technical services" ought not to be given a narrow meaning

14 *Fact Set Researach Systems Inc. v. Director of Income Tax (International Taxation-I) (2009) 225 CTR (AAR) 49.*
15 *Ishkawajima Harima Heavy Industries v. Director of Income Tax, Mumbai, [2007] 288 ITR 408 (SC).*
16 *Clifford Chance v. DCIT, 2008 318 ITR 237.*

If a given payment amounts to royalty or FTS under a DTAA, but not under a IT Act, first one would have to check if the amount is otherwise taxable in India under Section 9 or any other provision of the IT Act. If the answer to the above question was negative, then the said income cannot be taxed in India. On the other hand, if the answer to the question was in the affirmative, similar to the case discussed under (a) above, a comparison would have to be drawn to the tax rates under both the regimes and the more beneficial would apply.

restricting it only to engineering, manufacturing or other applied sciences. Going by the dictionary meaning, it must be broadly construed to include any kind of service given by someone who is an expert in any subject such that various kinds of "professional services" would also be included within the scope.[17] The Authority for Advanced Rulings has also held that 'technical' and 'consultancy' services are not water-tight compartments; consultancy services are also technical in nature, and advisory services merely involving discussions and advice of routine nature or exchange of information will not amount to consultancy services.[18] Since judicial authorities in India have resorted to dictionary meaning of the term 'technical,' it would be safe for one to assume that the dictionary meaning of the term 'managerial' can be used to define the term in the IT Act.[19] In fact, use of dictionaries in defining terms in a statute is an accepted method of statutory interpretation.[20] The dictionary meaning seems to indicate that the term 'manager' refers to someone who administers or supervises the affairs of a business, office, or other organization.[21] Therefore, the term 'managerial' service implies that the person is higher up in the hierarchy and has the power of decision-making. However, no Indian cases have interpreted this term so far.

An important point to be noted, which is common to both royalties and FTS, is that, if the alleged payment is part of an integrated business arrangement, then the said amount will not considered as royalties or FTS.[22] For instance, this case involved the non-resident laying down gas pipelines for Gas Authority of India Ltd. (GAIL). The non-resident applicant had to import equipment and particularly units of the drilling rig, provide the optical fibre pipe, other accessories for installation, corrosion coating, protection of underground utilities, bending, hydrostatic testing, fencing and the like. The optical fibre pipe and spare parts utilised for executing the contract became the property of GAIL. The court held that it was the case of a non-resident completing an entire project and one cannot minutely divide such a project into various technical services.

General Implications of royalty or FTS payments to non-residents

The Explanation to the Section 9 explicitly holds that where income is deemed to accrue or arise in India under clauses (vi) or (vii) of sub-Section (1), such income shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India and whether or not the non-resident has rendered services in India. Therefore, once the requirements of the Section 9(1)(vi) or (vii) are satisfied, then without any further conditions, the income for the non-resident is taxable in India.

Restricting ourselves to the earlier assumption that the payment of royalties and/or FTS is made *by* a resident company to a non-resident company,

17 *Continental Construction Ltd. v. CIT 195 ITR 117 (SC)*; *Intertek Testing Services India Pvt. Ltd. v. CIT-X, (2008) 307 ITR 418 (AAR)* .
18 *Intertek Testing Services India Pvt. Ltd. v. CIT-X, id.*
19 WEBSTER'S NEW WORLD COLLEGE DICTIONARY 871-872 (Micheal Agnes ed.-in-chief, 2000) (managerial is defined as *"of, like or characteristic of a manager, of management"* with management defined as *"the act, art, or manner of managing, or handling, controlling, directing etc." and manager being defined as "a person who manages").*
20 *See Union of India and Ors v. Harjeet Singh Sandhu* AIR 2001 SC 1772, para.31; See *further Naresh Shridhar Maraikar v. State of Maharashtra*, AIR 1967 SC 1, p. 16; *New Delhi Municipal Committee v. Allied Motor Pvt. Ltd.* (1995) 6 SCALE 37, p. 40.
21 *See* BLACK'S LAW DICTIONARY (8th ed. 2004), manager.
22 *Horizontal Drilling International S.A. v. Commissioner of Income-tax, [1999] 237 ITR 142 (AAR)*; *Director of Income Tax v. Sheraton International Inc.*, *[2009] 313 ITR 267* (Delhi)

prudent business practice would be that the resident Indian company claims the said payments as expenditure in its tax returns, for instance under Sections 35AB or 37. But the Section 40 of the IT Act mandates that no deductions can be made in respect of royalties or FTS or any other sum payable outside India, or in India, to a foreign company or a non-resident (not being a company), unless the tax is deducted and paid at source (by the resident Indian company) as required under the Chapter XVIIB of the IT Act. Under the Section 195 of the Act, any person responsible for paying to a foreign company or to a non-resident (not being a company), any sum chargeable under the IT Act shall deduct the income-tax payable on that sum at the rates in force.

In summary:

- royalties or FTS payable to non-residents for the purposes of a business/profession in India or earning any income from any source in India is taxable income in India;
- following prudent business practice, the resident Indian company would want to deduct the payments in its returns, in which case, the Indian company would have to deduct the tax applicable on the said royalties and FTS.

If a given payment amounts to royalty or FTS under the IT Act, but not under the DTAA, one would then have to verify whether the amount is otherwise taxable in India under the DTAA. If the answer to the above question was negative, then, the said amount is immunized from tax liability in India. On the other hand, if the answer to the question was in the affirmative, similar to the case discussed under (a) above, a comparison would have to be drawn to the tax rates under both the regimes and the more beneficial would apply.

The International Regime

This part will deal with the relevant provisions of the Indo-US DTAA, the Indo-UK DTAA and the Indo-Singapore DTAA. While doing so, they are compared and contrast with the OECD Model Convention (as they read on 28th January, 2003) (OECD MC in short) and the UN MC, 2001 (UN MC). At the same time, the differences with the Indian law will also be laid out.

The Indo-UK DTAA

Article 13(1) of the Indo-UK DTAA,[23] states that the State in which the recipient is a resident may tax royalties and FTS.[24] This is in direct contrast to the Article 12(1) OECD MC,[25] which dictates that royalties may be taxed *only* in the state where the recipient is resident. And unlike the OECD MC, the Indo-UK DTAA deals with FTS as well. The agreement then prescribes a differential rate of taxation depending on the type of royalty or FTS [Article 13 (2)]. Article 13(3) creates two different types of royalty payments, which are hereby classified as "Type-I Royalty" [Article 13(3)(a)] and "Type-II Royalty" [Article 13(3)(b)]. They have been deconstructed below:

- ***Type-I Royalty:***[26] This refers to payments received as consideration for
  - the use of, or the right to use:
    - any copyright of literary, artistic or scientific work including cinematograph films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting
    - any patent, trade mark, design or model, plan, secret formula or process; or
  - information concerning industrial, commercial or scientific experience.
- ***Type-II Royalty:***[27] This refers to payments for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.

As regards Type-I Royalty, it is obvious from the above that payments made for outright transfer in the rights over an intellectual property, such as an assignment, are beyond the scope of royalties. This

[23] Detail agreement is available at http://law.incometaxindia.gov.in/DIT/File_opener.aspx?fn=http://law.incometaxindia.gov.in/Directtaxlaws/cbdt/dta/A1_UK.htm

[24] Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

[25] Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

[26] This provision is a verbatim reproduction of the OECD Model Convention, Article 12(2).

[27] This was originally present in the 1963 OECD Draft Convention but was omitted in the 1977 Model Convention. *See* OECD Commentary, p.185, para.9.

is mirrored in the OECD Commentary as well.[28] The Calcutta High Court, while interpreting Article 13 of the Indo-UK agreement has also held the same thing.[29] The OECD commentary further restricts the phrase *"…information concerning industrial, commercial or scientific experience"* to know-how and the like, which necessarily involves undivulged information and certain amount of experience or expertise or skill.[30]

A quick comparison between the definition in the agreement and Explanation 2 to the Section 9(1)(vi) of the IT Act, would lead one to believe that there are not many differences between them. Although the wordings are not the same, (i)-(iv) and (v) of Explanation 2 to the Section 9(1)(vi) of the IT Act are, in substance, covered by Type-I Royalty; (iva) of Explanation 2 to the Section 9(1)(vi) of the IT Act is covered by Type-II Royalty. There are, however, certain technical differences:

- Firstly, the wordings of (i) & (v) of Explanation 2 to the Section 9(1)(vi) of the IT Act seem to allow for payments made towards assignments within the meaning of royalty. However, as noted previously in Part-I, Courts in India have opined that such payments would not be included within the meaning of royalty since they would be exempted as chargeable as capital gains. Therefore, this difference in words amounts to no difference in substance.
- The second difference arises due to (v) of Explanation 2 to the Section 9(1)(vi) of the IT Act, which excludes consideration for the sale, distribution or exhibition of cinematographic films. This is *not* excluded in the agreement. Since the law seems to be that any payment made towards an outright sale can anyway not amount to royalty, the exception regarding the sale of the rights in a cinematograph film logically fits. As regards distribution, under normal business practice, the distribution of a film would not anyway involve the licensing any of the rights of the film as such. The problem arises when one considers the exception as to "exhibition of cinematograph films". Going by the normal dictionary meaning, the term exhibition, in the context of a film, refers to the act of public screening of the film.[31] This would therefore, logically include the screening of the film by way of television or radio broadcast since such a broadcast would make the movie available to the public.

  But taking such a interpretation would result in the operative part of (v) of Explanation 2 to the Section 9(1)(vi) of the IT Act becoming redundant; that provision expressly makes the payments towards the grant of any right over a film or tape for use in connection with television or radio broadcasting. To prevent this absurdity,[32] the phrase "exhibition of cinematograph films" would have to be interpreted to exclude television or radio broadcasting. When viewed from this angle, the second difference also does not exist.
- Thirdly, income from operation of ships and aircraft in international traffic is excluded from the definition of royalty, whereas no such exclusion has been provided for in the IT Act. This, therefore, becomes the only difference between the Indo-UK agreement and the Indian domestic law as regards royalty.

Further, the OECD commentary expressly differentiates contracts involving payments for supply of know-how from payments made for provision of services, though admitting that one may encounter situations of mixed cases, wherein the best course to follow would be to apportion the amount actually paid. This distinction is highlighted in the Indo-UK DTAA by way of providing two different concepts: royalty and FTS. Under the Article 13(4) of the Indo-UK DTAA, FTS have been defined as payments for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel), which:

a. are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3(a) of this article is received; or

b. are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of this Article is received; or

c. make available technical knowledge, experience, skill know-how or processes, or consist of the development and transfer of a technical plan or technical design.

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28 OECD Commentary, p.184, para.8.2

29 CIT v. *Davy Ashmore India Ltd.* [1991] 190 ITR 626 (Cal.).

30 OECD Commentary, at pp.185-186, para.11

31 WEBSTER'S NEW WORLD COLLEGE DICTIONARY 498 (Micheal Agnes ed.-in-chief, 2000) (*"a public show or display"*). The author has already noted the use of dictionaries in interpreting words in a statute. *See supra ntoe 25.*

32 It is an accepted principle of statutory interpretation in India that one must not take an interpretation which would result in an absurdity. *See Nasiruddin v. State Transport Appellate Tribunal*, AIR 1976 SC 331, p.338; *Tirath Singh v. Bachittar Singh*, AIR 1955 SC 830, p. 833.

The above definition is subject to certain exceptions under the Article 13(5), where the payments are made:

a. for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property, other than property described in paragraph 3(a) of this Article;
b. for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships, or aircraft in international traffic;
c. for teaching in or by educational institutions;
d. for services for the private use of the individual or individuals making the payment; or
e. to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 15 (Independent personal services) of this Convention.

This provision is similar to the IT Act provision dealing with FTS. The following gives an account of the differences between the definitions under the agreement and the IT Act:

- The last four exceptions ((b)-(e)) are not incorporated in the corresponding definition in Indian law. On the other hand, the first exception given above ((a)) was recognized in the *case of Commissioner of Income-tax v. Neyveli Lignite Corporation Ltd,*[33] but in the context of royalties and did not involve services. Nonetheless, one may safely argue that a similar logic will apply to the context of FTS under the IT Act as well.
- The definition in the Article 13(4), unlike Explanation 2 to the Section 9(1)(vii) of the IT Act, does not deal with "managerial services." Considering that the term 'managerial' is a general word with a very wide connotation, the definition under Indian law is definitely broader than in the Indo-UK agreement.
- Articles 13(4)(a) & (b) restrict the scope of technical services to only those services that are ancillary and subsidiary to the application or enjoyment of the right, property or information mentioned in Article 13(3). Article 13(4)(c), on the other hand, is broader in that it is applicable on any service (not restricting itself to only those related to the property, right or information covered under Article 13(3)), such services would amount to technical services only when the receiver *"makes available"* technical knowledge etc. This element is conspicuously absent in the IT Act. This phrase is *pari materia* with the provision in the Indo-US DTAA. In the MOU that is part of the protocol annexed with the Indo-US DTAA, which is expressly declared to be an integral part of the agreement, it has been stated that the requirement of "make available" will be fulfilled when the person acquiring the service is enabled to apply the expertise.[34] That is, the service provider should also make his technical knowledge, experience, skill, know-how etc., known to the recipient of the service so as to equip him to independently perform the technical function himself in future, without the help of the service provider.[35]
- An interesting point arises when one reads the Article 13(4)(c) carefully: the requirement of "make available" does not apply when it involves the "development and transfer of a technical plan or technical design." Although they are present in the same sentence, the phrase *"make available"* in the Article 13(4)(c) does not qualify the last part of the Article 13(4)(c), i.e., *"…, or consist of a development and transfer of a technical plan or design."* It can be concluded from the fact that a comma precedes the latter, thereby separating it from the earlier part of the Article 13(4)(c). Grammar plays an important role in determining the meaning and scope of the words use in a DTAA. For instance, the Authority for Advance Rulings has, on previous occasions, used the presence of a 'comma' in a sentence to interpret the Indo-UK DTAA.[36] Further, if we were to read the phrase in question with the initial part of the sentence ("make available"), it would not make any grammatical sense. For these reasons, if the transaction in question involves the development and transfer of a technical plan or design, one does not need to prove the requirement of "make available."

The Indo-US DTAA

Article 12 of the Indo-US DTAA[37] deals with royalty and "fees for included services" and is similar in structure to the Article 13 of the Indo-UK DTAA. Article 12(1) allows for the recipient's State to tax "royalty" and "fees for included services." At the same time, the Article 12(2) allows the State where

[33] *Supra*
[34] For details visit:http://law.incometaxindia.gov.in/DIT/File_opener.aspx?fn=http://law.incometaxindia.gov.in/Directtaxlaws/cbdt/dta/A1_USA.htm
[35] *See Mahindra and Mahindra Limited v. The Dy. Commissioner of Income-tax, [2009] 313 ITR 263 (Mum)*; *Anapharm Inc. v. Director of Income-tax (International Taxation)*, id. at para.12.3; *Raymonds Limited v. DCIT, (2003) 86 ITD 791 (Bom)*;.
[36] *See, e.g., Cable and Wireless Networks India Private Limited vs. Director of Income Tax (International Taxation)*, *[2009] 315 ITR 72 (AAR)*.
[37] For details visit:http://law.incometaxindia.gov.in/DIT/File_opener.aspx?fn=http://law.incometaxindia.gov.in/Directtaxlaws/cbdt/dta/A1_USA.htm

the payments arise from, to tax such payments. The rate of taxation varies with the category of royalty or "fees for included services".

Article 12(3) similarly provides for Type-I Royalty and Type-II Royalty. However, the definitions provided herein differ significantly from the definitions provided in the Indo-UK agreement. They have been highlighted hereunder:

- The first significant difference arises from the fact that Type-I Royalty is defined to include "*… gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.*" The use of the word 'including' indicates that payments received from even an outright transfer of any right or property is considered as royalty. This is clearly unlike the OECD Model Convention, the Indo-UK agreement and the Indian IT Act.

At the same time, not all such payments would fall within the definition since the provision adds the condition that only those payments *which are contingent on the productivity, use, or disposition thereof* are included. In its ordinary grammatical sense, the word 'thereof' refers to *"…any such right or property…"* Therefore, in its normal meaning, this phraseology in the Article 12(3)(a) seems to require the fulfillment of two things: (a) the gains are to be derived from the alienation of any right or property covered under Type-I royalty; and (b) the gains are to be contingent on the productivity, use or disposition of such right or property.

The second criterion is quite an interesting and perplexing one. The essential object behind this clause is to prevent parties from disguising royalty arrangements in the form of a sale of intangible asset.[38] For instance, in a transaction involving the sale of transfer of title over the intangible asset, instead or in addition to a lump-sum payment at the beginning, the transferor may require the transferee to pay a percentage of the proceeds earned by employing the intangible property, say, for the next 10 years. The sale, therefore, involves payment of sums over a period of time, which is contingent of the use of the property. The underlying logic in equating such a transaction to a royalty arrangement is that the transferor retains some form of an economic interest over the intangible asset. This specific clause mirrors the presence of a similar provision under the U.S federal income tax law.[39]

- The definition of Type-II royalty, by referring to the Articles 8(2)(c) & 8(3), expressly excludes only: rental of ships or aircraft incidental to any activity directly connected with transportation of passengers, mail, livestock or goods; and profits from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic. The India-UK DTAA, on the other hand, uses much broader language, excluding income derived from the operation of ships or aircraft in international traffic. The difference actually arises since the phrases "operation of ships"[40] and "operation of aircraft"[41] has inclusive definitions in the Indo-UK agreement. Whereas, the Indo-US DTAA provides exhaustive definitions.

The above differences also signify the distinction between the IT Act and the Indo-US agreement on this subject.

As regards the subject of FTS, the Indo-US DTAA deals with it under a different name: "fees for included services"; and its definition is quite similar to its counter-part in the Indo-UK agreement.[42] The exceptions are also in *pari materia* with the exceptions under the Indo-UK agreement.[43] However, the scope and meaning given to the terms by the protocol to the Indo-US DTAA and the MOU attached therewith makes the Indo-US agreement quite distinct from Indian law as well as the Indo-UK agreement. The MOU makes a number of clarifications on the meaning and scope of the terms used in the agreement:

- As per the MOU, the phrase "technical services" is restricted to only those services requiring expertise in a *technology.*[44] This makes the scope of technical services much more narrow that the position of law in India. Secondly, although admitting that "consultancy services" overlaps with "technical services", the MOU defines the former to include any kind of advisory services, whether it involves expertise in a technology or otherwise.

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[38] JOSEPH ISENBERGH, INTERNATIONAL TAXATION 261 (2nd edn., 2005).
[39] 26 U.S.C.A. § 871(a)(1)(D).
[40] Article 9(3) of the Indo-UK DTAA
[41] Article 8(3) of the Indo-UK DTAA
[42] Article 12(4) of the Indo-US DTAA
[43] Article 12(5) of the Indo-US DTAA
[44] *Memorandum of understanding concerning fees for included services in Article 12 of Indo-US agreement*

- However, it also states that for included services under the Article 12(4)(b), due to the wordings of the clause, even "consultancy services" must be of a technical nature. When read in light of the previous point, this would mean that for "consultancy services" to fall within the category of the Article 12(4)(b), it must relate to expertise in a given technology. As a consequence, the only way any service that does not involve any expertise in technology can ever be an "included service" is if it is ancillary and subsidiary to the application or enjoyment of the right, property or information for which royalty has been released. This is a very significant departure from the Indo-UK DTAA as well as the Indian domestic law.
- There is a two prong test for a service to be within the domain of "included services" under the Article 4(a): firstly, the service must be related to the application or enjoyment of the right, property, or information that has been licensed etc.; and secondly, the predominant purpose of the service must be the application or enjoyment of the right, property, or information that has been licensed etc. The MOU provides certain factors that may be relevant to determine this question.
- Importantly, as stated earlier, the MOU enunciates the scope and meaning of the term "make available," in addition to a number of illustrations to clarify the meaning. It is to be noted that this criteria is absent under the Indian domestic law. Further, similar to the Indo-UK DTAA, if the service relates to the development and transfer of a technical plan or design, then the requirement of "make available" need not be proved.

The Indo-Singapore DTAA

The Indo-Singapore DTAA[45] prescribes that royalties and FTS may be taxed in the state in which they arise, subject to a maximum of tax of 10 per cent.[46] Similar to the agreements discussed above, this agreement also covers both type of royalty payments.[47] The differences between the definitions in this agreement when compared with the previous agreements and the Indian law are as follows:

- Firstly, the agreement expressly includes *"gains derived from the alienation* of any such right, property or information" to be considered as royalty. This is indirect contrast to the interpretation of the IT Act as well as the Indo-UK agreement. Further, unlike the Indo-US agreement, the condition that the gains be *contingent on the productivity,* use, or *disposition* is absent in the Indo-Singapore agreement.
- Secondly, the exclusion as to operation of ships and aircrafts is restricted to only two things: the incidental lease of ships or aircraft used in the transportation of passengers, mail, livestock or goods; and the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with such transportation. Note that the exception as to rental of containers is restricted to only those situations where it is in connection with the transportation of passengers, mail, livestock or goods. This is narrower than the Indo-US agreement. We have already seen that the language of this exception in the Indo-UK agreement is broader than even the Indo-US agreement. In any case, this exception is absent in the IT Act.

The definition of FTS is also quite similar to the ones noted earlier in the other DTAAs.[48] However, the following distinguish the Indo-Singapore DTAA from the others as well as the Indian domestic law:

- Firstly, similar to the IT Act and unlike the previous two DTAAs, this agreement defines FTS to include payments made for "managerial services" as well. However, the scope is the same as the other DTAA's in that it covers: (a) services that are ancillary and subsidiary to the application or enjoyment of the right, property or information for which royalty has been received; (b) for services other than those connected with the royalty payment, technical knowledge, experience, skill, know-how or processes has to be made available to the other party (enables the person acquiring the services to apply the technology contained therein).
- Secondly, the agreement has crafted a separate provision for the development and transfer of a technical plan or design [Article 12(4)(c)] and in contrast to the previous two agreements we have seen, one must prove the requirement of "make available" even for this.[49]
- Thirdly, the list of exclusions for FTS consists of 7 entries.[50] The two exclusions, apart from the ones we have already seen in the Indo-UK and the Indo-US DTAA are for services related to: the

[45] For details visit:http://law.incometaxindia.gov.in/DIT/File_opener.aspx?fn=http://law.incometaxindia.gov.in/Directtaxlaws/cbdt/dta/A1_Singapore.htm
[46] Article 12(2) of the Indo-Singapore DTAA.
[47] Article 12(3) of the Indo-Singapore DTAA
[48] Article 12(4) of the Indo-Singapore DTAA
[49] Article 12(4)(c) of the Indo-Singapore DTAA
[50] Article 12(5) of the Indo-Singapore DTAA

exploration or exploitation of natural resources; and the building site or construction, installation or assembly project; and the exploration, exploitation or extraction of mineral oils.

Final Analysis

In earlier part of the article, the differences in the way the Indian domestic law and the various treaties (Indo-UK, Indo-US and Indo-Singapore DTAA) defined and dealt with royalties and fees for included services are noted. This part shall deal with the consequences of the differences that were mentioned in the previous part. Do the existence of the differences result in a "treaty override"? To what extent does the Indian domestic law allow someone to take advantage of a DTAA?

Chapter IX of the IT Act deals with double taxation relief. Section 90 is applicable for the cases when the tax has been paid in a country with which India has signed comprehensive double taxation avoidance agreements.[51] Section 90(2) provides that the provision of the IT Act shall apply in those cases where DTAA is signed *only to the extent the former is more beneficial to the person.* Two things about this clause have to be noted:

- The IT Act will apply only to the extent it is more beneficial to the tax payer. In other words, generally, the first step is to apply the DTAA. Only in a case where the IT Act is more beneficial to the person would the provisions directly apply.
- Second, even in a case where the IT Act applies, it will not apply in-toto; it would apply only to the extent it is more beneficial to the person involved.

The Supreme Court has consistently held that the provisions of a DTAA will override the IT Act and that effect must be given to the special provision of the DTAA even if they are in conflict with a general provision of the IT Act.[52] The clause presumes that unless otherwise beneficial, the DTAA and not the IT Act would apply to a person. Read the provision in its normal, ordinary meaning, it would result in the following consequences:

(a) if a given payment amounts to royalty or FTS under a DTAA as well as under the IT Act, then one would have to check the rate of applicable tax under the Indian domestic law and the rate prescribed in the DTAA. If the applicable rate under the IT Act is lower than the DTAA or the rate in the IT Act is lower than the maximum set forth in the DTAA, the rate under the IT Act will apply. Else, the rate prescribed in the DTAA or the maximum rate prescribed therein would apply.

(b) if a given payment amounts to royalty or FTS under a DTAA, but not under a IT Act, first one would have to check if the amount is otherwise taxable in India under Section 9 or any other provision of the IT Act. If the answer to the above question was negative, then the said income cannot be taxed in India. On the other hand, if the answer to the question was in the affirmative, similar to the case discussed under (a) above, a comparison would have to be drawn to the tax rates under both the regimes and the more beneficial would apply.

(c) if a given payment amounts to royalty or FTS under the IT Act, but not under the DTAA, one would then have to verify whether the amount is otherwise taxable in India under the DTAA. If the answer to the above question was negative, then, the said amount is immunized from tax liability in India. On the other hand, if the answer to the question was in the affirmative, similar to the case discussed under (a) above, a comparison would have to be drawn to the tax rates under both the regimes and the more beneficial would apply.

Note that India follows a progressive tax system that is applied on the total income of a person. Therefore, while making the comparison as may be required in the above circumstances, one would have to include all the income that would otherwise be taxable under Indian law for that non-resident and use that tax rate applicable. The reasoning for this is quite obvious – one has to compare the DTAA tax rate with that rate under the IT Act, which would be charged on the said income if not for the DTAA.

Concluding Remarks

Although this article dealt with certain specific topics and restricted itself to only three DTAAs, it seems quite evident that, legally, India is on the clear when it comes to "treaty override" - a situation where the domestic legislation of a state overrules the provisions of either a single treaty or all treaties hitherto having had effect in that state.[53] The IT Act clearly provides preference to the provisions of any applicable DTAA. Going even further, Indian law cuts a fair deal to non-residents by allowing them to choose a DTAA or the Indian law depending on which is more advantageous. ■

51 Agreement with foreign countries
52 *Union of India v. Azadi Bachao Andolan*, 263 ITR 706 (SC); CIT v. P.V.L. *Kulandagan Chettiar, [2004] 267 ITR 654 (SC).*
53 See Report of the OECD, Tax Treaty Override (Paris, October 1989)

Inter Corporate Loans and Advances

The Company should comply with the Section 372A of the Companies Act,1956 before making of loans or investments in any other company. Approval of the company by passing special resolution if the limit exceeds the ceiling limit, i.e. 60 per cent (paid-up capital + free reserves) or 100 per cent of free reserves, whichever is higher as specified. Prior approval must be obtained by passing resolution in the Board meeting unanimously. Approval of Public Financial Institution (PFI) shall be obtained if the loan is subsisting and there is no default in respect of any payments to PFI. Further, there should be no default in respect of repayment of public deposits.

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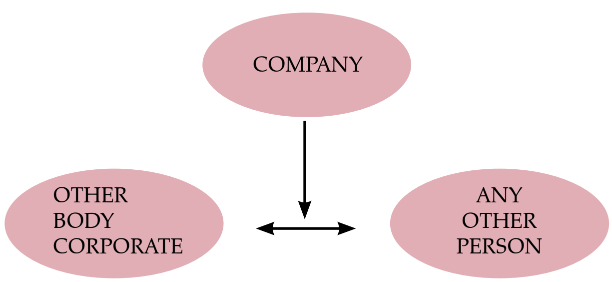
Shareholders, investors and lenders invest funds in a company only after analysing the returns, risk factors of the project and appraising the financial position, viability of the project, future prospects and other relevant factors. To keep a control on diversion of such funds, regulations have been made on the company relating to making of loans and investments in *any other company*.

The Company should comply with the Section 372A in respect of the following transactions:

1. Making any loans to any body Corporate.

2. Giving any guarantee or providing any security to –
   (a) A person who gives a loan to any body corporate; or
   (b) A body corporate which gives a loan to any other person.



3. Acquiring the securities of any body corporate.

COMPANY —Securities→ BODY CORPORATE

Loan: Loan includes debentures or deposit of money made by one company with another company.

Investments: Investments means acquisition of
- Shares,
- Debentures,
- Convertible debentures,
- Bonds, etc.,

as defined under the Securities Contracts (Regulation) Act, 1956. Investments in any assets, other than securities are not covered by this Section.

Free Reserves: It means those reserves which, as per latest audited balance sheet of the company, are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.

Approval Requirements

- Board of Directors
- Company by Passing Special Resolution
- Public Financial Institutions
- No Default in Respect of Public Deposits

Approval of the Board of Directors:

(a) *Prior Approval:* Approval of Board is to be made prior to making of loan, investment, guarantee or security.

(b) Unanimous consent of all directors *present* at the meeting is required.

(c) The approval of Board shall be obtained by passing a resolution at a *Board meeting* only and not by circulation.

The Board of directors can delegate the power to invest its surplus funds to the company's managing director as per the Section 292.

However, under the Section 372A, investment in any body corporate cannot be made unless it is sanctioned by passed at the meeting of the Board, with the consent of all the directors present.

Although, the power to invest has been delegated under the Section 292, the managing director cannot exercise the power to make the proposed investment, since the Section 372A does not provide for delegation.

So, the Board of directors of the company has to pass the resolution in the Board meeting.

Approval of Company by Special Resolution:

Special Resolution should be passed in a General Meeting if the amount of making loan, investment, guarantee or security or acquisition (existing + proposed) is higher of the following:

(i) 60 per cent of the paid-up share capital + free reserves, or,

(ii) 100 per cent of free reserves of the company

If the ceiling limit specified above is not exceeded, no special resolution is required.

Particulars in notice of special resolution:
- Specific limits of investments
- Particulars of the body corporate in which the loan/guarantee/security/investment if proposed to be made/given
- Purpose of loan/guarantee/security/investment
- Specific sources of funding
- Other relevant details

Exception of Special Resolution in respect of Guarantee:

The Board may give guarantee in excess of the ceiling limit without passing a special resolution if the following three conditions are satisfied:
- A unanimous resolution is passed in a Board meeting for giving guarantee.
- There exist exceptional circumstances which

The Board of directors of the company has to pass the resolution in the Board meeting prior to making of loan, investment, guarantee, or, security of the surplus funds of the company.

The Board of directors can delegate the power to invest its surplus funds to the company's managing director as per the Section 292. However, the managing director cannot exercise the power to make the proposed investment since the Section 372A does not provide for delegation.

prevent the company from passing a special resolution.

- The resolution of the Board is confirmed within 12 months:
  - in the general meeting of the company; or
  - in the annual general meeting held immediately after passing of the Board's resolution.

Approval of Public Financial Institution

If any term loan obtained from a PFI subsists a loan/investment/gurantee/security can be made/given by the company, only with the prior approval of the PFI. The expression PFI has been defined under the Section 4A and includes IDBI, ICICI, IFCI, LIC, IDFC and UTI.

Exception:

- If the amount of existing and proposed loan/investment/guarantee/security made/given does not exceed 60 per cent of the paid-up capital and free reserves, and
- No default in repayment of loan installments or interest to PFI.

No Default in Respect of Public Deposits is Subsisting

A company which has defaulted in compliance with the Section 58A (relating to public deposits) cannot make any loan, investment, guarantee, or, security, until such default is subsisting.

As such, where a company fails to repay the public deposits or interest thereon, on the due date, it may make loan, investment, guarantee or security only after the default has been made *good.*

The rate of interest chargeable on any intercorporate loan shall not be less than the *prevailing bank rate. 'Bank rate means the rate at which RBI lends money to commercial banks.'*

Transactions to Which Section 372A Does Not Apply

1. Section 372A does not apply to following companies:
   - a banking company
   - an insurance company
   - a housing finance company
   - a company established with the object of financing, industrial enterprises or providing infrastructural facilities
   - a company whose principal business is the acquisition of shares, stock, debentures or other securities
   - a private company, unless it is a subsidiary of a public company
2. Investments made in shares allotted under the Section 81(1) (a), i.e., shares allotted by way of right shares
3. Loan made by a holding company to its wholly owned subsidiary
4. Guarantee or security provided by a holding company in respect of loan made to its wholly owned subsidiary, or
5. Acquisition by a holding company by way of subscription, purchases, or, otherwise, the securities of its wholly owned subsidiary

Register of Inter-corporate Loans and Investments

Every company shall keep a register showing the following particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate.

- Contents: The register shall contain the following:
  - Name of the other body corporate
  - Amount, terms and purpose of making loan, investment, guarantee, or security
  - Date of making investment, loan, guarantee, or security and it should be entered chronologically in the register

The particulars should be entered in the register within 7 days of making loan, investment, guarantee or security.

- The register shall be kept at the registered office of the company.
- Any member can inspect and take the copies of the register in the same manner as under the Section 163.
- The company and every officer of the company who is in default shall be punishable with fine of Rs. 5000 plus Rs. 500 for every day till the offence continues.

Contravention of Other Provisions

The company and every officer of the company who is in default shall be punishable with imprisonment up to 2 years or a fine up to Rs. 50000. However, if the loan is repaid in full, no imprisonment shall be imposed, and where the loan is repaid in part, the imprisonment shall be proportionately reduced.

Further, any person who is knowingly a party to any contravention shall be liable to indemnify the company for the repayment of the loan or the money which has become payable by the company.

Illustration

Legal requirements for making loan exceeding the limit under the Section 372A

1. The Board of directors of PQR Ltd. has agreed in principle to grant loan worth Rs. 38 lakh to ABC Ltd. on the basis of the following information.

   Advise PQR Ltd. about the requirements to be complied with under the Companies Act, 1956, for the proposed inter-corporate loan to ABC Ltd.

• Authorized Share Capital	Rs.1,00,00,000
• Issued, subscribed and paid-up capital	Rs. 50,00,000
• Free reserves	Rs. 10,00,000

Solution:

As per the Section 372A, a special resolution should be passed in a general meeting if the amount of making loan, investment, guarantee or security or acquisition (existing + proposed) is higher of the following:

- 60 per cent of the paid-up share capital + free reserves, or,
- 100 per cent of free reserves of the company

If the ceiling limit specified above is not exceeded, no special resolution is required.

Paid-up capital	50, 00,000
Free reserves	10, 00,000
	60, 00,000
60 per cent of the paid-up capital + free reserves	36, 00,000
100 per cent of the free reserves	10, 00,000
Overall limit for loans and investments	36, 00,000
Less: Investments already made	NIL
Loans & investments permissible without special resolution	36, 00,000
Proposed loan to ABC Ltd.	38, 00,000

A Company which has defaulted in compliance with the Section 58A (relating to public deposits) cannot make any loan, investment, guarantee or security, until such default is subsisting. Every Company shall keep a Register showing the particulars in respect of every investment or loan made, guarantee given or security provided by it in relation to any body corporate.

In the given case, the ceiling limit has been exceeded.

Since, the proposed loan exceeds the ceiling given under the Section 372A, a special resolution is required before providing any loan.

2. The company shall adopt the following procedure for making loan to MNC Ltd.:

Approval of Board

- Unanimous approval of the Board by passing a resolution at Board meeting.

Approval by Special Resolution

A special resolution shall be passed in general meeting.

Particulars in notice of special resolution:

- Specific limits of investments
- Particulars of the body corporate in which the loan/guarantee/security/investment if proposed to be made/given.
- Purpose of loan/guarantee/security/investment.
- Specific sources of funding
- Other relevant details

The company should file a copy to the registrar within 30 days of passing the special resolution.

Approval of Public Financial Institution

- The company shall obtain the prior approval of the PFI, if any from whom it has taken a term loan.

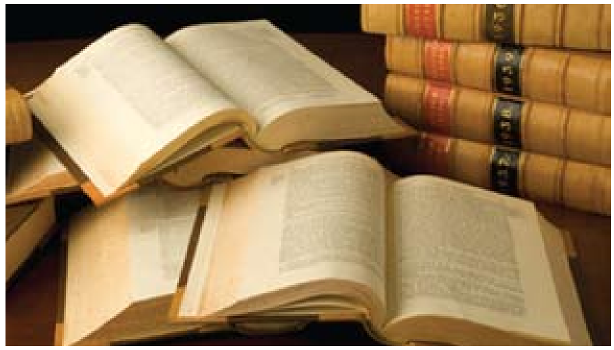
No Default of Public Deposits

- The company can make such investments only if no default in respect of public deposits is subsisting.
- The rate of interest on loan must not be less than the prevailing bank rate.

Entry in a Register

- The prescribed particulars shall be entered in the register maintained under the Section 372A(5).

Right to Information Act - An Overview



Throughout the World, the Right to information is seen by many as the key to strengthening participatory democracy and ensuring more people-centred development. In India also, the Government enacted Right to Information (RTI) Act in 2005 allowing transparency and autonomy, and access to accountability in public authorities. It is important for the profession to understand the significance of right to information in the changing scenario. We should be well versed with the important provisions of this legislation as well as know the process regarding how to apply for information, where to apply, how much fees and various other related aspects.

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Throughout the world, the right to information is seen by many as the key to strengthening participatory democracy and ensuring more people-centred development. Nearly 70 countries around the world have now adopted comprehensive Freedom of Information Acts to facilitate access to records held by government bodies and another 50 are in the process of adapting the same. In India, also, the Government enacted the Right to Information (RTI) Act in 2005. This came into force w.e.f. October 12, 2005.

Right to Know

Before dwelling on the RTI Act, 2005, a mention should be made that in *Reliance Petrochemicals Limited v/s Proprietors of Indian Express Newspapers Bombay (P.) Limited, 1988 SCC (4) 592* (decided on 23rd September, 1988) the Supreme Court held that right to know (Article 21) is a necessary ingredient of transnational developments, when distances are shrinking international communities are coming together for cooperation in various spheres, and they are moving towards global perspective in various fields including human rights, the expression "liberty" must receive an expanded meaning. The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of right including right to hold a particular opinion and right to sustain, and nurture that opinion. For sustaining and nurturing that opinion, it becomes necessary to receive information. Article 21 confers on all persons a right to know which includes a right to receive information.

It may be pointed out that a right to impart and receive information is a species of the right to freedom of speech and expression. Article 19(1)(a) of our Constitution guarantees to all citizen freedom of speech and expression. At the same time, Article 19(2) permits the state to make any law in so far as much law imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) of the Constitution in the interest of sovereignty and integrity of India the security of the state, friendly relations with foreign states. Public order, decency, morality. Contempt of court. Defamation and incitement of offence.

Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1)(a).The State is not only under an obligation to respect the Fundamental Rights of the citizen, but it is equally under an obligation to ensure conditions under which these rights can meaningfully and effectively be enjoyed by one and all.

Right to freedom of speech and expression in the Article 19(1)(a) carries with it the right to propagate and circulate one's views and options subject to reasonable restrictions as mentioned above. The prerequisite for enjoying this right is knowledge and information. Information adds something new to our awareness and removes vagueness of our ideas.

The Right to Information Act, 2005 (RTI)

The Right to Information Act, 2005, provides an effective framework for effectuating the right to information recognized under the Article 19 of the Constitution. It may be pointed out that the Right to Information Bill was passed by the Lok Sabha on May 11, 2005, and by the Rajya Sabha on May 12, 2005, and received the assent of the President on June 15, 2005. This Act considered as watershed legislation and is the most significant milestone in the history of Right to information movement in India allowing transparency and autonomy and access to accountability.

Salient Features of the Act

- The RTI Act extends of the whole of India except, Jammu & Kashmir.
- It provides a very definite day for its commencement, i.e. 120 days from the enactment.
- It shall apply to public authorities.
- All citizens shall have the right to information subject to provisions of the Act.
- The public information officers/assistant public information officers will be responsible to deal with the request for information and also to assist persons seeking information.
- Fee will be payable by the applicant depending on the nature of the information sought.
- Certain categories of information have been exempted from disclosure under the Sections 8 and 9 of the Act.

A citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in the Article 19(1)(a) of the Constitution of India.

- Intelligence and security agencies specified in the Schedule II to the Act have been exempted from the ambit of the Act, however, subject to certain conditions.

Objective

As stated above, the RTI Act confers on all citizens a right to information. The Act provides for setting out the practical regime of the information for citizens to secure access to information held by public authorities to promote transparency and accountability in the working of every public authority.

Definitions

The meaning of important terms has been incorporated under the Section 2 of the RTI Act these have been discussed as below:

"**Public authority**" means any authority or body or institution of self government established or constituted:

(a) By or under the Constitution,
(b) By any other law made by the Parliament,
(c) By and other law made by the State Legislature, and
(d) By notification issued or order made by the appropriate Govt.

[Section 2(h)]

"**Record**" includes:

(a) any document, manuscript and file,
(b) any microfilm, microfiche and facsimile copy of a document,
(c) any reproduction of image or images embodied in such microfilm (whether enlarged or not), and
(d) any other material produced by a computer or nay other device;

[Section 2(i)]

"**Information**" means any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contract, reports, papers, samples, models, data materials held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force

[Section 2(f)]

"**Right to Information**" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:

1. taking notes, extracts, or certified copies of documents or records;

2. inspection of work documents records;
3. taking certified samples of material; and
4. obtaining information in the form of diskettes floppies tapes video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

[Section 2(j)]

"**Third party**" means a person other than the citizen making a request for information and includes a public authority.

[Section 2(n)]

Obligations of Public Authority

Every public authority under the Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations and instructions, etc. in its possession as prescribed under the Act.

[Section 4(1)(a)]

As per the Section 4(1)(b), every public authority has to publish within one hundred and twenty days of the enactment of this Act:

(i) the particulars of its organization, functions and duties;
(ii) the powers and duties of its officers and employees;
(iii) the procedure followed in its decision making process including channels of supervision and accountability;
(iv) the norms set by it for the discharge of its functions;
(v) the rules, regulation, instructions, manuals and records used by its employees for discharging its functions;
(vi) a statement of the categories of the documents held by it or under its control;
(vii) the particulars of any arrangement that exists for consultation with, or representation by the members of the public in relation to the formulation of policy or implementation thereof;
(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted by it. Additionally, information as to whether the meetings of these are open to the public or the minutes of such meetings are accessible to the public;
(ix) a directory of its officers and employees;
(x) the monthly remuneration received by each of its officers and employees including the system of compensation as provided in its regulations;
(xi) the budget allocated to each of its agency, indicating the particulars of all plans proposed expenditures and reports on disbursements made;
(xii) the manner of execution 'of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
(xiii) particulars of recipients of concessions, permits or authorizations granted by it;
(xiv) details of the information available to or held by it reduced in an electronic form;
(xv) the particulars of facilities available to citizens for obtaining information including the working hours of a library or reading room, if maintained for public use;
(xvi) the name designations and other particulars of the Public Information Officers; and
(xvii) such other information as may be prescribed and thereafter update the publications every year.

Designation of Public Information Officers (PIO)

Every public authority has to:

- Designate in all administrate units or offices Central or State Public information officers to provide information to person who have made a request for the information;
- Designate at each sub-divisional level or sub-district level Central Assistant or State Assistant Public Information Officers to receive the applications for information or appeals for forwarding the same to the Central or State Public Information Officers; and
- No reason to be given by the person making request for information except those that may be necessary for contacting him.

[Section 5]

Request for Obtaining Information

The Act specifies the manner in which request may be made by a citizen to the authority for obtaining the information and it also provides for transferring the request to the other concerned public authority who may hold the information:

- An application is to be submitted in writing or electronically, with prescribed fee, to Public Information Officer (PIO);
- Information to be provided within 30 days;
- 48 hours where life or liberty is involved;
- 35 days where request is given to Asst. PIO;
- Time taken for calculation and intimation of fees excluded form the time frame;

- No action on application for 30 days is a deemed refusal;
- If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to the party to make representation); and
- No fee for delayed response.

[Sections 6 and 7]

Duties of a PIO

PIO shall deal with the request from persons seeking information and render reasonable assistance to the person to reduce the same in writing where the request cannot be made in writing. If the information requested for is held by or its subject matter is closely connected with the function of another public authority, the PIO shall transfer within 5 days the request to that other public authority and inform the applicant immediately.

PIO may seek the assistance of any other officer for the proper discharge of his/her duties. She/he on receipt of the request shall, as expeditiously as possible, and, in any case within 30 days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in the Sections 8 and 9

Where the information requested for concerns the life or liberty of a person the same shall be provided within forty-eight hours of the receipt of the request. If the PIO fails to give decisions on the request within the period specified he shall be deemed to have refused the request.

Where a request has been rejected, the PIO shall communicate to the requester: (i) the reason for such rejection, (ii) the period within which an appeal against such rejection may be preferred, and (iii) the particulars of the appellate authority.

PIO shall provide information in the form in which it is sought unless it would disproportionately divert the residues of the public authority or would be detrimental to the safety or preservation of the record in question.

If allowing partial access, the PIO shall give a notice to the applicant, informing:

- that only part of the record requested after severance of the record containing information which is exempt form disclosure, is being provided;
- the reasons for the decision, including any finding on any material question of fact, referring to the material on which those findings were based;
- the name and designation of the person giving the decision;
- the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
- his or her rights with respect to review of the decisions regarding non-discloser of part of the information the amount of fee charged or the form of access provided.

If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request.

Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

[Sections 5, 7, 10 and 11]

Exemption from Disclosure

Certain categories of information have been exempted form disclosure under the Act. These are:

- Where disclosure prejudicially affects the sovereignty and integrity of India the security strategic scientific or economic interests of the State, relation with Foreign State or lead to incitement of an offence;
- Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court.
- Where disclosure would cause a breach of privilege of Parliament or the State Legislature.
- Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive positions of a third party or available to a person in his fiduciary relationship unless larger public interest so warrants.
- Information received in confidence from a foreign government.
- Information, the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance.
- Information which would impede the process of investigation or apprehension or prosecution or offenders.
- Cabinet papers including records of deliberations of the Council of Minister, Secretaries and other officers. However the decisions of Council of Minister the reason thereof and the material on the basis of which the decisions were taken shall be made public after the decision has been taken and the matter is complete or over. Further that those matters which come under the exemptions specified in this section shall not be disclosed.
- Personal information which would cause invasion of the privacy unless larger public interest justifies it.

[Section 8]

Rejection of Request

The PIO has been empowered to reject a request for information where an infringement of a copyright subsisting in person would be involved.

[Section 9]

Partial Disclosure Allowed

As per the Section 10 of the Act, if the request for access to information is rejected on the ground that it is in relation to the information which is exempt from disclosure, access may be provided to that part of the record which does not contain any information which is exempt form disclosure under this Act and which can be reasonable severed form any part that contains exempt information.

Who is excluded?

The Act excludes Central intelligence and security agencies specified in the Second Schedule like Intelligence Bureau, Research and Analysis Wing of the Cabinet Secretariat, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, Central Industrial Security Force, National Security Guards, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, Crime Branch (CID), Dadra and Nagar Haveli, Special Branch, Lakshadweep Police.

Agencies specified by the State Governments through a notification will also be excluded.

The exclusion, however, is not absolute and these organisations have obligations to provide information pertaining to allegations of corruption and human rights violations. Further, information shall be provided only with the approval of the Central/State Information Commission within forty-five-days form the date of the receipt of request.

[Section 24]

Appellate Authorities

Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under the Act.

First Appeal - First appeal to the officer senior in rank to the PIO in the concerned public authority within 30 days from the expiry of the prescribed time limit or from the receipt of decisions (delay may be condoned by the appellate authority if sufficient cause is shown).

Second Appeal - Second appeal to the Central Information Commission, or the State Information Commission as the case may be within 90 days of the date on which the decision was given or should have been made by the first appellate authority (delay may be condoned by the Commission if sufficient cause is shown).

Third party Appeal against the PIO's decision must be filed within 30 days before first appellate authority and within 90 days of the decision on the first appeal before the appropriate information commission which is the second appellate authority.

Burden of proving that denial of information was justified lies with the PIO First Appeal shall be disposed of within 30 days form the date of its receipt or within such extended period not exceeding a total or forty-five days form the date of filling thereof, for reasons to be recorded in writing. Time period could be extended by 15 days if necessary.

[Section 19]

Penalties

Section 20 of the Act imposes stringent penalty on a PIO for failing to provide information. Every PIO will be liable for fine of Rs. 250 per day up to a maximum of Rs. 25,000 for:

- (i) not accepting an application;
- (ii) delaying information without reasonable cause;
- (iii) malafidely denied the request for information;
- (iv) Knowingly giving incomplete, incorrect, misleading information;
- (v) destroying information which has been requested; and
- (vi) obstructing in furnishing of information in any manner.

The Central/State Information Commission has the power to impose penalty. They can also recommend disciplinary action for violation of the law against the PIO for persistently falling to provide information without any reasonable cause or has not furnished the information within the specified period.

Jurisdiction of Courts

As per the Section 23, lower courts are barred form entertaining suits or applications against any order made under this Act.

Conclusion

It is a useful act especially for the Chartered Accountants working with various authorities. They will be more powerful and resourceful after their access to the power of the RTI. ■

Global Economic Crisis and Innovative Cost-Control Techniques: An Assessment.

The goal of any cost system is to provide relevant and timely information to management. This information supports better management of corporate resources in production or provisions of services and improves competitiveness in terms of costs, quality and profitability. Amidst the changes, which the business world has witnessed during the last few decades, traditional cost-accounting systems have been found to be unsteady. To survive in global recession, creativity, innovation and cost control are very important tools. The author discusses some of the innovative techniques and their applications in Indian industry, and offers suggestions for improvement of quality of products and services.

Dr. Pradeep Kumar Singh
(The author is a faculty in the Department of Commerce in Mahatma Gandhi Government Arts College, Chalakkara, Pondicherry. He may be contacted on drpks3@rediffmail.com.)

The global economic crisis was a reality and it has, directly and indirectly, affected all economies. Many economists had predicted that the Great Recession of 2008-09 would be the worst global recession since that of the 1930s. The global recession has taken its toll on the Indian economy too, which has led to a crisis-cutting demand and affecting exports resulting in multi-crore losses in export orders and tens of thousands of job losses especially in key sectors like the IT, automobile and export-oriented firms. It has also shaken up the investment regime, which is being restructured, with the telecom sector likely to be declared off-limits for the foreign investors. Satyam scam was another incident which affected the over-all image of Brand India in global market. Each and every company wants to cut its cost by either minimising its overheads or minimising its ineffective manpower. To survive in a global recession, creativity, innovation and cost control are important tools. The last two decades have witnessed the genesis of various innovative cost-management practices. The focus and thrust of these cost-accounting systems has been broadened to enable managers to better serve the needs of the customers and manage the firm's business processes that are used to create customer value. These innovative cost-management tools help a firm to establish a competitive advantage by providing more customer value for less cost than its competitors.

The business environment today is turbulent and laced with little uncertainty which is continuously changing and is full of opportunities and challenges. The companies are necessitated to change their manufacturing practices, technologies and identify the opportunities at the right time and face them with right strategy can only gain competitive advantages. The successful companies are no longer competing on single dimension, such as cost. Instead, companies excel on two or more of the traditional strategic elements. They must not only focus on producing a low-cost product, but, additionally, maintain high quality and customer services level. There is a shift in corporate strategy from *product-driven* to *market-driven*. Customer satisfaction has become the corporate goal for success in contemporary business environment. Especially, the growing intensity of competition has forced many enterprises to seek more innovative systems.

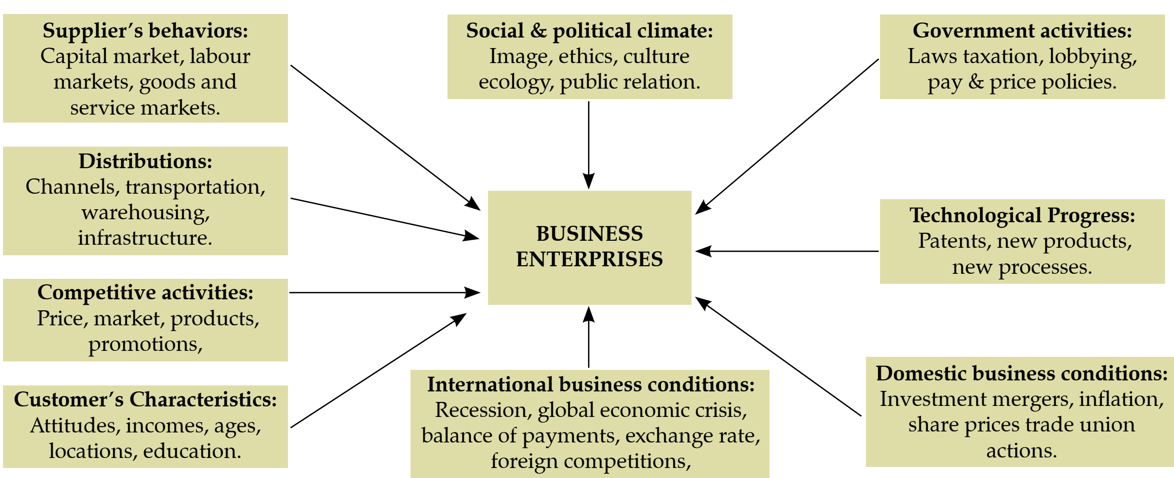
In this regard, one example is very significant. In 1970s, an American automobile manufacturer took a group of Japanese industrialists around his automated warehouse, of which he was very proud. When he wanted to know what they thought about it, the reaction was: *Why do you store what you cannot sell?* Meanwhile in Japan, a supplier's truck was halted at the gates of Toyota for no other reason but that they were earlier than their delivery schedule, which was against the concept of 'Just in Time'

Nowadays, many external factors (refer to Exhibit I) are affecting the business activities. In international business, recession and global crisis (decline of global demand) are among the most affecting activities, and, in national business, slow down and decaling of aggregated demand are affecting factors.

The goal of any cost system is to provide relevant and timely information to management for support better management of corporate resources in production or provisions of services and improves competitiveness in terms of costs, quality and profitability. Amidst the changes, which the business world has witnessed during last few decades, traditional cost-accounting systems have been found to be inappropriate: firstly, the goal competition which changed the need of information of managers and, secondly, the technological revolution which reshaped manufacturing environment and, thus, the cost structure of manufacturing entities. Traditional systems failed to attend to the information needs of global production technologies and competitions, and, therefore, have become irrelevant. Now, market sentiments determine the price and no enterprise can shift its inefficiency and idle costs to it customers in the form of price, as customers are better informed for bargaining in this era.

In the light of this background, it is important to discuss the innovative cost-control techniques that are very useful in the era of economic crisis to minimise cost and control the cost of product and services by the Indian companies. We are familiar with the traditional cost-control techniques like differential costing, marginal costing, opportunity costing, relevant costing, responsibility accounting, value analysis and engineering and their relevance.

Exhibit I: Business Enterprises and External Factors.



In this article, the focus is on innovative techniques (refer to the Exhibit II), which have the ability to sustain business and market share in critical times:

Exhibit: II Cost Control Techniques

Traditional costing techniques

- Differential costing,
- Marginal costing,
- Standard costing
- Opportunity costing,
- Relevant costing,
- Responsibility accounting,
- Value analysis and engineering

Innovative costing techniques:

- Target costing
- Activity based costing,
- Benchmarking,
- Life cycle costing,
- Attributable costing,
- Transfer pricing,
- Back flash costing,
- Kaizen costing.
- JIT (System) Analysis

Target Costing

Target costing is defined as a cost management tool for reducing the overall cost of a product over its product life cycle. Management utilises this pricing technique to meet both demands of its customers as well as company profit goals. Target costing is particularly popular among Japanese firms in various industries, such as automobile, manufacturing, electronics, machine tooling, and precision machine manufacturing. As Japanese tastes became more diverse, assembly-oriented production grew in popularity.

Target cost = Target selling price – Profit margin.

This growing demand for a diverse range of products shortened product life cycles. With shorter product life cycles, more focus is placed on costs occurring at each phase, i.e. development, planning and design. In order to minimise cost, team members focus on eliminating non-value-added costs of the process improving product design and modifying process methods. Target costing, in particular, emphasises the reduction of costs during the planning and design stage of the product life cycle since the majority of product cost is determined at this stage. In comparison to traditional product costing methods, target costing allocates more of the total cost to the development stage, simultaneously reducing costs during the production stage. Target costing is customer oriented and market-driven profit-making strategy. It is aimed at achieving customer's satisfaction and market competitiveness at the same time and, in the mean time, making a profit according to the strategic plan. Working of target costing is simple.

First, determine the selling price of the product on the basis of market research and costumer affordability. Then, target cost of the product is calculated by subtracting the profit form the price. We must always remember that all the three

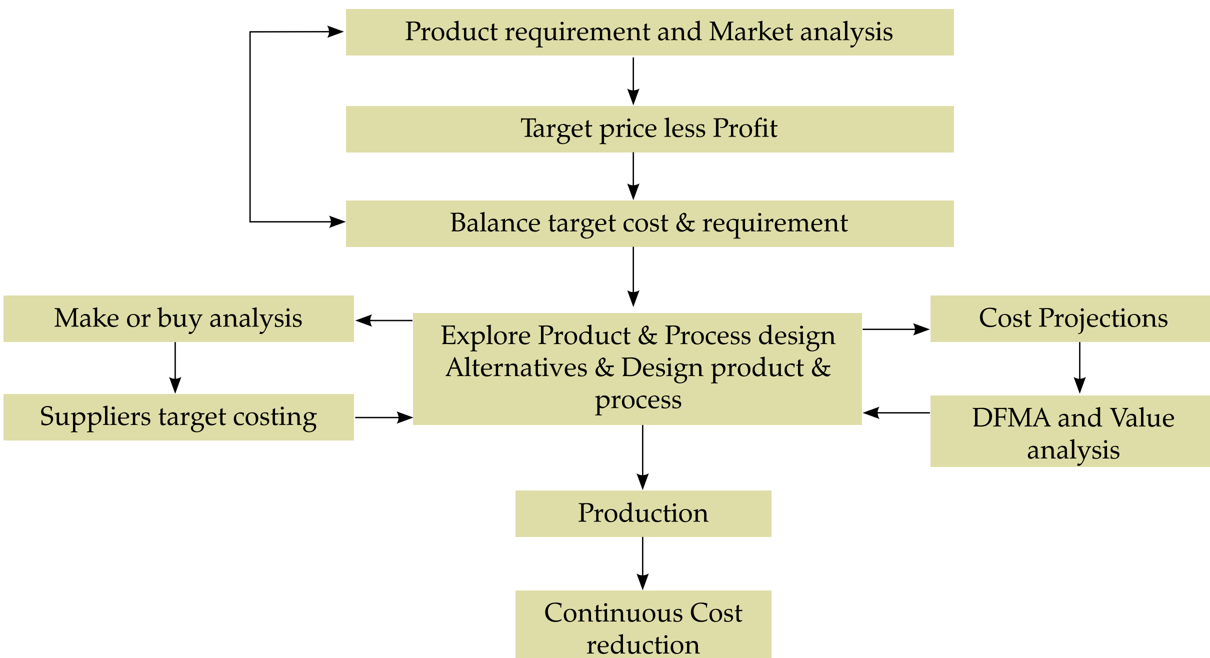
The successful companies are no longer competing on single dimension, such as cost. Instead, companies much excel on two or more of the traditional strategic elements. They must not only focus on producing a low cost product but additionally, maintain high quality and customer services level. There is a shift in corporate strategy from *product-driven* to *market-driven*.

variable costs, e.g. material, labour and direct expenses, are time-dependent and they need to be revised periodically. Target costing represents a fundamentally different approach. It is based on three premises:

1. Orienting products to customer affordability or market-driven pricing,
2. Treating product cost as an independent variable during the definition of a product's requirements, and
3. Proactively working to achieve target cost during product and process development.

target cost for the product into various product cost elements based on the engineering design and cost requirements. The achievement of the target cost requires intense value engineering (VE) activities and close cooperation among departments, e.g. engineering, production and marketing. VE is a mechanism Japanese manufacturers use to enhance the value of products and services, which is measured by the relationship between the functions performed by products and services, and the costs incurred. The functions are defined by different companies in different ways. Some are geared

Exhibit III: Target Costing Concept



In calculating the target profit, Japanese companies use the rate of return on sales (ROS) rather than return on investment (ROI). The ROS is technically more convenient to relate profit to low-volume products. This practice reflects Japanese manufacturers' tendency to focus on the profitability of the portfolios of related products rather individual products. After the total target cost is set for a newly approved product plan, the engineering planners and cost management personnel divide the total

toward process improvement while others are focused on satisfying the needs of customers.

Tata Nano – An Example: Target costing and Tata Nano are synonyms. Tata Nano is one of the major projects launched by the Tata Motors on January 10, 2008, which had been originally started four years back in 2003. *It is one of the latest examples of the target cost management by Indian automobile industry* how an Indian company fixed the target price according to market condition and, based on that, they controlled

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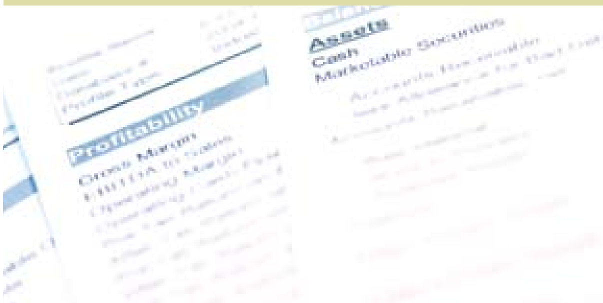


cost during designing and production stage of the product. The target price of Tata Nano have been decided four years before and, even after rapid increases of inflation, they maintained the price of Rs. 1 lakh. After the analysis of data and information collected form various sources, Tata Motors adopted innovation and redesigning, packaging design, outsourcing of components, benchmarking with Maruti 800, supply-chain management, etc., as their cost-reduction strategy to supplement the target costing.

Kaizen Costing

Kaizen costing means continuous improvement. Target costing is a critical means of managing the costs in a new product design and development stage. It supports continuous improvement activities in the manufacturing phase. It helps Japanese manufacturers accomplish their objective of cost reduction in the full cycle of design-development-production cycle. It functions in the same way as a budgetary control system but is usually located outside the regular cost accounting system. In the standard cost accounting system, the focus is on meeting standards. It, in contrast, authorised the setting of a cost reduction target amount and the attainment of the target amount through continuous improvement activities. These improvement activities, which should lead to cost reductions, are clearly specified for each organizational unit and for each accounting period.

Kaizen costing is a Japanese technique used to manage costs during a product's planning and design stages and has been used by some Japanese firms for over twenty years. It is now widely used in Japan in industries such as electronics, precision machinery and automobile. Its objective is to reduce current costs by using various improvement tools such as value engineering and functional analysis for each manufacturing facility. *Kaizen* is a Japanese word that translates as *continuous improvement*. It consists two separate words namely *kai* and *zen* that mean *change* and *better* respectively. So, Kaizen means *change for better*, i.e. continuous improvement with involvement of everyone in the organization to generate value for customers. It is basically based on the belief that there will be no progress if you keep

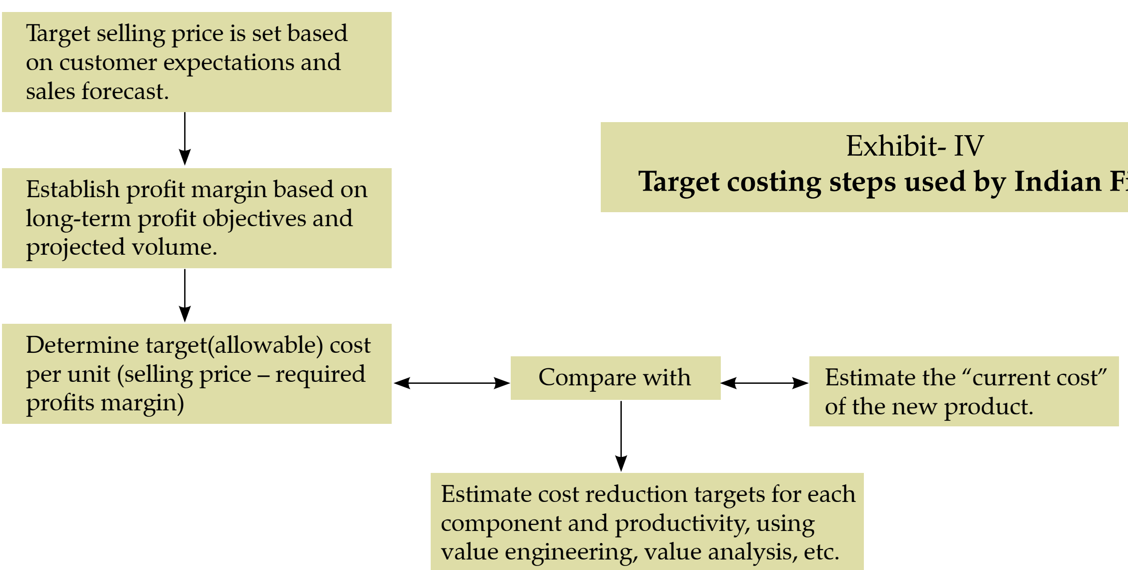


Exhibit- IV
Target costing steps used by Indian Firms.

Kaizen costing is a Japanese technique used to manage costs during a product's planning and design stages. It has been used by some Japanese firms for over twenty years. It is now widely used in Japanese industries, such as electronics, precision machinery and automobile. Its objective is to reduce current costs by using various improvement tools, such as value engineering and functional analysis for each manufacturing facility. The term *Kaizen* is a Japanese word that translates as *continuous improvement*.

on doing things exactly the same way all the time. Kaizen focuses upon process oriented thinking as opposed to result-oriented thinking. The message of Kaizen environment is that not a day should go by without some kind of improvement being made somewhere in the organization. Many Indian firm like Tata Motors, Hero Honda and L&T are using Kaizen costing for the continuous improvement of their process and distribution system to minimise their cost.

Activity-Based Costing (ABC)

This costing has emerged in the late 1980s as an alternative to traditional costing system to accumulate the cost of an object. The basic objective of the ABC system is to use only cause and effect in cost allocation. This system focuses on activity as a fundamental cost, objects and sues the costs of these activities as building blocks for compiling the cost on other objects. The Chartered Institute of Management Accountants, London, has defined it as *Cost attribution to cost units on the basis of benefits received form indirect activities i.e. ordering, setting up assuring quality, etc*. This is also called activity accounting, in only generic approach and can be a part of both a job and process costing system. It is that costing in which costs are first traced to activities and them to products. This system assumes that activities are responsible for the incurrence of costs and products create the demands of activities. Costs are charged to products based on individual products use of each activity.

ABC aims at identifying as many as cost possible to be subsequently accounted as direct costs of production. Any cost that is traced to a particular product via its consumption of activity becomes direct cost of the product. For instance, in conventional costing system, cost set-up and adjustment as time are considered factory overheads and subsequently assigned to different products on the basis of direct labour hours. But, in ABC, set-up and adjustment time is determined for each product and its cost are directly charged to each product. Thus, by putting activities, ABC tries to ascertain the factors that cause each major activity and the relationship between activities and product produced. Usually, the ABC system has greater number of cost centers than the traditional costing system.

Resources → Activities → Products

According to Computer-Aided Manufacturing International (CAM-I), *activity-based costing is a methodology that measures the cost and performance of activities, resources and cost objects. Resources are assigned to activities, then activities are assigned to cost objects based on their use. Activity based costing recognises the casual relationship of cost drivers to activities.* ABC is a decision-making tool. It allows organization to improve business performance through increased efficiency and reduction of costs. It can be defined as:

$$C/A = HD + M + E + S$$

where C/A = estimated cost per activity, H= number of Labour hours required to perform the activity one time. D=wages per Labour hour, M= material cost required to perform the activity one time, E= equipment costs to perform the activity one time, S= sub contracting costs to perform the activity one time.

Exhibit- V: Major steps of ABC system

Identifying major activities → Assigning costs to activity cost centers → Identify support activity → Selecting cost drivers for allocating cost to cost centers. → Allocating the cost of an activity to cost objects on the basis of cost drivers

Nowadays, due to pressure of recession and global economic crisis, most of the Indian companies are identifying and eliminating non-value added activities and accordingly minimising cost of service and product to sustain in global market.

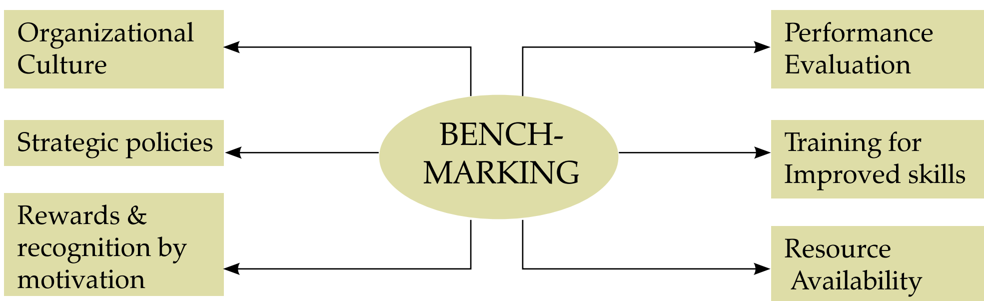
Transfer Pricing

The Indian corporate sector had followed market-price-based transfer pricing system as against the worldwide practice of cost-based method domestic transfer pricing and market-price-based method for international transfer pricing. The motivations for adoption of market based domestic transfer pricing method by the respondent firms were optimal decision making for the organization, divisional autonomy and motivation for performance. Firms concentrating on customers, competencies and competition by leveraging the approaches to relationship management, solution selling, business process integration and appropriate use of IT are bound to benefit enormously. Sundaram Fastners Ltd. is a very good example of an Indian firm, which has achieved this distinction from none other than General Motors of the USA. Asian Paints too has achieved market leadership status in the face of stiff competition from various MNCs by leveraging such practices.

Benchmarking

The word *benchmark* is a reference or measurement standard used for comparison and it is a continuous process of identifying, understanding and adapting best practices and processes, which result in superior performance along with cost effectiveness. Stamatis (1997) has defined benchmarking *as the process of gathering, analyzing and evaluating the world on outside your organization and comparing it to your own*. The findings and the results of this process becomes the vital foundation and basis of your improvement. *A systematic and continuous measurement process; a process of continuously comparing and measuring an organizations business process against business leaders any where in the world, to gain information that will help the organization take action to improve its performance.* According to IBM their benchmarking is *the continuous process of enlisting the best practices in the world for the process goals and objectives leading to world class levels of achievements.*

Exhibit- VI



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Just-in-time (JIT) inventory management system is part of a manufacturing approach that seeks to reduce the companies operating cycle and associated costs by eliminating wasteful procedures. It is based on the idea that all required inventory items should be supplied to the production process at exactly the right time and in exactly the right quantities. This approach was first developed by the Toyota Motor Company in the 1950s.

The main objective of benchmarking is the need to establish credible goals and pursue continuous improvements in the direction where the practices need to discover. In any enterprise, types of benchmarking have emerged as performance, process and strategic. The performance involve pricing, technical, quality and features where as and employee training. The strategic benchmarking includes competitive advantages and market success. This concept was evolved and used in early 1950s by W. Edward Deming, when he taught the Japanese the idea of quality control; but, after this, the concept of benchmarking lost its relevance. This concept again became prominent in early 1980s, when multinational giants IBM, Motorola and Xerox used benchmarking for their strategic advantage. From then onwards till today, benchmarking is being used as an effective tool for various managerial functions including cost control.

Richard Chang and Keith Kelly (1998) have evolved four common approaches to benchmarking:

1. *Internal Benchmarking:* It is done within an organization, or, perhaps in conjunction with another branch office. Internal benchmarking is typically the easiest to conduct, since data and information should be readily available and confidentiality concerns are minimised.
2. *Competitive Benchmarking:* Generally each organization has at least one competitor that excels at the exact processes which an organization wants to study. However, in this approach, benchmarking will be slightly difficult when compared to internal benchmarking, because it is very difficult to collect or learn a competitor's trade secret. Firms usually hire the services of a third party consultant to gather strategic information relating with the competitors.
3. *Noncompetitive Benchmarking:* Noncompetitive benchmarking helps an organization to improve its core-competencies. The benefits of noncompetitive benchmarking include:
   a. A related process in your industry with a firm you do not directly compete with.
   b. A related process in a different industry.
   c. An unrelated process in a different industry.

   The most striking phenomenon of non-competitive benchmarking is that new and innovative processes can be find out and adapted in an organization.
4. *World-Class Benchmarking:* This approach is the most ambitious and broad forms of benchmarking. It involves the process of making comparison with the strategies of the world's best establishments and analyzing and learning from their strategic approaches.

Benchmarking and Tata Nano: Benchmarking involves the process of making comparison the strategies of the world's best establishments and analyzing and learning form their strategic approaches. During the process of designing and development of Nano, Tata Motors treated Maruti 800 car as benchmark. In terms of acceleration and drive ability, it should at least equal the Maruti 800 and, in some areas, it should excel it. For that purpose, they used world-class benchmarking to improve the quality with cost reduction at global level. The performance involve pricing, technical, quality and features where as and employee training.

JIT (System) Analysis

Just-in-time (JIT) inventory management system is part of a manufacturing approach that seeks to reduce the companies operating cycle and associated costs by eliminating wasteful procedures. It is based on the idea that all required inventory items should be supplied to the production process at exactly the right time and in exactly the right quantities. This approach was first developed by the Toyota Motor Company in the 1950s. In contrast, inventory models used in many plants, which rely on safety stocks, some times are referred to as *just in case* models. Many related terms described the JIT approach such as MAN (*material as needed*), MIPS (*minimum inventory production system*), and ZIPS (*zero inventory production system*).

The basic philosophy behind JIT is: the firm should keep a minimum level of inventory on hand relying on suppliers to furnish stock just-in-time as and when required. This is in direct contrast to the traditional inventory philosophy, which emphasises keeping sufficient levels of safety stocks to ensure that production will not be interrupted. Although, large inventories may not be a bad idea when interest rates and carrying costs are low, but when carrying costs are higher, the inventories really become too costly to maintain.

The JIT inventory system, as its name suggests, means all inventories whether of raw materials, works in process and finished goods are received in time. In other words, raw materials are received just in time to go in to production, manufacture parts are completed just in time to be assembled into products, and products are completed just in time to be shipped to customers. In a JIT environment, the flow of goods is controlled by what is described as *pull approach* to the manufacture of products, which means, at the final assembly stage, a signal is sent to the preceding work station as to the exact quantum of parts and material that will be needed over the next few hours for the assembly of products, and only that quantum of parts and material is provided. The same signal is sent back through each preceding work station so that a smooth flow of parts and materials is maintained with no inventory build up at any point.

LCC analysis can be used to assist management in the decision making process where there is a choice of options. This costing is, therefore, a method for evaluating all relevant costs over a period of time of a project/technology. CAM-I defines *life-cycle costing* as the accumulation of costs for activities that occur over the entire life cycle of a product, from inception to abandonment by the manufacturer and the customer.

Essentials of JIT System

The following are the key requirements for the successful operation of the JIT inventory system:

1. The company must have only a few suppliers.
2. Suppliers must be bound under long term contracts and willing to make frequently deliveries in small lots.
3. The company must develop a system of total quality control (TQC) that means no defects to be allowed over its parts and materials.
4. Poor quality of goods or parts cannot be accepted, since the JIT inventory system operates with almost no work in process inventory.
5. Workers must be multi skilled in the JIT environment. This is because, in case of the JIT system, machine and equipment are arranged in small cells, where several tasks can be performed in relation to a product. The workers assigned to these cells are expected to operate all the equipments, which are there in the cells.

Flexibility Manufacturing System (FMS)

Flexibility seems to be another key word for providing the competitive edge now days. Customers are looking for more and more varieties and features in the products. The tastes change continuously and only those manufacturers who respond to these attributes have the leading edge in the competition. This means that, in order to respond to the immediate market needs, we need a system, which operates profitably in the mid volume and mid-variety range, and allows us to quickly vary the production volumes and product mix without substantial increase in the cost of operation. Adopting the FMS is one method that provides this required flexibility. By means of trying together a set of high profile machine tools such as CNC machine centers and CNC turning centers and an equally high profile material handling system such as automated guided vehicles, robots, etc., by means of a high power computer system, the required flexibility is obtained. A network of computers and the associated software allows the machine tools and the material handling system (MHS) entities to talk to each other and do the assigned task in a coordinated fashion. Since, it is completely computer controlled, alternative parts can be manufactured by simply changing the part programme and tools. Jobs can be routed through alternative locations by simply telling the MHS entities to do so. Everything in the shop floor starting from the machine tools, MHS entities, tools, chips and coolants, materials, inventory, scrap and work holding devices are watched, directed and monitored electronically by the computer control system. Library of scheduling and planning algorithms ensures that things happen almost to plan.

In the era of global slow down and competition through flexile manufacturing system a firm can produced verity of goods as per the requirement of customers and enhance heir turnover and market share despite of slow down. Mobile companies are the latest examples of this FMS approach. They are generating and creating demand for their product with adoption of special features as per the requirement of the customers though value added product and services.

Backflush Costing

Backflush costing, a precise method, is associated with modern manufacturing methods and companies which sustain low or no inventory. Hammer et al (1993) describes it as *a method of costing associated with a JIT (Just in Time) production system, which applies cost to the output of a process. Costs do not mirror the flow of products through the production process, but are attached to output produced, i.e. finished goods stock and cost of sales, on the assumption that such back flushed costs are a realistic measure of the actual costs incurred."* It is a costing system that delays recording some or all of the journal entries relating to the cycle from purchase of direct materials to the sale of finished goods.

Procedures in Backflush Costing: The procedures in backflush costing may differ to a great extent from company to company, as there are various forms of this costing that can be used. Backflush costing may abolish work-in-process accounts and instead flush all of the costs back at the end of the production run being costed. It may also record raw materials at a standard cost when they are purchased, while recording conversion costs at their actual costs. It is also used by eliminating the finished goods inventory account and instead recognising the finished goods at the point of sale.

Backflush costing is most suitable when used to go together a just-in-time inventory management system or to assist an activity-based costing system. This is due to the fact that backflush costing simplifies the costing process in these situations. However, users of this type of system must keep in mind that it does not always conform to generally-accepted accounting principles (GAAP) and that this type of system can be criticised because it does not leave a sequential audit trail. Backflush costing may still be the most appropriate system for certain just-in-time inventory management situations. This is especially true if it is used in conjunction with activity-based costing.

Life Cycle Costing (LCC)

It is also called as whole-life costing, a technique to establish the total cost of ownership and a controlled approach that addresses all the elements of this cost and can be used to produce a spend profile of the product or service over its probable life-span. LCC analysis can be used to assist management in the decision making process where there is a choice of options. This costing is, therefore, a method for evaluating all relevant costs over a period of time of a project/technology. CAM-I defines life-cycle costing as *the accumulation of costs for activities that occur over the entire life cycle of a product, from inception to abandonment by the manufacturer and the customer.* Life-cycle analysis provides a framework for managing the cost and performance of a product over the duration of its life. The life-cycle commences with the initial identification of a consumer need and extends through planning, research, design, development, production, evaluation, use, logistics support in operation, retirement, and disposal.

The Methodology of LCC: It is based on the premise: to arrive at meaningful purchasing decisions, full account must be taken of each available option. All significant expenditure of resources which is likely to arise as a result of any decision must be addressed. Explicit consideration must be given to all relevant costs for each of the options from initial consideration through to disposal.

LCC Calculation: The life-cycle cost of a project can be calculated using the formula:

$$\mathbf{LCC = C + Mpw + E\ pw + R\ pw - S\ pw}$$

where the subscript pw indicates present worth of each factor)

- The capital cost **(C)** of a project includes the initial capital expense for equipment, the system design, engineering, and installation. This cost is always considered as a single payment occurring in the initial year of the project, regardless of how the project is financed.
- Maintenance **(M)** is the sum of all yearly scheduled operation and maintenance (O&M) costs. Fuel or equipment replacement costs are not included. O&M costs include items such as an operator's salary, inspections, insurance, property tax and all scheduled maintenance.

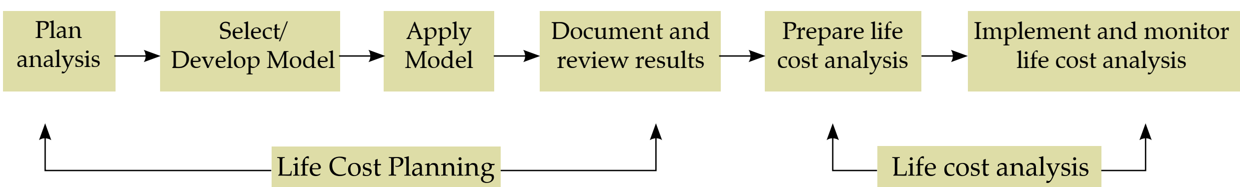
- The energy cost **(E)** of a system is the sum of the yearly fuel cost. Energy cost is calculated separately from operation and maintenance costs, so that differential fuel inflation rates may be used.
- Replacement cost **(R)** is the sum of all repair and equipment replacement cost anticipated over the life of the system. The replacement of a battery is a good example of such a cost that may occur once or twice during the life of a PV system. Normally, these costs occur in specific years and the entire cost is included in those years.
- The salvage value **(S)** of a system is its net worth in the final year of the life-cycle period. It is common practice to assign a salvage value of 20 per cent of original cost for mechanical equipment that can be moved. This rate can be modified depending on other factors such as obsolescence and condition of equipment.

The important point is that the basic supporting structure is not affected by a change in policy that might affect a given activity. In making policy decision, therefore, the aim is to find the units cost figures for the activities in question under alternative configuration while treating the basic organizational arrangements as continuing unchanged.

Suggestions for Indian Companies

In the era of global recession, it is essential for all companies to cut their cost to face the competition, which is why, many Indian companies are focusing on the cost-cutting through retrenchment of their excess employees or non-performing employing, or are cutting the various facilities, welfare measures to minimise their cost. After the analysis of facts and their cost reduction methodology, the following suggestions are offered to the Indian industry to reduce and maintain their cost in this global competition.

Exhibit VII: Life Cycle Costing Process



There are four major benefits of the LCC analysis:

- Evaluation of various options in purchasing;
- Awareness and complete information of total costs;
- Accurate forecasting of cost profiles and different cost elements; and
- Performance evaluation and trade-off against cost.

Attributable Costing

Attributable cost is another term improved activity based costing system. It is not a new accounting process but a shift in the focus of the cost analysis. An attributable cost refers to any cost that could be eliminated, if a particular activity was discontinued. Attributable cost includes all costs whether fixed or variable associated directly with the particular activities and activities share of allocated cost which would be eliminated, if the activities were to be discontinued and capacity reduced accordingly. These cost similar to the avoidable cost. Shilling Law defines it as *the cost per units that could be avoided on the average, if functions were discontinued entirely without changing the supporting organization structure.*

First step, to adopt Kaizen costing for enhancing manufacturing innovation.

Second step, to use target costing for research & development innovation.

Third step, to implement Green Kaizen and target costing.

Fourth step, to have overall cost management during the production process.

Target costing and Kaizen costing are also suggested for sustainability and innovation. These two pillars can drive the bottomline of the Indian industry in short run and in long run. Along with the improvement of quality of product, they have to use target costing and Kaizen costing as a cost management process. Drivers such as automations, efficiency, adequate, research, etc., will help the industry move up the value chain, which help in the sustenance within the industry. Similarly, elimination of all form of waste, non-value-added activities and development of high level of efficiency in manufacturing process will help Indian industries to remain competitive in global market. And, therefore, to survive in global recession, creativity, innovation and cost control are very important tools.

Way to a Peaceful and Secured Life: Right Financial Planning through Life Insurance

What makes one an achiever in life? A perfect financial planning. Those who do not do a financial planning end up in a vicious circle of life that is nothing but "race after money". However, those who ensure a proper financial planning, make life peaceful. A successful person improves life style considerably, in a short time, through the most respectable manner of the society, in which he lives. This article looks at the right financial planning to make one's life peaceful and secured.

CA. Ramakrishnan Venkataraman

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

Human beings has always been driven by two "D" factors: Desires and Dreams. Initiated by the basic "necessities" (commonly known as food, clothing and shelter), as they grow up, the scope of their necessity embraces personal "Desires" and expands to "Dreams". A successful person improves life style considerably, in a short time, through the most respectable manner of the Society, in which he lives.

What makes one an achiever in life? A perfect financial planning. Those who do not do financial planning end up in a vicious circle of life that is nothing but "race after money". However, those who ensure a proper financial planning, make their life peaceful.

Human beings have a set of desires and dreams. A desire may be to become a doctor or an engineer, to own a car, to live in a good house, etc., which are just a few examples from their basket of dreams and desires. These are simpler, because they will be able to achieve these with ease. On the contrary, when they enter into the domain of family, the basket becomes bigger. With the advent of children, family-size increases and this automatically results in the basket getting bigger. There arises a compulsion and a drive to achieve multiple and complex dreams and desires of members of a family.

Since, a family has multiple and complex dreams and desires, situation gets complex, because there could be several permutations and

Of late, insurance companies have introduced a new concept called ULIP (Unit Linked Insurance Products). They participate in the equity market and explore an opportunity to offer participants an attractive return. While death benefit is a basic assurance from any insurance product, the excess returns have always been based on performance of funds.

combinations of dreams and desires. For example, while father may wish to own a 3-bedroom flat, the mother may desire an independent villa. As the son looks for its place in a posh locality within the city, the daughter may dream to have it in an upcoming locality far away from city traffic and nuisances.

How to draw a connecting link to everyone's desire and dream, and yet live peacefully? For this, one needs funds, which should be made available through a right financial planning:

To achieve desires & dreams

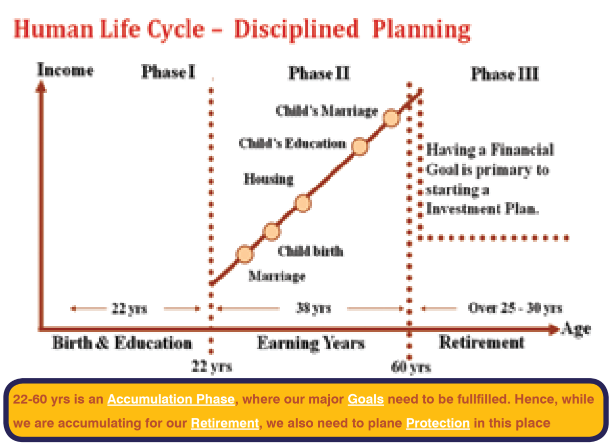
↓

need funds

↓

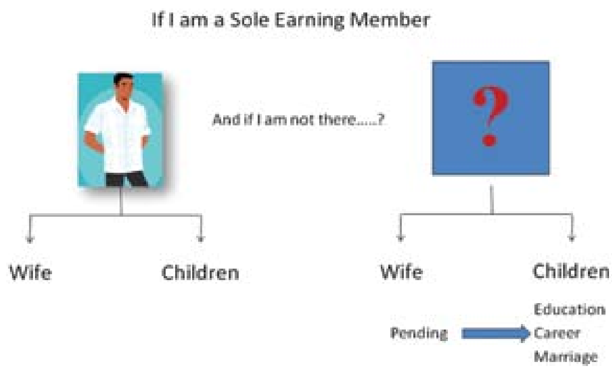
need for a financial planning

The below mentioned diagram, depicts different phases of one's life and the need for a disciplined financial planning:



The truth that is brought out is that one earns in one's second phase of life comprising just 38 years. This phase also witnesses one's major goals set by desires and dreams. Not only an individual aims at fulfilling all her/his goals, there is an urgency to accumulate for retirement phase, as well.

The case is more critical in case of sole earning member families. A lot of hard financial planning is required to ensure protection and continuation of life style of family members, with or without the sole earning member.



If one has peace and security in life, there will be an effective focus on performance in job and business. Then, where there is focus, there is productivity. Impressive productivity brings in a respectable financial and social status for the individual concerned.

What gives one peace and security? Insurance is the only financial service product that offers peace and security to an individual. It covers the risk on one's loss of life. A traditional insurance product offers three types of benefits:

1. Death benefit, in case of an unfortunate event
2. Survival benefit, in case the insured survives through the term
3. Market upside, widely termed as "distribution of bonus and/or profits"

Of late, insurance companies have introduced

As per current taxation laws, payment of premium provides tax benefits under the Section 80 C. Any payment from insurance companies (on death or on survival or distribution of profits/bonus) is exempt under the Section 10(10D). Today, an insurance cover for one's life for Rs. 1 crore is available for as little as Rs. 17 per day. Such an affordable cost will enable every earning member to get life insured for Rs. 1 crore. Then, why not go for it?

a new concept called ULIP (Unit Linked Insurance Products). They participate in the equity market and explore an opportunity to offer participants an attractive return. While death benefit is a basic assurance from any insurance product, the excess returns have always been based on performance of funds.

Philosophy propagates, human lives are priceless. However, a financial planner advocates the principle, "Every human life has a financial value".

How to calculate a person's human life value? Here is the table:

Every Human Being has a "Value"

HUMAN LIFE VALUE (HLV)	
Your Age (in years)	45
	Amount (INFO)
Annual Gross Income	20,00,000
Les Personal Expense including Taxes	5,00,000
Amount Available to spend for Family	15,00,000
HLV Factor as per Age (Upto 25 Years = 20 / 26 to 35 = 15 / 36 to 45 = 12 / 46 & Above = 10)	12
Gross Human Life Value	1,80,00,000
less Liquid Assets (Assets that can be encashed within 7 days)	30,00,000
less Existing Life Insurance (Sum Assured only)	1,00,00,000
add Current Liabilities (Loans, Credit Card Amounts, Borrowings, etc.)	25,00,000
add Money Value of Dreams for rest of life (Vacation, Children Marriage, Career, House, Car, etc.)	40,00,000
Human Life Value	1,15,00,000

If we purchase a new Mercedez Benz from the showroom, we will never insure it for a mere Rs. 10,000. Similarly, we will never under-insure our house property, factory warehouses, plant and machinery, stock in trade and such other non-living things. Why? The answer to this question is simple: We fear that in case of any unfortunate loss or damage, the value that would be realised from insurance companies would be much less than the real value. Then, why should a wise person under insure the personal life?

Of course, insurance is the subject matter of solicitation. Whenever your financial advisor, advises a need for insurance planning, the invariable response is: *I am already over-insured. So, I don't need any further insurance*. However, it will be wise in our own interest to take a piece of paper and start writing down the following vital information, looking at our files and records:

1. Policy Number
2. Policy Date
3. Maturity Date
4. Is the policy still in force?
5. Sum Assured (Only Death Benefit)
6. Total sum assured of all policies in force

Include the total, thus arrived at, and the table given above to arrive at the gap to be bridged by further insurance cover for human life, at the given point of time.

The insurance premium will keep increasing as the age increases. At a lower age, the premium cost is much lower. Technically, it is called *mortality charges*. A wiser financial advisor will advise her/his clients to go for maximum cover at a younger age, so that the reduced cost of premium fully benefits the clients. Furthermore, as per current taxation laws, the payment of premium provides tax benefits under the Section 80C. Any payment from insurance companies (on death or on survival or distribution of profits/bonus) is exempt under the Section 10(10D).

Today, an insurance cover for one's life for Rs. 1 crore is available for as little as Rs. 17 per day depending on age, term and product features. Such an affordable cost will enable every earning member to get life insured for Rs. 1 crore. Then, why not go for it?

Compare this amount with the spending spree of today's earning professionals:

- An average cinema ticket costs Rs.100
- A pastime dinner will be not less than Rs. 150
- The daily cost of prohibitive habits on smoking and beverages could be above Rs. 50

Is your family's security less important than any of the above listed luxuries? Then, why close your eyes on the benefit of insurance planning? As reiterated time and again, more wealth can be created, if and only if, we are productive in our professional roles. Productivity is a direct result on the focus and concentration on performance. Our mind should be at peace, secured and free from unnecessary tension and worries.

In today's world, people make a handsome entry into the professional world, with an impressive salary, at a younger age. All that is required from seniors in the financial field is an appropriate advice given to the youngsters on the need to go in for insurance cover, looking at the product as a life-risk-cover product at a younger age. Thereafter, keep looking at client's human life value, due to changes that may occur in due passage of time, opportunities, commitments, desires and dreams, and bridge the gap with additional insurance policies as required.

Go for life insurance. Continue to have peace in mind. Ensure security of your family members. Keep creating more wealth.

Series: Legends in the Accounting Tradition of India

Shri Sorabji S. Engineer

Inherent sincerity and nobility made Shri Sorabji Shapurji Engineer (1883-1973) a tower of inspiration to a generation of accountants of his time. He is also known to the Indian accounting community as the acclaimed *guru* of the first President of The Institute of Chartered Accountants of India (ICAI), Shri Gopaldas Padamsey Kapadia.

Shri Engineer was contemporaneous with the profession of accountants/auditors enjoying a high status, especially during 1913, the year of the enactment of the Indian Companies Act. There was nothing like this profession, as an auditor of a joint-stock company used to be a well-known or a respectable person. It was also the time, when the Society of Incorporated Accountants and Auditors (SIAA), London, had prominent Indian accountants like Shri K. S. Aiyar and Shri N. R. Mistri on their roll. In retrospective, it is a reminder of our own medieval history, when *muśrifs* (accountants) and *mustawfis* (auditors) used to be among the most influential professionals of an empire.

Shri Engineer, after passing the B. A. examination in December 1904, got his three-year (1905-1908) articleship under Shri K. S. Aiyar, and was first article to serve in India under an approved Incorporated Accountant. This provision to serve an articleship in India had become a reality only in 1905. Then Shri Engineer went to London to appear at his Intermediate and Final examinations of the SIAA. He belonged to the first batch of duly-qualified SIAA accountant/auditor. He completed the course in 1909 and joined Shri Aiyar's firm and served the same for five years (1909-1914). Shri Engineer founded his own firm in March 1914 in Bombay as well as in Ahmedabad. The Section 144 of the Indian Companies Act, 1913, empowered accountants like Shri Engineer, which stipulated the qualifications of an auditor.

Exactly a hundred years back in May 1910, Shri Engineer had founded the Association of Auditors and Accountants in India with other prominent Indian accountant-auditors of his time, which included Shri K. S. Aiyar and Sir S. B. Billimoria. In October 1913, he was appointed as the first Professor of Accounting & Auditing in the Sydenham College of Commerce and Economics, Bombay, and his job was to prepare the students for the degree of Bachelor of Commerce. He trained hundreds of students/articles, which included two past Presidents of the ICAI (India), Shri G. P. Kapadia and Shri C. C. Chokshi, and many first partners of eminent chartered accountant firms of India.

A noteworthy contribution of Shri Engineer has been his substantial role in drafting of the *History of the Accountancy Profession in India*. He is known to have assisted his student Shri G. P. Kapadia with many authentic anecdotes and narratives about some prominent and towering accountants of the formative period and their times. He contended their significant contributions to the accountancy profession in India as the derivative of credibility. We, as readers, get to witness a glimpse of this contribution of Shri Engineer's while reading the *History* where Shri Kapadia very fondly remembers his guru and his stories. Shri Kapadia respectfully recalls him as *a source of inspiration to scores and scores of articled clerks* and writes: (Shri Engineer)…*moulded the careers of hundreds of members*.

(Contributed by the Journal Section of ICAI)

⏭ Government May Scale Down Tax Relief Proposed in DTC Draft

People with more than Rs. 10 lakh annual income may not get the tax relief originally proposed in the Direct Taxes Code, as the Finance Ministry is for tweaking slabs across the board to offset concessions elsewhere. Under the first draft of DTC -- which when implemented will replace the Income-tax Act, 1961 – income of Rs. 10 lakh to Rs 25. lakh was to attract tax at the rate of 20 per cent, but the final draft may propose slapping 30 per cent tax on any income above Rs. 10 lakh per annum, according to sources. This is to make up for the possible concessions the ministry may extend in other areas like exempting long term savings from tax at the time of withdrawal and the way Minimum Alternate Tax is calculated, sources said. As such, the relief on highest tax slab would not be much, since under the present regime too, 30 per cent tax is imposed on income of more than Rs. 8 lakh a year. Sources said the ministry is reworking the August 2009 draft following feedback from stakeholders. Under this, the 10 per cent tax proposed on income up to Rs. 10 lakh may now stand scaled down to Rs. 5 lakh a year. And income of Rs 5 to 10 lakh a year would attract 20 per cent tax, although the first draft proposed slapping this rate on Rs. 10 to 25 lakh income. However, the threshold level of income that is exempt from tax may be raised to Rs. 2 lakh from Rs. 1.6 lakh at present. The first draft had proposed retaining the threshold limit at Rs 1.6 lakh.

Source: http://economictimes.indiatimes.com/

⏭ Revised Tax Code Draft in Month or Two

The revised draft of the Direct Tax Code (DTC), that will replace the Income-tax Act, 1961 will be available for comments soon before it is finalised and placed before Parliament for its approval, possibly in the winter session. Stating this at a seminar recently, the Central Board of Direct Taxes (CBDT) chairman, SSN Moorthy, said the revised draft of the simplified direct tax code would be available for comments in a month or two. The first draft of the DTC was made available in August last year. The industry had, however, protested certain proposed taxes in the DTC. The draft suggested 2 per cent Minimum Alternate Tax (MAT) on the gross asset value of a company, instead of the current levy of 15 per cent on book profits. Moorthy said the government is looking into the MAT issue. Besides MAT, the revised draft will also address other issues such as tax exemption for the housing sector and taxation of savings. Moorthy said the department was hopeful of tax collection of Rs. 3.80 lakh crore in 2009-10, short of Rs. 7,000 crore as per the revised estimates.

Source: http://www.business-standard.com/

⏭ Genuine Business Recasts Can Bring in Tax Benefit: ITAT

In a decision that will help corporates restructure businesses, the Chennai bench of Income-tax Appellate Tribunal (ITAT) has held that tax benefit could not be denied to business restructuring, if the exercise fulfills all the conditions mentioned under the Income-tax Act, 1961. The ruling in the case of Chennai-based TVS Motors Company comes as a relief to all corporates which are at dispute with the I-T department for tax benefits denied to genuine amalgamation or business restructuring. Such disputes arise when tax authorities view it as an exercise intended to avoid tax; corporates argue that the restructuring is for business convenience. The case revolved around a composite scheme of arrangement involving TVS Motors, which held over 66 per cent stake in Laxmi Auto Components (LAC). LAC had transferred its rubber and plastic division to another group company, Sundaram Auto (SAC). At the time, the rest of LAC, including the engine components business, investment in SAC and other investments were transferred to TVS Motors. The scheme of rearrangement was cleared by the Madras High Court. However, the assessing officer declined to accept it as an amalgamation on the ground that the full assets and liabilities of LAC were not transferred to TVS Motors, and therefore, do not fulfil the conditions required for tax neutrality of an amalgamation. According to him, the exercise at best could be described as rearrangement under the Sections 391 to 394 of the Companies Act, and therefore, not an amalgamation. The assessing officer, thus, taxed the capital reserve arising out of amalgamation, disallowed the depreciation claims arising from the transfer of LAC's assets to TVS and also denied the credit for the dividend distribution tax paid by LAC. The ITAT did not accept the I-T department's stand. The tribunal held that amalgamation as well as rearrangement are dealt under the Sections 391 to 394 of the Companies Act, and therefore, there is no merit in the department's decision to deny tax neutrality to a restructuring exercise. When all assets and liabilities are taken over by a company, such an exercise can be considered an amalgamation. In this case, the tax department could not prove that some assets were left behind. ITAT further observed that there is no merit in the contention that the whole exercise was meant for avoiding tax.

Source: www.cainindia.org

⏭ Foreign Companies Need Not be Taxed: High Court

In a decision that could have a bearing on all cross-border transactions, including those related to the Indian Premier League teams that are currently being probed by tax authorities, the Delhi High Court has ruled that any liability to withhold tax would arise only if payments to overseas entities is liable to be taxed in India. The decision assumes significance in the background of a Karnataka High Court ruling last year that tax should be withheld from all payments made to overseas entities. The Delhi High court's decision was given in the case of Maharishi Housing Development Finance Corporation. The ruling was on whether it should have deducted tax while making payment to an overseas entity. Maharishi did not deduct the tax, but the tax officer said that it should have. The tax department disallowed the expenditure under the Section 40a(ia) of Income-tax Act, 1961. The Income-tax Appellate Tribunal (ITAT) also decided in favour of the tax officer. The Delhi High Court ruling differed from a Karnataka High Court judgement in the case of Samsung Electronics last October, in which the High Court held that tax has to be deducted in India from all payments made to overseas entities. Its rationale was that since the taxpayer is not an expert in deciding whether a particular income is liable to be taxed in India, it would be wiser to allow the tax officer to do that. In the case of Maharishi, the Delhi HC remanded the matter to ITAT to decide whether its payment to the overseas entity is liable to tax in India.

Source: www.cainindia.org

⏭ Pending Tax Cases are Holding Back Rs 64,000 Crore

There are more than a lakh tax cases pending in courts and various tribunals, holding back Rs. 64,244 crore in both direct and indirect taxes. "The major reasons for pendency of 1,31,780 tax cases are excessive burden on existing tribunals and courts, and shortage of human resources with tax departments," junior finance minister S. S. Palanimanickam has told the Lok Sabha. He said there were 68,382 direct tax related cases pending -- income tax appellate tribunals had 29,505 cases, High Courts had 34,467 cases and Supreme Court had 4,410 pending cases, blocking over Rs. 18,900 crore as on September 30, 2009. As regard indirect tax, there are about 63,400 cases pending in Customs, Excise & Service Tax Appellate Tribunals (46,930 cases), High Courts (14,077) and Supreme Court (2,391) blocking over Rs. 45,300 crore as on December 31, 2009.

Source: www.hindustantimes.com

⏭ CAG Report Bares Lapses in Service Tax Recovery

The Comptroller and Auditor General of India (CAG) has highlighted glaring lapses in the recovery of service tax being administered by the Union Government, while the number of cases and amount entailed in demands for service tax outstanding for adjudication/recovery keep escalating. In its report on Indirect taxes - service tax, laid in Parliament recently, the CAG said a total of 88.286 cases involving tax of Rs. 22,432.91 crore were pending with different authorities (Commissioners of Central excise/service tax have been authorised to collect service tax within their jurisdiction). Of this, a major chunk, amounting to 65 per cent or Rs. 11,575 crore, was with the adjudicating officers of the department. A particularly distressing feature is pendency for recovery of demands has escalated from 19,470 cases in 2007-08 to 22,513 cases in 2008-09, an increase of 16 per cent. Stating that the Revenue Department detected a total of 6,512 cases of fraud/presumptive fraud during the years 2006-09 involving tax of Rs. 5149.32 crore, the CAG said the department raised a demand for Rs. 3,097.90 crore only and recovered barely 32 per cent or Rs. 9,996.65 crore. What is worse is out of a penalty of Rs. 405.48 crore that was slapped, the department could collect only Rs. 5.99 crore or 1.48 per cent.

Source: www.thehindubusinessline.com

⏭ Centre will Beat Inflation: Finance Minister

The inflation based on the Consumer Price Index for Industrial Workers is expected to decline rapidly in view of the fact that the prices of essential food commodities have started declining, Union Finance Minister Pranab Mukherjee said recently. He hoped that the government would tide over the problem of high inflation within the next few months. Inaugurating the national conference of the Confederation of Indian Industry (CII), the Union Finance Minister said the prediction of a good monsoon was vital for the economy as it would bring down the prices of essential food items. Underscoring how inflation eroded real income and hurt the marginalised and poor segments, the Finance Minister hoped that the government would "beat the high inflation in the coming months" as it had planned meticulously the economic recovery in the past one year. Taking into consideration the industrial growth, particularly in the last six months, Mr. Mukherjee expected the GDP growth to be around 8.5 per cent for 2009-10, despite unfavourable monsoon. As for the current financial year, Mr. Mukherjee estimated a strong growth in view of the improved business confidence and expected to beat the IMF's projected growth of 8.8 per cent in 2010-11 and 8.4 per cent in 2011-12.

Source: www.financialexpress.com

⏭ IFAC Seeks Views to Serve Accountants in Business

IFAC has recently released for comment an exposure draft (ED) setting out its proposed 2010-2012 strategy and work plan prepared by its Professional Accountants in Business (PAIB) Committee. The proposed plan outlines the direction and priorities of IFAC's services relevant to professional accountants in business. This public consultation is a first-time opportunity for IFAC member bodies and other key stakeholders to comment on the proposed vision, strategic direction, and corresponding work plan for this key constituency. The proposed strategic direction focuses on enhancing the profile, influence, and relevance of professional accountants in business with specific objectives of increasing awareness of the important roles professional accountants play for organizations and their stakeholders, and supporting the professional accountants in business within IFAC member bodies by facilitating the communication and sharing of good practices and ideas. Comments on the exposure draft are requested by July 14, 2010.

Source: http://www.ifac.org/MediaCenter/

⏭ IPSASB Publishes Proposals for Amendments under Annual Improvements Project

The International Public Sector Accounting Standards Board (IPSASB) has recently released for comment exposure draft (ED) 44, *Improvements to International Public Sector Accounting Standards* (IPSASs). The release continues the IPSASB's improvements project, an annual undertaking intended to enhance the usability of IPSASs and thus facilitate global convergence. The IPSASB uses the improvements project to make non-urgent but necessary amendments to IPSASs. ED 44 includes proposed improvements to existing IPSASs to maintain alignment with International Financial Reporting Standards (IFRSs), as well as other general improvements. The proposed amendments are related primarily to requirements for recognition, measurement, and disclosure and do not represent substantive revisions to the content of existing standards. Comments on the exposure draft are requested by June 30, 2010.

Source: http://www.ifac.org/MediaCenter/

⏭ IAASB Proposes to Strengthen Reporting on Pro Forma Financial Information

The International Auditing and Assurance Standards Board (IAASB) has recently released a proposed new assurance standard that addresses the process of compiling pro forma financial information included in prospectuses. Recognising the increasingly integrated nature of global capital markets and the importance of pro forma financial information in the public's investment decisions, the newly proposed standard is designed to enhance public confidence in how such financial information is produced. The proposed standard, *Assurance Reports on the Process to Compile Pro Forma Financial Information Included in a Prospectus*, deals with information-necessary in many forms of domestic and cross-border securities offerings-that illustrates the impact of an event or transaction on an issuer's financial information. While all stakeholders are invited to comment on the proposed ISAE 3420, the IAASB recognises that pro forma financial information is of particular interest and relevance to issuers, investors, analysts, professionals working at securities exchanges, and regulators. Accordingly, the IAASB invites respondents from these constituencies in particular to comment by September 30, 2010

Source: http://www.ifac.org/MediaCenter/

⏭ IFAC and the Prince's Accounting for Sustainability Project Collaborate

The IFAC and The Prince's Accounting for Sustainability (A4S) Project have entered into a MoU (memorandum of understanding) to support the global accountancy profession's role in developing sustainable organisations. Organisations are increasingly seeking new ways to maintain their economic performance and contributions to society in the face of challenge and crisis. Perhaps the most critical challenge facing business and society generally is to live within our ecological limits, while continuing to enjoy economic prosperity. IFAC and A4S believe that an essential part of the answer lies in going beyond traditional ways of thinking about performance and embedding sustainability into strategy, governance, performance management, and reporting processes.

Source: http://www.ifac.org/MediaCenter/

⏭ IPSASB Publishes 2010 Handbook of Pronouncements

The IPSASB has recently published its 2010 *Handbook of International Public Sector Accounting Pronouncements*, in two volumes. The handbook contains all current IPSASB pronouncements, including 31 accrual-based standards and the IPSASB's cash basis standard. Five of these standards were approved by the IPSASB in 2009, including requirements and guidance for all aspects of accounting for financial instruments, as well as intangible assets and agriculture. According to the Chair, IPSASB, Andreas Bergmann, the handbook represents the substantial completion of the IPSASB's convergence program and over a decade of work. Under the convergence program, the IPSASB achieved substantial convergence with the IFRS requirements as of December 31, 2008, that are relevant for the public sector. The handbook

can be downloaded free of charge from the IFAC's Publications and Resources site.
Source: http://www.ifac.org/MediaCenter/

⏭ IASC Foundation Releases IFRS Taxonomy 2010

The International Accounting Standards Committee (IASC) Foundation has recently released the IFRS Taxonomy 2010. The 2010 taxonomy is consistent with IFRSs and with the IFRS for Small and Medium-sized Entities (SMEs), and for the first time both have been integrated into a single taxonomy. It is a translation of IFRSs as issued at January 1, 2010 into XBRL (eXtensible Business Reporting Language) that is rapidly becoming the standard format for the electronic filing of financial information - particularly within jurisdictions reporting under IFRSs. The taxonomy contains significant architectural improvements when compared with the 2009 version. To accompany the release of this taxonomy, the IASC Foundation is undertaking a consultation with companies using IFRSs and filing with the US Securities and Exchange Commission to establish and demonstrate that the IFRS Taxonomy is practical for filers and for users of filed XBRL content.
Source: http://www.iasb.org/News/

⏭ IASB and ASBJ meet to discuss convergence in Japan

The International Accounting Standards Board (IASB) and the Accounting Standards Board of Japan (ASBJ) have held their 11th meeting to review preparations for the convergence with and intended adoption of IFRSs in Japan. The IASB and the ASBJ have accelerated their work towards convergence of IFRSs and Japanese generally accepted accounting principles (GAAP) by June 2011. Representatives of the ASBJ proposed its solutions on those issues and representatives of the boards exchanged views. With a view to promoting the voluntary adoption of IFRSs in Japan, the boards reaffirmed that the IASB will continue to support the ASBJ's efforts.
Source: http://www.iasb.org/News/

⏭ IASB Addresses 'Counter-Intuitive' Effects of Fair Value Measurement of Financial Liabilities

The IASB has recently published for public comment its proposed changes to the accounting for financial liabilities. This proposal follows work already completed on the classification and measurement of financial assets (IFRS 9 Financial Instruments). The IASB is proposing limited changes to the accounting for liabilities, with changes to the fair value option. The IASB is, therefore, proposing that all gains and losses resulting from changes in 'own credit' for financial liabilities. No other changes are proposed for financial liabilities. Therefore, the proposals will affect only those entities that choose to apply the fair value option to their financial liabilities.
Source: http://www.iasb.org/News/

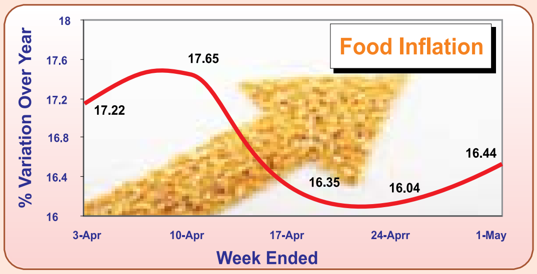
⏭ IASB Concludes the 2008-2010 Cycle of Annual Improvements to IFRSs

The IASB has recently issued *Improvements* to IFRSs - *a collection of amendments to seven* IFRSs - as its latest set of annual improvements. The IASB uses the annual improvements process to make necessary, but non-urgent, amendments to IFRSs that will not be included as part of a major project. The amendments included in this publication reflect issues that were included in the draft of proposed amendments to IFRSs published in August 2009. It also includes an amendment to IFRS 1 *First-time Adoption of International Financial Reporting Standards* applicable to entities with operations subject to rate regulation. Unless otherwise specified, the amendments are effective for annual periods beginning on or after January 1, 2011, with earlier application permitted.
Source: http://www.iasb.org/News/

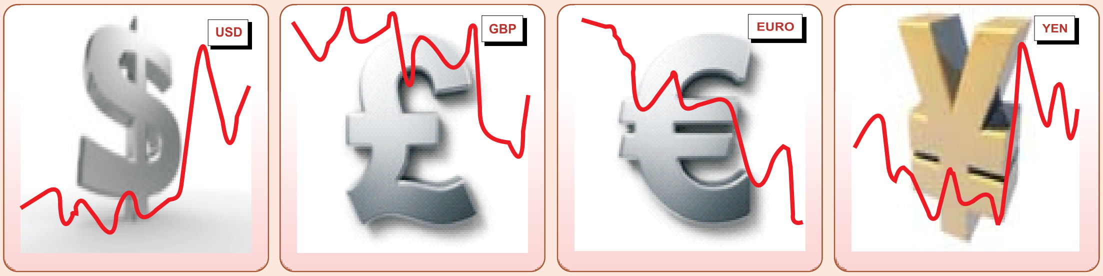
⏭ IFRS Interpretations Committee Appointments

The Trustees of the IASC Foundation, oversight body of the IASB, has recently announced appointment and reappointments to the IFRS Interpretations Committee, formerly known as the IFRIC. Robert Garnett, the non-voting Chair of the Interpretations Committee, will retire as a member of the IASB at the end of June 2010. However, in order to provide continuity during a period of significant change to accounting standards around the world, the Trustees have asked Mr Garnett to continue as Chair of the Committee for a further period of two years. The Trustees have reappointed all the three members, Guido Fladt, Bernd Hacker and Andrew Vials, for a further three-year term. Feilong Li, controller of CNOOC, China's largest producer of offshore crude oil and natural gas, has been appointed as member of the Interpretations Committee.
Source: http://www.iasb.org/News/

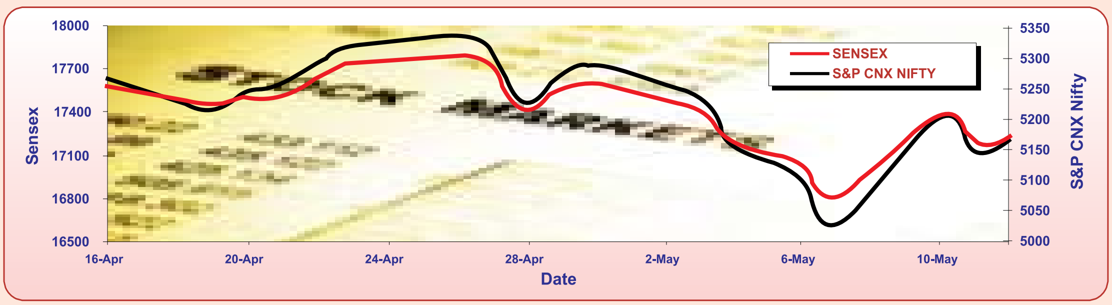
Economic Indicators



Indian Rupee vs. Major Foreign Currencies (April 16, 2010 to May 15, 2010)



Stock Markets



Selected Indicators

Item	Unit/Base	2009	2010					
		May 1	Mar. 26	Apr. 2	Apr. 9	Apr. 16	Apr. 23	Apr. 30
Cash Reserve Ratio	per cent	5.00	5.75	5.75	5.75	5.75	5.75	6.00
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	11.50-12.25	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	6.50-8.50	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	1.20/3.40	2.00/9.00	1.75/5.75	1.25/3.75	2.00/3.90	0.25/3.90	2.20/4.10

Note: Readers are Invited to contribute write-ups or any relevant and interesting piece of information for this feature at eboard@icai.org.

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during April-May 2010 for the reference of Faculty/Students & Members of the Institute.

1. Accounting

Accounting & Financial Reporting in 2010 – A Global Outlook by Olu Sonola & Dina Maher. *International Accountant*, April/May 2010, pp.4-8.

Capital Account Convertibility & Growth: A Developing Country Perspective by A.K. Seth & Sumati Varma. *Decision*, April 2009, pp.55-99.

Changes in Discretionary Financial Reporting Behavior Following the Sarbanes-Oxley Act by Gerald J. Lobo & Jian Zhou. *Journal of Accounting Auditing & Finance*, Winter 2010, pp. 1-26.

The Full Value of Non-cash Dividends by A.V.D. Burgh & Melanie Cope. *Accountancy SA*, April 2010, pp.20-21.

IFRS for SMEs U.S. GAAP Comparison Tool Available Online by Alexandra Defelice. *Journal of Accountancy*, April 2010, pp. 30.

Interpreting the IFRS World by Karen McCardle. *CA Magazine*, May 2010, pp.40-42.

Project Management for Accountants by Ed Kless. *Journal of Accountancy*, April 2010, pp.38-42.

The Sec's IFRS Work Plan by Alexandra Defelice & M.G. Lamoreaux. *Journal of Accountancy*, April 2010, pp.22-25.

Variance Decomposition Primer for Accounting Research by Jeffrey L. Callen & & Dan Segal. *Journal of Accounting Auditing & Finance*, Winter 2010, pp. 121-130.

2. AUDITING

Audit Under Scrutiny by Veena Hudson. *Accounting & Business*, April 2010, pp.31-32.

The Effect of Audit Specialists on the Informativeness of Discretionary Accruals by Duncan Mascarenhas etc. *Journal of Accounting Auditing & Finance*, Winter 2010, pp.53-84.

Restating the Value of Audit by Ian Welch. *Accounting & Business*, April 2010, pp.33.

3. ECONOMICS

The Analytics of the Agriculture – Industry Relationship in a Closed Economy: A Case Study of India by Rajiv Jha. *Eco. & Pol Weekly*, April 24, 2010, pp.94-98.

Business Analytics: A New Economic Strategy by Tang Kok Kwai. *Singapore Accountant*, April 2010, pp.40-41.

Financial Sector Regulation in India by Y.V. Reddy. *Eco. & Pol. Weekly*, April 3, 2010, pp.40-50.

Implementation of Monetary Policy in India by Deepak Mohanty. *RBI Bulletin*, April 2010, pp.771-778.

Insights From the Recent Financial Crisis by V. Sreekant. *Financial Planning journal*, April 2010, pp.12-16.

On Financing the fiscal deficit & availability of loanable funds in India by Surajit Das, *Eco. & Pol. Weekly*, April 10, 2010, pp.67-75.

The World in 2030 by Sarah Perrin. *Accounting & Business*, April 2010, pp. 34-37.

4. INVESTMENT

Applying Forensic Skepticism to Lost Profits Valuations by James A. Digabriele. *Journal of Accountancy*, April 2010, pp.32-37.

Business Valuation: What is it Worth ? by Lola Sim & Klemens Wilhelm. *CA Magazine*, April 2010, pp.39-41.

Entry Load on Mutual Funds: A Instrument of Fraud by Shreya Garg. *Company Law Journal*, Vol.2, 2010, pp.31-40.

Real Estate Investment Trust Regimes Viewed Through the Lens of the US Paradigm by Nicola Fritsch. *Bulletin for International Taxation*, April 2010, pp.211-223.

5. MANAGEMENT

Corporate Reporting Framework (CRF): Benchmarking Tata Motors Against AB Volvo & Exploring Future Challenges by Subhasis Ray & Subhrajyoti Das. *Decision*, April 2009, pp.101-129.

Leading the Pack: Enhancing Internal Controls Through the Central Finance Team by Willy Leow. *Singapore Accountant*, April 2010, pp.27-28.

Organisational Commitment & Employee's Innovative Behavior : A Study in Retail Sector by Mohd. Hassan Jafri. *Journal of Management Research*, April 2010, pp.62-68.

Personal Financial Planning: A Portfolio that Adds Value by Deborah Wetmore. *CA Magazine*, April 2010, pp.42-44.

A Study of Knowledge Management Among Faculty Members at MIT Pune by Vishwas Wadekar & Aparna Dighe. *Lingaya's Journal of Professional Studies*, Jan.-June 2010, pp. 47-52.

6. TAXATION & FINANCE

Analysis of Budget Changes Relating to Service Tax by P. Ravindran. *The Management Accountant*, April 2010, pp.267-271+282.

Apex Court on a Person's Preventive Detention – An Analysis by T.N. Pandey. *Consolidated Commercial Digest*, 01.05. 2010, pp.6-15.

Budget 2010–11: Changes in Central Excise, Customs & Service Tax by S.S. Gupta. *The Management Accountant*, April 2010, pp.272-282.

Budget 2010 & Development by Anamika Mukherjee. *The Management Accountant*, April 2010, pp.264-266.

Budget 2010 – Impact on Personal Finance by Sachin. *Financial Planning Journal*, April 2010, pp.44-47.

Taxation of Foreign Institutional Investor in India by O. Nayak & B.B. Nayak. *Company Law Journal*, Vol.2, 2010, pp.25-30.

Taxation of Inter-state Transactions Under the Proposed Indian GST by S. Madhavan etc. *International VAT Monitor*, March-April 2010, pp.128-139.

Transfer Pricing: An Important Win by Rene Fleming & J. Smith. *CA Magazine*. May 2010, pp.32-34.

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

ADVISORY FOR MULTIPURPOSE EMPANELMENT FORM (MEF) FOR THE YEAR 2010-11

1. Last date for submission of applications on the website www.meficai.org is 15th June, 2010.(5.30 P.M.)
2. Please ensure that you are using internet explorer 6.0 or above.
3. Members are advised to fill MEF well in advance to avoid last minute rush and technical problems.
4. The information filled in by the applicant in MEF can be edited/modified any number of times **before** submission of MEF.
5. All correspondence, acknowledgement, discrepancy letters, etc. will preferably be through email only. Please fill up e-mail id correctly and kindly ensure that it is active.
6. Unique Code Number (UCN) is allotted by the Institute. UCN is very important number because it facilitates in compiling the applicants experience in conducting bank audit. Therefore, an applicant must ensure that correct UCN appears in the MEF.
7. Old applicants practicing in individual name should continue to use the same UCN in case he forms a sole proprietary concern.
8. Members may note that experience in capacity, as article/ audit assistant/clerk or paid employee/assistant should not be added in experience to be mentioned in Question no.5 of MEF.
9. As per RBI Guidelines, in case the applicant was appointed as Central/Branch Statutory Auditors of a Public Sector Bank in the previous financial year, the following may be noted to avoid conflict of interest:
   - Don't associate with the same Bank (of which the applicant is appointed as statutory auditor) or any of its subsidiaries/associates, as concurrent/ internal/ income and expenditure or revenue auditor/stock auditor/auditor of borrowers accounts.
   - Don't take a loan (including outstanding on credit card) from/give a guarantee to a loan from the same Bank (of which the applicant is appointed as statutory auditor) or any of its subsidiaries/ associates.
   - Don't accept the position of a Director on the Board of the same Bank (of which the applicant is appointed as statutory auditor) or any of its subsidiaries/associates.
10. If a firm has done audit of two or more than two entities or Statutory Central and/or as well as branch audit of a Bank for the same year, then it should be counted as one year experience only, while filling-up various entries in the form.
11. The Institute shall be randomly calling from 10% of applicants the following financial documents:
   - (Latest) Financial Statements of the firm
   - Partnership deed in vogue and as on 1st January, 2010
   - Copy of acknowledgement of (latest) Income Tax Returns of the firm and partners
   - Copy of computation of (latest) income of the firm and partners
   - Copy of (latest) Assessment Order of the firm and partners
12. While every care is taken in preparing the panel, in the event of any inadvertent mistake or omission, the Institute will not be responsible in any way. **The Institute does not undertake any responsibility with regard to the allotment of audit**
13. **Procedure for logging into MEF:**
   MEF is designed differently for sole proprietary concern, partnership concern and members practicing in individual name and thus, the applicant should select his option carefully.
   Visit www.meficai.org and select your option for empanelment as a sole proprietor/partnership concern/ individual.
   Remember the PASSWORD for future reference, as you would be able to log into your form using this password ONLY.
14. All the information being sourced from Institute database is static (not editable) and the same will be appearing with green background. Applicants, who do not agree with the details appearing in these fields, should fill in the Memorandum of Changes.
15. **Complaint filing Mechanism**
   - In case, an applicant faces any problem in accessing, operating or submission of MEF, complaint may be lodged by accessing complaint-box link available on www.meficai.org
   - Applicants can lodge their complaint by using either MEF No./ M. No/ FRN
   - On successful lodging of complaint, complaint number would be informed through e-mail.
   - All the complaints lodged by the applicant would be looked into by PD Secretariat.
   - Any changes in the status of the complaint, applicant would be able to view the status of their complaints by using MEF No./Complaint No./MRN/FRN.
   - In case, the complaint is not resolved or replied within a week, members may call upon at 011-30110444, 30110508, 30110451 and 30110438.

SUBMISSION OF DOCUMENTS

16. **A hard copy of the Declaration** duly signed by all partners/ proprietor/ member practicing 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 the following address in an envelope superscribed with the words **"DECLARATION FOR MEF 2010-11"** so as to reach on or before 30th June, 2010.

The Secretary
Professional Development Committee
The Institute of Chartered Accountants of India
ICAI Bhawan, Indraprastha Marg
New Delhi - 110 002

17. Receipt of hard copy of the Declaration will not be individually acknowledged. The same will be displayed on the website mentioning MEF number within 15 days of receipt of the Declaration. Declarations will then be verified for completeness and correctness and discrepancy, if any, will be intimated to applicant by email.

Members are advised not to correspond directly with the authorities on matters related to empanelment.

SAMPLE MULTIPURPOSE EMPANELMENT FORM 2010-11 FOR PARTNERSHIP FIRM

Form has been designed separately for sole proprietorship concerns and members practicing in individual name on similar pattern

WEBPAGE 1

1.Personal Details Highlighted (Green) fields are read only fields * Fields are Mandatory

Firm Registration No		Year of Establishment	
Concern's Name		Unique Code No	
Status as on 01.01.2010	PARTNERSHIP		

Address of Head Office

Address		State/Union Territory *	SELECT
		District *	SELECT
Pin Code		STD Code *	
City		Telephone No *(with STD code)	

Please provide name of the person to be contacted for any clarifications/ information

Name of contact person *	Phone (O) *	Mobile *	E-mail *

Memorandum of changes

Incase, applicant does not agree with any of the static information mentioned above (flowing from Institute's database), please provide the information which should appear instead of the one appearing here.

Submit your comments 100(characters left

Please ensure that the changes informed here have already been incorporated in the Institute's database. The information provided here will be incorporated in the MEF Database only after due verification with the Institute's database.

WEBPAGE 2

2. Particulars of partners as on 01.01.2010

	Exclusively associated*	Others	Total
(a) Number of FCAs			
(b) Number of ACAs			
(c) Total [(a) + (b)]			

*A member is not treated as exclusively associated with the firm if he is a partner in any other firm or is a sole proprietor of any other proprietary firm or is paid employee elsewhere.

Details of Partners of the Concern

S.No	Name	Membership No.	Whether main occupation is practice	Whether DISA qualified?	Whether partner/ proprietor of any other concern	Whether paid employee of any other concern	Name of the other concern in which member is partner/ proprietor/ paid employee	FRN of such concern	CPE hours obtained in calendar year 2009 (extended up to 31.01.10)
			(Y/N)	(Y/N)	(Y/N)	(Y/N)			
1									
2									

3. Number of paid Chartered Accountant employees in the Concern as on 01.01.2010

Full Time	
Part Time	

Details of Paid Chartered Accountant Employees in the concern

Name	Membership No	Whether DISA qualified	Whether partner/ proprietor of any other Concern	Whether paid employee of any other Concern	Name of the other Concern in which he is partner/ proprietor/ paid employee	FRN. of such Concern
		(Y/N)	(Y/N)	(Y/N)		

4.Professional Staff

Number of professional staff ** as on 01.01.2010 (including at branches)

Article/Audit Assistants	
Other professional staff	
Total	

** Other professional staff excludes typists, stenographers, computer operators, secretary(ies) and sub-ordinates but includes audit staff (other than Article/ Audit Assistants) having knowledge of book-keeping and accountancy and engaged in onsite audit. This includes non-CA staff only. CA staff should be included in earlier question 3 itself.

Memorandum of changes

Incase, applicant does not agree with any of the static information mentioned above (flowing from Institute's database), please provide the information which should appear instead of the one appearing here.

Submit your comments

1000 characters left

Please ensure that the changes informed here have already been incorporated in the Institute's database. The information provided here will be incorporated in the MEF Database only after due verification with the Institute's database

WEBPAGE 3

5.Bank, PSU Audit Experience

Experience of bank audit as Statutory Auditor of a branch of a nationalized bank or of a private sector bank with deposit of not less than Rs. 500 cores of the bank as a whole (and not that of a branch)		
Note:	The experience of Statutory Central Audit of J & K Bank will also be reckoned as public sector bank audit experience.	
(a)	Does the Concern has previous experience of audit referred to above? (Y/N)	N
	If yes, please fill in the no of years of experience	
(b)	Does the partners of the Concern have experience of audit referred to above (a partner will be considered to have such experience only if he signed the audit report/conducted the audit)? (Y/N)	N
	If yes, indicate in the appropriate box, how many partners have this experience:	
	(e.g. If 3 Partners have experience of more than 8 years, indicate '3' in the first box)	
	8 years or more ☐ 5 to 7 years ☐ 3 to 4 years ☐ Less than 3 years ☐	

	Experience of statutory audit of PSUs	
(a)	Does the Concern has experience of statutory audit of PSUs? (Y/N)	N
	If yes, please fill in the no of years of experience:	0
(b)	Do the partners of the concern have experience of statutory audit of PSUs (A partner will be considered to have such experience only if he signed the audit report/conducted the audit)? (Y/N)	N
	If yes, indicate in the appropriate box, how many partners have this experience:	
	8 years or more ☐ 5 to 7 years ☐ 3 to 4 years ☐ Less than 3 years ☐	

Whether any disciplinary action is pending in the records of the Institute against any of the partners of the firm? (Y/N)	N

WEBPAGE 4

6. Whether the applicant or any of its partners has been associated with any of the public sector banks/regional rural banks/co-operative bank since 01.04.2009 upto the date of submission of application? For e.g. as Concurrent Auditor / Revenue Auditor/ Income & Expenditure/ Inspection/Monitoring of borrowing sick units etc. **excluding statutory audit** (Y/N)	N

(If yes, please fill up)

Details of association with Public Sector Banks/Regional Rural Banks/Co-operative Banks from 01.04.2009 upto the date of submission of application.

	Name of the Bank	Concurrent Audit (Y/N)	Internal/Stock/ System Audit (Y/N)	Income & Expenditure/ Revenue Audit (Y/N)	Inspection (Y/N)	Monitoring of borrowing sick units # (Y/N)	Any other Assignment (Y/N)
☐	SELECT BANK						

 # Both appointments made by the bank and/or concerned borrower

7. Whether the applicant is or any of its partners was during the past calendar year indebted (including outstandings in respect of credit cards) or has given guarantee in respect of any loan etc.,(for amounts exceeding Rs.1000/-) to any public sector bank/regional rural banks/ Co-operative banks from 01.01.2010 upto the date of submission of application? (Y/N)	N

(If yes, please fill up)

Details of indebtedness to Public sector bank/ Regional rural banks/ Co-operative banks or guarantee given in respect of any loan including outstanding of credit cards (For amounts exceeding Rs 1,000) from 1/1/2010 to date of this application

	Name of the Partner/Firm (Indebted/ Guarantor)	Membership No. (where applicable)	Name of the Bank
☐			SELECT BANK

8. Whether any of the partners of the concern was during the past calendar year director in any public sector bank/ regional rural banks/ Co-operative banks from 01.01.2010 upto the date of submission of application? (Y/N)	N

(If yes, please fill up)

Details of Directorship in Public sector bank/ Regional rural banks/ Co-operative banks from 1/1/2010 to date of this application:

Name of the Bank	Name of the Member who is Director	Membership No.
SELECT BANK		

Both appointments made by the bank and/or concerned borrower

WEBPAGE 5

Declaration

Application No			
FRN		Unique Code No., if any allotted	

We, the undersigned, as Partners of M/s ____________ do hereby declare that the particulars as given above are complete and correct in all respects to the best of our knowledge and belief. We hereby declare that no separate application for any of our branches has been made. We undertake that we have gone through the Instructions and Applicant Guide hosted on *www.meficai.org* website and affirm that application is made in accordance therewith.

We recognise that if any of the instructions are not adhered to or any of the statements made in the application form or information furnished in the application form is not correct and/or incomplete, the application is liable to be rejected and/or We would be liable for disciplinary action under the Chartered Accountants Act, 1949, and Regulations framed thereunder.

We hereby declare that audit/other assignment allotted on the basis of information furnished in the application form will not be accepted and carried out if the firm in whose name the application is made is not in existence at the time of audit.

We declare that the constitution of the firm as on 01.01.2010 shown in the application is the same as that in the constitution Certificate issued by ICAI.

Name of Partners	Membership No	Mobile Number	E-mail ID	Signature #

Date	
Place	

*1. The declaration should be signed by all continuing partners (from out of the partners as on 01.01.2010) as on the date of the application in case of a partnership firm. The credit will be given only for those continuing partners who have signed the declaration. The credit for the partners who have joined subsequent to 01.01.2010 will not be given.

2. The signatures should correspond to those in the Institute's records.

COMMITTEE ON PUBLIC FINANCE AND GOVERNMENT ACCOUNTING- INVITATION TO WORK AS RESOURCE PERSONS & TO CONTRIBUTE ARTICLES

The Committee on Public Finance & Government Accounting is involved in study and research, preparation of reports, assimilation of information pertaining to Public Finance & Government Accounting and providing technical assistance to different Departments of Central & State Government free of cost as social service along with providing awareness of Government Accounting to employees of the Government, C&AG, members of the profession, media, NGOs and providing training within the Government bodies at Central, State, District level, Local bodies and Gram Panchayat Level.

In order to achieve its aforesaid objectives, Committee 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 also 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
Phone: 011-30110554(O)
Mobile: 98100 41371, 93122 58364
Email: cpf_ga@icai.org

Expert Advisory Committee of The Institute of Chartered Accountants of India

The fast changing and immensely competitive environment often calls upon organisations to enter into complex business deals and transactions where practice norms are not yet settled. In such situations, accounting for transactions and auditing thereof becomes a difficult task. This gives rise to the need for authoritative guidance on such matters. The Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India fits into the role of giving such authoritative guidance in the form of Opinions on matters relating to application and implementation of accounting and auditing standards and other pronouncements comprising generally accepted accounting and auditing principles under peculiar and intricate situations. Over a period of time, EAC's role has become widely acknowledged with members in practice and industry alike increasingly seeking the services of EAC to unravel wide array of issues and complex problems while discharging their duties, such as preparation and presentation of financial statements, reconciling the views of auditors, management, various stakeholders and authorities, etc.

For the benefit of the members, EAC regularly releases Compendium of Opinions where the opinions finalised during an year are published in a volume of the Compendium. So far, EAC has released 26 volumes of the Compendium. A CD of 'Compendium of Opinions' containing more than 1000 opinions issued up to January 2006 has also been released by the Committee. All these publications of the Committee are available for sale at the Insitute's Office at New Delhi and its Regional Council Offices at Mumbai, Chennai, Kolkata and Kanpur.

Opinions can be obtained from the Expert Advisory Committee as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. The Rules can also be obtained from the Institute's Head Office at New Delhi. For further information, Secretary, Expert Advisory Committee can be contacted through e-mail at eac@icai.org.

IMPORTANT ANNOUNCEMENT FOR MEMBERS

No.: 29-CA/LAW/NDM-726/Announce/01/10

Sub : Implementation of Section 51A of Unlawful Activities (Prevention) Act, 1967

The provisions of the Unlawful Activities (Prevention) Act,1967 were amended in 2008, by inserting Section 51A which was notified on 31.12.2008 by the Govt. of India. Section 51A reads as under

"51A. For the prevention of, and for coping with terrorist activities, the Central Government shall have power to –

(a) freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of or at the direction of the individuals or entities Listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism;

(b) prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities Listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism;

(c) prevent the entry into or the transit through India of individuals Listed in the Schedule to the Order or any person engaged in or suspected to be engaged in terrorism."

In order to implement the provisions of Sec. 51A effectively, the Ministry of Home Affairs, Govt. of India requested the Ministry of Corporate Affairs to issue an appropriate order to ICAI, ICSI and ICWAI to sensitize their members to the provisions of Section 51A of Unlawful Activities (Prevention) Act, 1967. Accordingly the Ministry of Corporate Affairs vide its letter dated 22.03.2010 (copy enclosed) asked the ICAI to advise its members to act as per mandate of the Ministry of Home Affairs.

Accordingly, all members of ICAI are informed that as and when any member come across any such fact which is connected with the violation(s) of provision(s) of the Unlawful Activities (Prevention) Act, 1967, he must take action forthwith for the implementation of Section 51A as per procedure laid down in the Office Memorandum dated 22.02.2010 issued by Ministry of Home Affairs, Government of India (copy of the Office Memorandum dated 22.02.2010 is enclosed).

In other words, the members of ICAI must ensure that in case any of their client match with the particulars of designated individual / entity, as per Order dated 08.07.2009,wherin the list of such designated individuals/entities have been given (copy of the said order dated 08.07.2009 enclosed), they shall immediately, not later than 24 hours from the time of finding out such client, inform full particulars to the **Joint Secretary (IS.I), Ministry of Home Affairs**, at Fax No. 011- 23092569 and also convey over telephone on 011-23092736. The particulars apart from being sent by post should necessary be conveyed on e-mail id: isis@nic.in.

It is pertinent to mention that, besides the aforesaid, the Ministry of Home Affairs has separately issued an order dated 27.08.2009 to the regulators of the financial sectors, and to all the State Governments and UT Administrations, with regards to immovable property (copy of the order dated 27.08.2009 enclosed).

[Note: Members may refer the Website of the Institute (www.icai.org) for the contents of the enclosures]

Invitation to Join Panel of Examiners/Paper setters

The Institute is in the process of strengthening its panel of examiners and paper setters with professionals/academicians/resource persons for all the papers in CA IPCE and Final (New Course) Examinations in general and for the following subjects in particular:

- Business law - Communication and Ethics
- Cost Accounting and Financial Management
- Taxation
- Indirect Tax Laws
- Advanced Auditing and Professional Ethics
- Information Systems Control and Audit
- Information Technology
- Advanced Management Accounting
- Strategic Financial Management
- Direct Tax Laws

Persons who have the requisite proficiency, interest in learning in the above subjects, inclination for evaluation of answer books and who can spare time may send in the Empanelment Form duly filled in to the Additional Secretary (Exams), The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi – 110 002. The form has been hosted in the ICAI's website (http://www.icai.org/resource_file/15857ExaminersEmpanelmentForm.pdf), which can be downloaded or may be obtained by sending a request letter to the Additional Secretary (Exams).

Addl. Secy. (Exams.)

Invitation for Articles on XBRL

To encourage and promote XBRL, ICAI has established XBRL India, i.e., the local jurisdiction of XBRL. XBRL, i.e., eXtensible Business Reporting Language is a novel platform for electronic communication of financial and business data. Developed by an international not-for-profit consortium, XBRL provides several benefits to those dealing with financial data such as chartered accountants, regulators, financial analysts, etc.

To create awareness about XBRL by developing a pool of knowledge and sharing it, ICAI invites articles on XBRL from members and others with knowledge/ experience in XBRL for publishing in the Chartered Accountant Journal. Articles may pertain to relevant topics such as the basics of XBRL; its benefits and uses to various users such as chartered accountants, banks, income-tax department, financial analysts, and others; challenges in implementing XBRL; etc.

The articles submitted should not exceed 5,000 words and every article should have an executive summary of about 150 words; author's brief profile, e-mail ID, postal address and contact numbers along with a passport size photograph (scanned for e-mail). Authors may note that they are also required to send a declaration about the originality of the article, without which the article will not be considered by the Editorial Board of ICAI. The final decision on publication of the content is taken by the Editorial Board and Rs. 5,000 shall be paid as honorarium for an article published. The authors are advised to refer to the 'Guidelines for the Authors of the Chartered Accountant Journal' which are available at ICAI website.

The articles can be sent by e-mail at eboard@icai.org/Journal@icai.org or by post to:

The Editor,
The Chartered Accountant,
Journal Section
The Institute of Chartered Accountants of India
ICAI Bhawan
C – 1, Sector 1,
Noida – 201301

NEW PUBLICATIONS FROM THE INTERNAL AUDIT STANDARDS BOARD

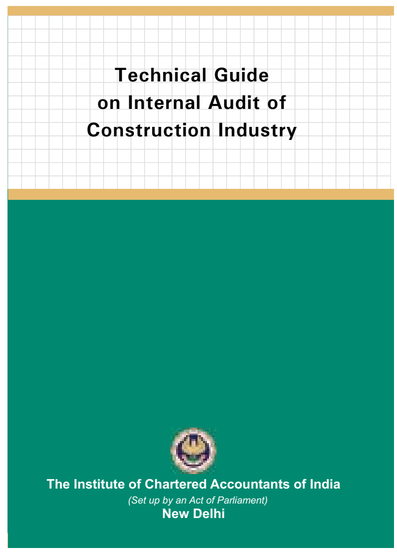
Technical Guide on Internal Audit of Construction Industry

(Pages: 110 + 18 initial pages + 2 cover pages)
Price: Rs. 150/- *(including CD)*

The construction industry has grown with a rapid pace over the last few years. Despite the high growth potential, the industry is subjected to more risk and uncertainty than many other industries. Internal auditors need to understand the basic structure and processes of construction project management to effectively perform their professional duties. Keeping this in view, the Internal Audit Standards Board of ICAI has issued ***Technical Guide on Internal Audit of Construction Industry***. This Technical Guide provides comprehensive reference material on operational as well as internal audit aspects relevant to the construction industry.

Significant Features of the Technical Guide are:

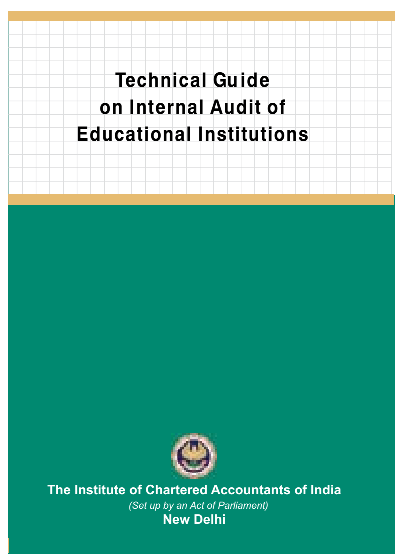
- Brief overview of construction industry in India.
- Explains regulatory framework, and technical and operational features of construction industry in detail.
- Overall approach of internal audit with reference to Standards on Internal Audit and the procedures to be undertaken with regard to peculiar aspects.
- Provides guidance regarding internal audit of special aspects such as, procurement, material handling and storage, IOUS, revenue recognition, etc.
- Includes flow charts depicting various processes undertaken in the construction industry.
- Includes glossary of the terms peculiar to construction industry.
- The Guide comes with a CD of the entire Guide to ensure ease of reference.



Technical Guide on Internal Audit of Educational Institutions

(Pages: 168 + 11 initial pages + 2 cover pages)
Price: Rs. 200/- *(including CD)*

Education plays a vital role in building up a strong nation. From an integrated and synergic viewpoint, educational system constitutes the foundation of the legal, administrative, civic and other domains of India of tomorrow. Internal audit assists in achieving efficiency and effectiveness in educational institutions, ensuring that processes and systems produce results that meet the needs of society while making the best use of resources at their disposal. Keeping this in view, the Internal Audit Standards Board of ICAI has issued ***Technical Guide on Internal Audit of Educational Institutions***. This Technical Guide provides comprehensive reference material on operational as well as internal audit aspects relevant for various types of educational institutions.



Significant Features of the Technical Guide are:

- Brief overview of education in India and technical aspects of educational institutions such as, statutes applicable to educational institutions, types of management, stages of education, organisational structure, etc.

- Covers regulatory framework and technical and operational features of educational institutions.
- Detailed guidance on finance and accounting features such as, principal books of account maintained by educational institutions, sources of income and expenditure, fund accounting, etc.
- Overall approach of internal audit with reference to Standards on Internal Audit and the procedures to be undertaken with regard to peculiar aspects.
- Provides guidance regarding internal audit of special aspects such as, corporate governance, frauds, transactions with related parties, statutory and legal compliances, etc.
- In-depth understanding of information technology environment and internal audit using computer assisted techniques.
- Includes Illustrative Internal Control Checklist, Reporting Format under Bombay Trust Rules, etc.
- The Guide comes with a CD of the entire Guide to ensure ease of reference.

Ordering information:

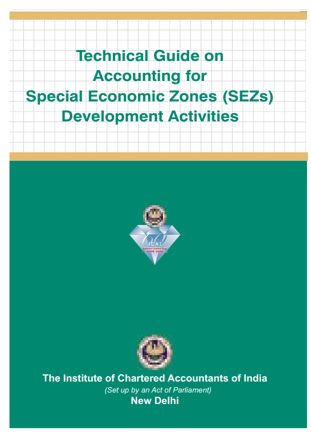
The publication(s) can be obtained from the sales counter at the Regional Offices or at the Head office of the Institute. Copies can also be obtained by post. To order by post, send a demand draft for the amount of price of the publication (add the charges indicated below for the desired mode of delivery) in favour of the "The Secretary, The Institute of Chartered Accountants of India, New Delhi", payable at New Delhi, to the Postal Sales Department, the Institute of Chartered Accountants of India, A-94/4, Sector-58, Noida - 201301 - (U.P.).

Postal Charges:

By Courier:	Within Delhi : Rs. 20/-.
	Rest of India: Rs. 25/-.
By Registered Parcel:	Within India : Rs. 36/-.
By Unregistered Parcel:	Within India : Rs. 19/-.

NEW PUBLICATION FROM THE RESEARCH COMMITTEE

Technical Guide on Accounting for Special Economic Zones (SEZs) Development Activities



Research Committee of the ICAI has brought out a `Technical Guide on Accounting for Special Economic Zones (SEZs) Development Activities'. The Technical Guide has been prepared with a view to explain, inter alia, the application of relevant Accounting Standards in respect of transactions entered into by the SEZ Developers. It explains the accounting treatment for expenses incurred prior to and after the SEZ notification as well as those on rehabilitation and resettlement besides providing guidance on expenses incurred on land taken on lease for notification of SEZ.

Ordering Information :

Price: Rs. 50/-

Postal Charges: Rs. 18/- (plus Rs. 15/-, if required by registered parcel)

Available at: Sale counters of the Institute of Chartered Accountants of India at New Delhi, Chennai, Mumbai, Kolkata and Kanpur. Copies can also be obtained by post. To order by post, request may be sent along with a demand draft for the amount of the price of the publication plus the postal charges in favour of "The Secretary, The Institute of Chartered Accountants of India", payable at New Delhi, to the Postal Sales Department, The Institute of Chartered Accountants of India, ICAI Bhawan, A-94/4, Sector-58, Noida – 201301 (U.P).

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 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

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.

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.

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

Classifieds

4790 New Delhi based C.A. firm requires Articled Assistants. Contact: Neeraj Bhagat & Co, S-13 St. Soldier Tower, G-Block Community Centre, Vikas Puri, New Delhi – 110018, Ph: 45527239, 28544939. Email: info@neerajbhagat.com

4791 Chartered Accountant is available as External Quality Control Reviewer/Advisor to any well established firm of Chartered Accountants in Chennai having listed/unlisted Public Company Clients to comply with the Standard on Quality Control, assisting in organising/review of Internal Audit Programmes and participating actively in consultancy assignments. Response to skandanbala@gmail.com

4792 Practising member with 35 years experience in industry and profession in internal audit and and consultancy wish to join established firm in Jaipur as working partner. Contact: randhirkhandelwal@gmail.com. Mob.No.09334042451

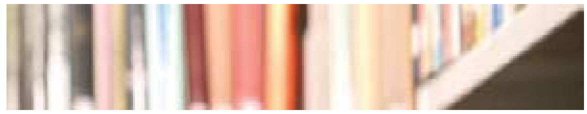
4793 A Delhi based CA, in practice for more than 35 years wants to merge in established CA firm of Delhi with good infrastructure & impressive profile on very favourable terms to that firm. Email: seegodasthedoer@gmail.com

4794 Bangalore based FCA is willing to merge / associate with other CA's / Firms on long term basis. Kindly mail at ca.srvbng@gmail.com. Contact No. 09482009249

CABF Donors

The Institute of Chartered Accountants of India duly acknowledges the following members for making generous contributions to the Chartered Accountants Benevolent Fund (CABF):

S. NO	M. NO	NAME OF FIRMS/ MEMBERS	AMOUNT (Rs.)
1	210328	CA. Balajhi D.	27500.00
2	071213	CA. P. P. Pareek	11000.00
3	054285	CA. Kamal Nayan Jain	11000.00
4	075260	CA. Ishwar Chandra	10000.00
5		Rajkot Branch of W.I.R.C. of the Institute of Chartered Accountants of India (Collected from Members of Rajkot branch)	90483.00
		Total	**149983.00**



"Transfer Pricing" eLearning Course By Committee on IT

Unstructured CPE Credit: 6 (Six)

Course Fee: Rs. 500/-

Transfer Pricing eLearning Course

It is indeed a matter of proud privilege and honor for Chartered Accountants to have been given the onerous responsibility of reporting on International Transactions. This eLearning course aims to introduce the pertinent details in a lucid and easily understandable manner such that Chartered Accountants are equipped to better discharge this responsibility to the satisfaction of the government. This course inter alia covers the following aspects:

- Introduction/Purpose/Basic components/Section 92
- Concept of Transfer Pricing (Issues/Provisions)
- Transfer Pricing Regulations (Pre/Post)/Need
- Basic Principles of Taxation
- Shortcomings of existing provisions of IT Act, 1961
- Associated Enterprises/Deemed Associated Enterprises

Course and Lesson Navigation

All the information - all the time. ICAI eLearning courses are transparent. They give you great details of your eLearning usage:

- Time taken in last attempt
- Fully expandable or contactable modules
- Show all lessons, or completed only or incomplete lessons
- Number of times each lesson being attempted
- Account Expiry date
- Search the course for words or terms
- Total time spent in course
- Change password of user details
- Blogs
- Complete audio control
- Graphs
- Animations
- Totally web-based, no download, no plug-in
- 24*7 access through internet with unlimited attempts

How to Register

You can register for the course Online by paying the course fee through the ICAI Online Payment at the following link:

http://www.icai.org/ccm.html

and your Redeem Code to register for the eLearning courses would be dispatched by e-mail on the next working day. Alternatively, you can pay the course fee by DD/ Pay Order/ At-Par-Cheque drawn in favour of "The Secretary, ICAI" payable at Delhi and send it with a covering letter giving your pertinent details (name, address, phone no., mobile no., e-mail id) to the address given below.

Committee on Information Technology
The Institute of Chartered Accountants of India
ICAI Bhawan, Plot No. 52-54, Vishwas Nagar, Shahadara
Delhi-100032, India
Phone: 011-30210619/621, Fax: 011-30210681,
E-mail: elearn@icai.in, Web: http://elearn.icai.org

Articles Invited for Students' Journal, Special Issues

The Board of Studies is planning to bring out Special Issues of the Students' Journal in the forthcoming months. The main focus will be on:

- IFRS
- Direct Tax Laws
- Indirect Tax Laws
- Corporate Laws including SEBI Guidelines and Regulations, Insider Trading Code, Public Issue Guidelines
- International and Indian Capital Market
- Finance including Resource Raising
- International Financing including special financial instruments being used internationally and
- Labour and Economic laws.

Articles on the above topics are invited from members, academicians, students and others for inclusion in the Student Journal. An article should comprise 1200 to 1600 words only. The authors are advised to enclose the following along with the articles:

1. A formal & signed undertaking in the form of a letter stating that the article is original in all respects and does not infringe any copyright and has not been published elsewhere or has been sent for publication.
2. A latest passport size colour photograph (with full name and registration number written on the back of the photograph).
3. A soft copy of the article with complete communication and E-mail address. Articles received without the details/enclosures specified above will not be considered.All correspondence in this regard should be addressed to The Board of Studies, ICAI, A-94/4, Sector-58, Noida – 201301 with the full name, complete address and the membership/registration number if applicable.

CORRIGENDUM

Attention of our readers is invited to the p.1632 of the April 2010 issue of the Journal in the article **'Service Tax Proposals under the Finance Bill, 2010'** written by **CA. Ravi Holani**. In this article, **point (v)** of the subsection **Explanation 1** of section **(g)** has got wrongly merged in the next list due to a printing error. The readers should read the correct version as follows:

"Explanation 1:

…

(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce;

but does not include

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

(c) land used for educational, sports, circus, entertainment and parking purposes; and

(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities."

We regret this error.

-Editor

CPE 6 Hours

Seminar on "Audit of Public Sector Undertakings — Enhancing their Effectiveness"

Date & Time: June 26, 2010 [10.00 am – 6.00 pm]	**Venue:** S. Narayanan Auditorium, Bangalore	
Inaugural Session	Address by: Shri K.P. Sasidharan, Director General(Commercial), O/o C&AG	
	Topics	**Speakers**
	Expectation from Auditors – C&AG Perspective (with special reference to supplementary audit, Directions from C&AG)	Shri K. P. Sasidharan, Director General(Commercial), O/o C&AG
	Issues related to Empanelment/Allotment and other related issues	CA. Pankaj Jain, Chairman, Professional Development Committee, ICAI
	Recent Developments in Accounting Standards relevant to PSU's	CA. Gururaj Acharya, Bangalore
	Recent Developments in Auditing Standards – An Overview	CA. Rajkumar Adukia, Chairman, Internal Audit Standards Board, ICAI
	Audit Planning – Co-ordination with Management & Reporting Practical Issues	CA. G. Sudhindra, Bangalore
	Preparing PSUs for adoption of IFRSs from 2011: Issues and Challenges due to differences between ASs and IFRSs	CA. Shyam Ramadhyani, Bangalore
Committee Chairman	CA. Pankaj Jain, Chairman, Professional Development Committee, ICAI ✉ pankaj@icai.org, pankaj@kjco.net	
Programme Co-ordinator	CA. K. Raghu, Central Council Member, ICAI ☎ +91-9341219091 ✉ kraghu999@gmail.com	
Programme Convenor	CA Shambu Sharma, Chairman, Bangalore Branch of ICAI ☎ +91-9845077362 ☎ 080-22227201 ✉ casharmaca@gmail.com	
Participation fee	Members: Rs 500 /- per delegate Non - Members: Rs. 800/- per delegate Cheque should be drawn in favour of "Bangalore Branch of SIRC of ICAI " payable at Bangalore and sent to The Chairman, Bangalore Branch of SIRC, The Institute of Chartered Accountants of India, ICAI Bhawan, 16/0, Millers Tank Bed Area, Vasant Nagar, Bangalore - 560 052. For any other query, you may please contact Ms. Roopashree, Bangalore Branch. ☎ 080-30563512/501 ✉ bangalore@icai.org, blrregistrations@icai.org	

CPE 12 Hours

Two-Days National Conference for Members in Industry on International Financial Reporting Standards (IFRS)

Organized by: Committee for Members in Industry of ICAI
Hosted by: Bangalore Branch of SIRC of ICAI
on June 18-19, 2010

Hotel Le-Meridian, Bangalore

Timing of Sessions		Details
	Friday-18.06.2010	
9:00 AM – 9:30 AM 9:30 AM – 10:00 AM	Registrations Inaugural Session	
Technical Session I 10:00 AM – 11:30 AM	**Overview of IFRSs** a. Global scenario b. How and when? c. Impact	CA. Manoj Fadnis Chairman, Acounting Standards Board, ICAI
Technical Session II 11:45 AM – 1:15 PM	a. Presentation of Financial Statements, b. Revenue recognition, c. Income Tax	CA. Vinayak Pai Consultant, Bangalore
Technical Session III 2:00 PM – 3:30 PM	Disclosure of Accounting Policies – IAS-1 Share Based Payment and Employee Benefits Consolidation	CA. Madhusudan Kankani Bangalore
Technical Session IV 03:45 PM – 5:15 PM	Intangible Assets, Accounting transaction in Foreign Currency segments – IFRS 8	CA. Y. N. Desai, Mumbai
	Saturday-19.06.2010	
Technical Session V 10:00 AM – 11:30 AM	**Critical differences between 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	CA. P. R. Ramesh Co-opted Member, Accounting Standards Board - ICAI
Technical Session VI 11:45 AM – 1:15 PM	**Role of CAs in industry as well as in Practice** a. What industry gains? b. What professionals achieve? c. What country and society gains?	CA. Mohan Lavi, Bangalore
Technical Session VII 2:00 PM – 3:30 PM	**Challenges on first time adoption in India** a. Applicability b. Business impact c. Implementation planning	CA. Sanjeev Singhal Religare Enterprises Ltd., New Delhi

** Confirmation Awaited*

Technical Session VIII 3:45 PM – 5:15 PM	**Convergence Process in an organisation** a. Roadmap b. Problems likely to be faced and answers there of c. Areas that may have significant impact	CA. Gargi Ray Infosys Technologies Ltd., Bangalore
Participation Fees	Rs. 3,000/- for Members The cheque should be drawn in favour of 'Bangalore Branch of SIRC of ICAI' payable at Bangalore and it 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.**	
Contact Details		
Conference Chairman	**Conference Director**	**Conference Coordinator**
CA. Subodh Kumar Agrawal Chairman Committee for Members in Industry of ICAI ✉ subodhka@yahoo.com	CA. K. Raghu Central Council Member and Member CMII ✉ kraghu9999@gmail.com	CA. Shambhu Sharma H Chairman Bangalore Branch of SIRC of ICAI ✉ Bangalore@icai.org
Official Coordinator	Shri Shaleen Suneja, Secretary, Committee for Members in Industry ☎ +011-30110491/555 ✉ ssuneja@icai.org	
For Registration & further details, please contact	Bangalore Branch of SIRC of ICAI 16/0, Millers Tank Bed Area, Bangalore-560 052 ☎ 080-30563541 ✉ dcobangalore@icai.org	

CPE 6 Hours

Full Day Workshop on Financial Instruments

Organised by: Committee for Members in Industry of ICAI
Hosted by: EIRC of ICAI
on June 19, 2010
Floatel, Kolkata

10:00 AM – 10:30 AM	Inaugural Session	
Technical Sessions 10:30 AM – 1:30 PM 2:15 PM – 5:15 PM	**Topics of Discussion:** AS 30, 31, 32 IFRS 32,39,7, 9	**Speaker:** CA. Vinod Kothari
Contact Details		
Programme Chairman CA. Subodh Kumar Agrawal Council Member, 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 Coordinator	Shri Shaleen Suneja, Secretary, Committee for Members in Industry, ☎ 011-30110555/491 ✉ cmii@icai.org
	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: Patna Branch of Central 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 the 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:

June 27, 2010
Sunday, 9:30 am - 5:30 pm

Venue:

Auditorium, L. N. Mishra Institute of Economic Development and Social Change, 1, Bailey Road, Patna-80001, Bihar.

Fee: Rs. 1000/-

DISCUSSION SESSIONS

- Capacity Building Measures - Networking of CA Firms, Merger, Acquisition & Corporate form of practice.
- Internal Audit - Critical Issues.
- Strategies for Wealth Creation, Wealth Maximization and Wealth Management.
- E-filing – Practical Aspects (MCA & Service Tax).
- Service Tax - How to handle Departmental Proceedings.

Programme Chairman

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CPE 6 Hours

Full Day Programme on Capital Markets

Theme: Indian Capital Markets – Its Growth Potential and Challenges

Organised by: Committee on Financial Markets & Investors' Protection, ICAI

Hosted by: EIRC of ICAI

Date & Time:
Saturday, July 3, 2010
10:00 AM to 6:00 PM

Venue:
Park Hotel (Galaxy Room), Kolkata

Address by:
CA. Arun Kumar Jagatramka,
CMD Gujarat NRE Coke Ltd.

Guest of Honour:
CA Amarjit Chopra, President ICAI

Guest of Honour:
Mr. C. B. Bhave, Chairman, SEBI*

Chief Guest:
Mr. Arun Yadav
Hon'ble Minister of State for Public Enterprises
Govt. of India*

Speakers:
Mr. Gul Techchandani*
Mr. Mudhusudan Kela*
Mr. S. P. Tulsyan
Mr. Rakesh Jhunjhunwala*
Mr. Nilesh Shah*
CA. Pankaj Inderchand Jain, Council Member, ICAI
CA. Prithvi Haldea, Council Member, ICAI*
Smt. Usha Narayanan, Executive Director, SEBI & Council Member, ICAI*

Topics:
1. Capital Market – The Road Ahead
2. Changing Perception in Capital Market
3. Wealth Creation through Strategic Planning
4. Impact of European Upheaval on World Economy
5. Panel Discussion

Fees: Rs. 1200/-

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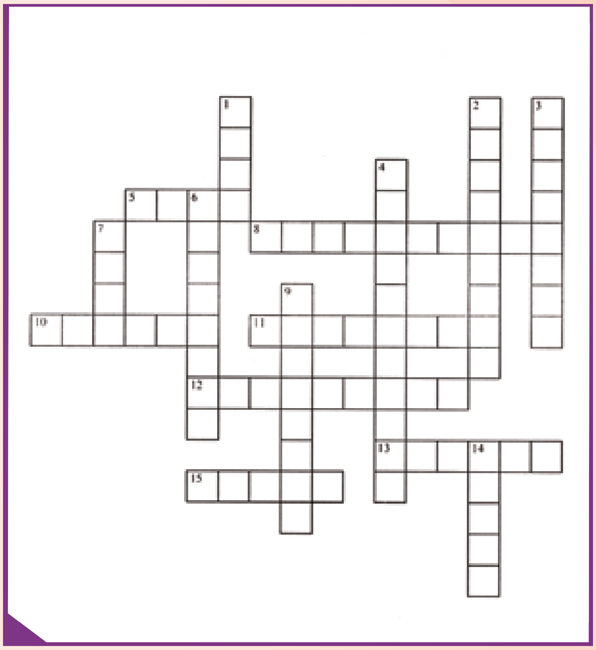
</table>

** Confirmation awaited*

CROSS WORD 048



ACROSS

5. The Indian Company which provides professional index management service is _____.

8. _________ agreement is an agreement where the owner of securities agree to sell them to a counterparty and buy them back at a slightly higher price later. (10)

10. Warsaw stock exchange is the exchange of __________. (6)

11. The situation where the future price is above the expected future spot price is known as ____________. (8)

12. Impact cost measures the _________ of the stock. (9)

13. One of the factors affecting Option Prices is the time of ________. (6)

15. The __________ of a stock option is the ratio of the change in the price of a stock option to the change in the price of underlying stock. (5)

DOWN

1. ________spread is created by buying a call option at certain strike price and selling a call option on the same stock with higher strike price. (4)

2. Higher premium are result of High interest rates and high interest rates are result of high ________. (9)

3. Most common type of SWAPS are interest rate swaps and ________ swaps. (8)

4. Hedgers use ________ to reduce or eliminate the risk. (11)

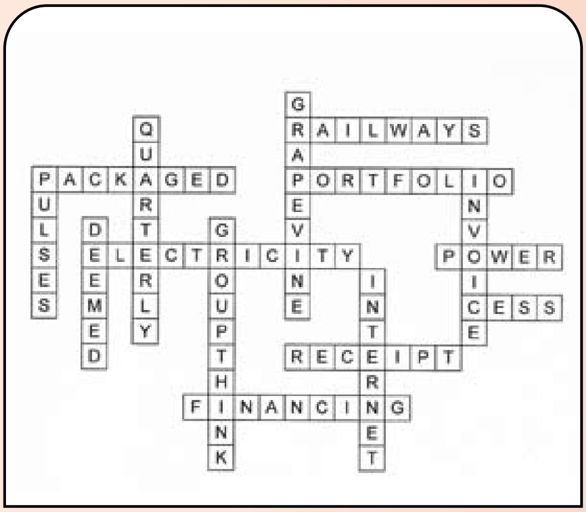
6. An investor believes that there will be a big jump in a stock price, but is uncertain as to the direction. He or she will create a _________. (8)

7. A _____ option gives the holder the right to buy an asset by a certain date for a certain price. (4)

9. Stock option can be exercised any time on or before _________. (8)

14. On expiry, the settlement price of an index futures contract is closing ______ value.

Note:
Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the Self-declaration Form to be submitted to your regional office annually to avail CPE hours credit for Unstructured learning activities under the activity 'Providing solutions to questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.



SOLUTION Crossword 047

1 One passenger entered into an aeroplane and asked the airhostess, "Is everything alright with the plane? Is the fuel tank filled with petrol? Is the engine fine for the journey?
The airhostess asked the man angrily, "Why are you asking all these things again and again?"
The man told the airhostess, "So that if the aeroplane stops mid-way, you don't ask me to push the aeroplane!!!!"

2 Doctor: Let us see what happens if I cut your ears.
Patient: I will not able to see at all
Doctor: Why?
Patient: Naturally, where will I hang my spectacles?