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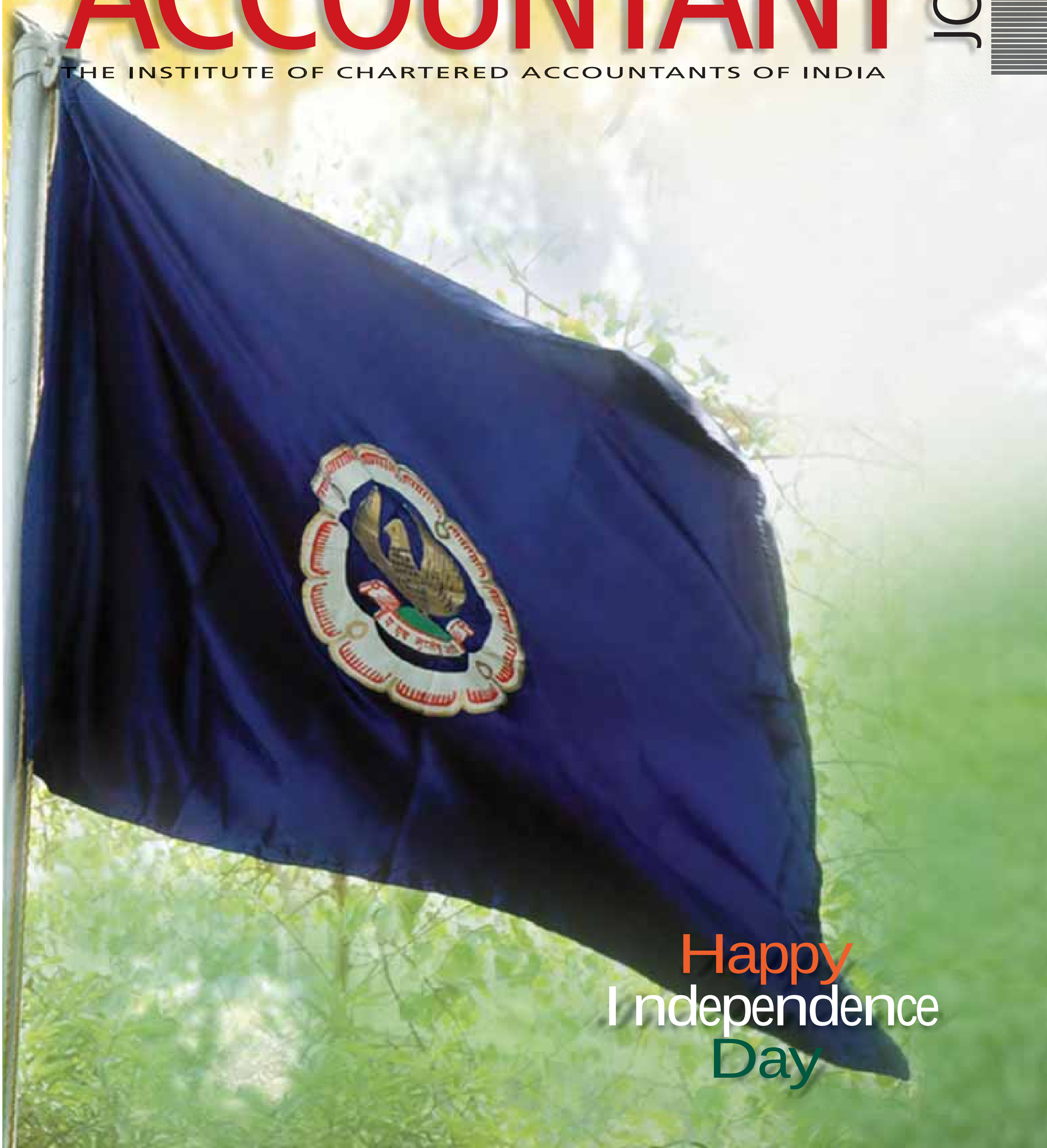
SET UP BY AN ACT OF PARLIAMENT

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA



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Revised Discussion Paper on Direct Tax Code

"When archaic rules have to be replaced with new ones, the changes must be dramatic and path breaking" - This is what Union Finance Minister Pranab Mukherjee conveyed to all taxpayers when he introduced the draft Direct Tax Code (DTC) last year. Now, whether the lot of objectives can be achieved given the limited horizons of those tasked with implementation, the constraints of time and the political ground realities remain to be seen.

Some of the features/clarifications incorporated in the DTC are worth appreciating, such as, the policy of rates of taxes being provided in the DTC itself, specific provisions restricting double taxation of the same income, provision of draft Assessment Order if the amount of additions/disallowances exceed Rs. 25 lakh, substitution of market value as on 1.04.2000 in place of cost for the purpose of computing capital gain in case of investment asset etc. At the same time, some of the conceptual changes proposed in the DTC are highly debatable, and may defeat the objective of simplification and reduced litigation.

While reframing the law, it may be desirable to keep in mind that certain provisions and legal propositions have stood the test of time and are now well known and universally accepted. Unsettling these to bring about change to meet the "desired" theoretical or conceptual correctness or to suit so called "international best practices" is more likely to unsettle the law without matching revenue gains.

The global financial crisis has demonstrated that charting its own course of modulated de-regulation has insulated India from the storms of financial instability. India is an emerging economic giant and must evolve its own "best practices", adapted to our economy. The concepts of equity, accountability and certainty will be what the generation of informed tax payers are looking for. Shifting responsibilities to them in an un-equitable manner (including burden of proof) in matters of service of notice, failure to dispose of applications for rectification etc. would be seen as attempts to cover up for inefficiency in tax administration. A vibrant democracy and an active judiciary would eventually limit such powers.

The Finance Minister, having decades of experience in public life, has to be complimented for responding to the suggestions by bringing out a Revised Discussion Paper (RDP) on DTC on 15th June, 2010. This has considered numerous issues raised by the various stakeholders on the DTC. Eleven significant issues have been considered and each issue is discussed in a separate chapter of the RDP. Some of the critical changes proposed in the DTC have been reversed, at least partially, in the RDP, for example, restoration of MAT on book profits, continuation of EEE on specified savings instruments, restoration of exemption limits on terminal benefits like gratuity, voluntary retirement compensation, application of domestic law or DTAA, whichever is more beneficial, levy of wealth tax on specified "unproductive assets", etc.

However, there are several other critical issues concerning penalty, prosecution, service of notice, revision of other orders, stay of demand by the Appellate Tribunal, opportunity of being heard in a best judgment assessment, determination of arm's length price, search and seizure, survey, branch profits tax, maintenance of accounts, method of accounting, depreciation, etc., arising out of the provisions of the Code. These issues have not been dealt with in the RDP, probably, since they are more technical in nature, the number of representations received on these subjects may be relatively lesser as these matters are not so easily and immediately appreciated by a layman. Therefore, although these issues have not been dealt with in the RDP, they may require re-consideration.

The present Income-tax Act 1961 has evolved over six decades and all the laws relating to the major areas have been critically examined by the judiciary and have become well-settled. Therefore, the major part of the existing statute, on which the law is almost settled may be retained and necessary changes may be made only with regard to other part. This will help in avoiding litigation on settled position of law. Perhaps, consideration of these matters in greater detail may merit referral to a Select Committee of Parliament. Such a step would enable some of the conceptual issues to be better addressed. For example, the move to go for an integrated tax return/ tax law addressing income-tax, capital gains tax, gift tax (under the cloak of "Other Income") and wealth tax takes us right back to Prof. Kaldor's prescription for Indian Income Tax (made in the 1950's) which was consciously diluted/ deviated from by our law makers in later years in light of experience in India. Other issues that may need to be addressed are the concept of "inclusive growth" and issues of accountability of tax administration – a concept propagated by Kautilya in the 4th Century BC – but not yet implemented in his own land.

Change is for the better when it is driven by belief and experiences, not when there is change for the sake of change; more as a fad or fashion. For the changes proposed to be endurable and effective, we trust that the Finance Minister will steer the DTC along the right path, so that the wisdom of our law makers would be appreciated by the rapidly expanding numbers of honest Indian tax payers.

Editorial Board

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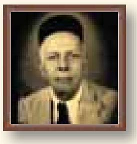

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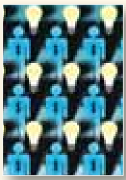

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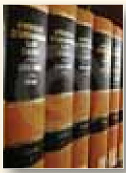

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Dear All,

Values and morals if practised only within profession may bring in dangerous consequences. The virtues of our values, morals, ethics and skills need to spill over to the society at large, to the entire nation and to the whole world. We as professionals cannot be mute spectators to the ills plaguing the world but instead be responsive and responsible global citizens.

Intolerance is growing. When the whole world is meditating over exercising non-violent options of resolving various internal and international crises, it is strange that we refuse to remember the instances of our own ideals including Buddha and Gandhi. We have a responsibility towards our times and our world. Otherwise, we must be ready to take the blame for the misplaced and misdirected state of affairs our coming generations would be in. This patriotic yet global concern should be the focus of our thought process when we salute our national tricolour and celebrate our Independence Day on August 15. This Day should also remind us that with independence and freedom come added responsibilities, commitments and expectations. This also goes for the autonomy and independence we enjoy as an Institute and as a Chartered Accountant. It is highly satisfying that we have so far been up to the expectations of the Government and society, and we are sure that our indefatigable spirit of independence with responsibility will continue to make us more and more useful to the world at large in all times to come.

Meanwhile, the return filing season is upon us. Taxpayers across the country are grappling with collation of documents/ finalising their accounts to determine the income earned during the previous year. We are sure all of us will be assisting the society in fulfilling this important duty towards our Government and more importantly towards our nation.

Now let you be updated about some of the important developments pertaining to the profession and members.

CA Day Celebrations

We are delighted to inform you that we celebrated 62nd CA Day, the foundation day of our Institute on July 1, in a highly befitting manner with ample show of strength and solidarity. It was heartening to note that the large venue of the main function at the Plenary Hall, Vigyan Bhawan in New Delhi, was overflowing and bustling with members and students who had gathered there to celebrate our indefatigable spirit of excellence and high standing in the society. **CA. K. Rahman Khan**, Hon'ble Deputy Chairman, Rajya Sabha, and **Shri Salman Khurshid**, Hon'ble Minister of State (Independent Charge), Ministry of Corporate Affairs, were the Guests of Honour. On this momentous occasion, **Shri R. Bandyopadhyay**, Secretary, Ministry of Corporate Affairs and **CA. T. V. Mohandas Pai**, Member of the Board, Infosys Technologies Limited also specially addressed the members. **CA. Ajeet Singh S. Bhandari**, the topper in the first CA Final Examination held in November 1949, was specially invited to this august function and was felicitated. The aforesaid programme was followed by a special Panel Discussion on Revised Discussion paper on Direct Taxes Code wherein **CA. Ved Jain**, Past President of ICAI and **CA. (Dr.) Girish Ahuja** participated as Panelists.

"As the nation embarks on a high growth rate and emerges as an economic power, the profession should prepare itself to play a pro-active and dynamic role in India's growth. The profession should re-define its role as a watchdog of public expenditure and investment. The motto of the Institute 'Awake while others sleep' needs to be followed in thought, deed and true spirit," said CA. K Rahman Khan, adding that *"the ICAI should be the advisory to the Government. We have an obligation to the common man and when we have schemes like NREGA wherein more than Rs. 70,000 crore are going to be spent, the Institute should take up the challenge, offer its services as a social obligation to see as to how these funds are being spent."*

Shri Khurshid was all praise for the profession and its progress, and said that he would like *"to look forward to the day when like Neil Armstrong, an Indian accountant from somewhere on the moon would say that he has finally conquered the moon and on that day one would be sending digital audit reports of India's space stations on the moon"*.

CA. T. V. Mohandas Pai said that *"the world belongs to those with the intellectual capacity to bring about change. We should be accountants to the world in 10 years from where we are today as accountants to India. With economy going up three times in the next 20 years, the demand for the services of CAs will go up manifold."* He said that *"in the next 10-20 years we are going to be judged by the ethics that we carry and the ethics that we demonstrate to everybody in the world and there will be no forgiveness if we fall down,"* truly adding that *"CAs have potential to be role models for society"*.

All the invited dignitaries not only saw and admired but also felt our large presence. They whole-heartedly acknowledged and commended the achievements of the profession over last more than six decades and were unanimous that next decade will belong to Indian chartered accountants. We assure all of them that we will leave no stone unturned to come up to this expectation of the society and the Government. We humbly express our gratitude to all the dignitaries for their words of praise and encouragement, which will definitely inspire us to serve the society all the more. Our special thanks to the members for making CA Day a grand success. Let's continue making our presence felt. A detailed report of the CA Day function has been published in this issue of the journal.

Meetings with Various Ministries

Ministry of Labour & Employment: We recently met Shri P. C. Chaturvedi, Secretary, Ministry of Labour and Employment. We presented him an approach paper dealing with the major schemes run by the Ministry and the role we can play in areas like accrual accounting, internal audit, etc. Shri Chaturvedi shared with us various initiatives taken by his Ministry and the developments thereat. He expressed his grave concern on the tendering process for utilising the services of Chartered Accountants and emphasised that L1, i.e. lowest bidder, can't be the sole criteria of selecting a professional for a qualitative job. He urged the ICAI to look into the matter and ensure that tendering process, gradually becoming an exploitation tool in the hands of allotting authorities, should not become a bane for the qualitative performance of the chartered accountants. We also deliberated upon constitution of a joint working group of the Institute and the Ministry and both sides considered it as a good mechanism to initiate and continue a meaningful dialogue for the areas of mutual interest. The efforts of CA. Anil Khandelwal, in organising the said meeting are worth mentioning.

Department of Financial Services: We also met Shri R. Gopalan, Secretary, Department of Financial Services, Ministry of Finance and discussed the issue of autonomy given to public sector banks in respect of appointment of auditors. We, on behalf of the Institute, put forth various alternatives as to how autonomy can be retained within the new framework being implemented from this year i.e. 2010-2011.

We have given suggestions with regard to the need for uniform reporting pattern of concurrent audit, its frequency, the fee structure and the empanelment criteria. We also requested him for increase in audit fee for bank audit, effective from FY 2009-2010. He gave a positive response on both these requests. The Government is looking forward to revise the branch audit criteria for branches under CBS, which may bring down the number of branches to be audited in future. However, the same branches may be subjected to concurrent audit.

Chartered Accountants (Amendment) Bill, 2010

Members may be aware that in order to enable members of the Institute to practise through a new business vehicle i.e. Limited Liability Partnership, consequential amendments in the Chartered Accountants Act, 1949, arising out of the Limited Liability Partnership Act, 2008 became necessary. Accordingly, the inputs of the Institute were called for and also submitted to the Central Government in relation to the amendments that were considered appropriate, followed by oral discussions, specific to the consequential amendments, arising out of Limited Liability Partnership Act, 2008. Thereafter, the Central Government introduced in Rajya Sabha on 28th April, 2010 the Chartered Accountants (Amendment) Bill, 2010, along with two other Bills namely, the Cost and Works Accountants (Amendment) Bill, 2010 and the Company Secretaries (Amendment) Bill, 2010 pertaining to the sister Institutes. The Rajya Sabha, on consideration, referred the Bill to the Parliamentary Standing Committee on Finance for its examination. It is pertinent to mention that the Cost and Works Accountants (Amendment) Bill, 2010 however *inter alia* contained a proposal regarding change of its name from the Cost and Works Accountants of India (ICWAI) to the Cost and Management Accountants of India (ICMAI), which in no way whatsoever relates to the amendments necessitated by the LLP Act. The Institute was invited to make its submission before the said Parliamentary Standing Committee on 7th July, 2010 and accordingly, suitable presentation/submissions were made by the undersigned along with the Vice President, CA. G. Ramaswamy and the Chairman of the Corporate Laws and Corporate Governance Committee, CA. S. Santhanakrishnan. While submitting our viewpoints on the proposed amendments, arising out of the LLP Act, we have also expressed our concerns over the proposal for change of name of ICWAI to ICMAI. We are actively following up on the matter.

Ensuring Effective Convergence with IFRS

The members must be aware that we are making persistent efforts to meet the timelines laid down by the Ministry of Corporate Affairs for convergence with IFRS starting from 1st April 2011. Formulation of IFRS-converged Accounting Standards in time is the most significant milestone in this direction, which is at advanced stage. Exposure Drafts of all the Accounting Standards have already been issued. Most of these Standards have also been considered by the Council of the ICAI after duly considering the comments received. These Standards are being considered by the National Advisory Committee on Accounting Standards (NACAS) simultaneously. It is expected that all the Standards would shortly be ready for notification by the Government.

Simultaneously, we are proactively going on with our concerted nation-wide drive to provide education and training to all the stakeholders concerned for proper implementation of IFRSs. For this purpose, IFRS Certificate Course and IFRS e-learning Course are being undertaken. As many as 38 batches of IFRS Certificate Course have been completed and around 2000 members have undergone this course. In addition to this, we are dedicatedly continuing with the large-scale IFRS awareness campaign in collaboration with the Ministry of Corporate Affairs. As part of this mega campaign, 14 workshops have been organised in different parts of the country which have been attended by more than 850 delegates.

Our Suggestions on DTC Accepted

The ICAI had submitted its suggestions on the issues arising from the Direct Taxes Code (DTC) to the Ministry of

Finance, after detailed consideration and deliberation of the proposals contained in various chapters of the Code at high level meetings of the Direct Taxes Committee of the Institute and its study groups. A Revised Discussion Paper on DTC has been released by the CBDT on 15th June, 2010, taking into consideration the vital and critical issues raised by various stakeholders on the DTC. Eleven significant issues have been considered and each issue is discussed in a separate chapter of the Revised Discussion Paper. It is extremely satisfying to note that six of the eleven significant issues identified in the Revised Discussion Paper (RDP) are as per the specific suggestions of the ICAI. These include our representation made on issues such as MAT, EEE, and income from house property, etc. A gist of the RDP as well as the formal suggestions submitted to the Ministry of Finance on 30th June 2010 is given in this issue of the Journal. Certain follow up presentations and representations have also been made by the ICAI before the top officials of the Ministry of Finance and Ministry of Corporate Affairs and have been very well received.

Constitution of Groups

Group for Revision of Recommended Scale of Fees: We have constituted a group under the convenorship of Council member CA. S. Santhanakrishnan for revision of recommended scale of fees chargeable for the work done by the members of the Institute. As members would appreciate, the revision of the recommended scale of fees is the need of the hour to ensure appropriate compensation for the unmatched skills, quality and hard work the members put in while performing their duties as a Chartered Accountant. We are sure this will further enhance the quality of our services to the society.

Group to Study Guidelines of MPLAD Scheme: We have recently constituted a Special Group to study the Guidelines of Members of Parliament Local Area Development (MPLAD) Scheme of Central Government and to recommend areas for improvement with regard to Accounts and Audit part of the scheme. The Group will review the existing provisions, procedures and formats prescribed under the MPLAD scheme with regard to accounts, audit and utilisation certificate so as to make them more effective and helpful in achieving the objectives of the MPLAD scheme. The Special Group will also examine the need for preparation of a manual for audit under the scheme so as to ensure quality, uniformity and consistency of the audit procedures to be applied with reference to MPLAD scheme.

Enlarging the Vision of the Profession

Members would appreciate that our profession is all set to take a giant leap forward in near future and, as such, it is high time that we give shape to a holistic long-term vision of our profession. In this regard, we have launched a futuristic initiative of hosting a series of interactive workshops with the key stakeholders of the profession in various regions of the country. These workshops are aimed at eliciting and gathering quality inputs from the key users of the services of Chartered Accountants to design and enlarge the Vision Statement of the Institute for the profession of Chartered Accountancy. In order to make the vision development process more participative and to develop a shared vision for the profession, we invite you all to become a part of the profession's vision by participating in this exercise and take the profession to newer heights. Taking this initiative forward, we recently attended a Vision Interactive Workshop at Jaipur. The elite discussion group at the workshop discussed and deliberated the various issues related with the changing facets of the Indian Chartered Accountancy profession with regard to the ever-sophisticating expectations from the members, the quality of CA students, their training and education, the evolving paradigm and new avenues for the profession. The workshop was a great success in terms of the range and quality of inputs received from the participants, and the positive enthusiasm witnessed amongst the participants was indicative of the way to go for the profession and its members.

International Initiatives

The undersigned along with CA. Rajkumar S. Adukia, Council member, attended the International Innovation Network (IIN) Conference held in New York on July 12-14, 2010. While the undersigned made the presentation on recent initiatives of ICAI relevant to its members, CA. Rajkumar S. Adukia made presentation on recent initiatives of ICAI for students. Apart from ICAI, Institute of Chartered Accountants of Scotland, New Zealand, Australia, Ireland, American Institute of Certified Public Accountants and Canadian Institute of Chartered Accountants shared their recent initiatives on varied subjects. The conference was a wonderful experience as it has provided us different ideas for the development of accountancy profession and different initiatives we could take for the benefit of our members and students. During the visit, a programme was also organised by our New York Chapter wherein the undersigned addressed the members there. The Deputy Consulate General of India in New York Dr. A. M. Gondane also attended the programme. Here we are happy to note that our New York Chapter has recently got unique distinction of being represented by a lady Chair – CA. Aradhana Aggarwal. We heartily congratulate her on this feat. It is worth mentioning that incidentally the Secretary of this Chapter is also a woman – CA. Lalita Potluri. Indeed our women members are now empowered and second to none.

The undersigned visited Canada on July 15-16, 2010 for attending IFAC meetings and Meeting with the Canadian Institute's functionaries. During the visit, we met Toronto Chapter office bearers and positively responded to their concerns regarding professional matters in Canada. Given our thrust on achieving bilateral co-operation with the major accountancy bodies and in process providing membership recognition avenues to the ICAI membership, we have continued our dialogue for bilateral recognition of qualification with different countries. Our efforts have been that our members are able to get the best possible leverage as is available to similarly placed accountancy bodies.

We have been, for quite some time, in talks with CICA and we have requested CICA to provide the status of a designated and recognised accounting body as per their terminology whereby our members would be able to take up the specified examination as is available to fully recognised bodies under their parlance. Some headway has been made on this front but few contentious issues remain to be resolved. However, it is hoped that there will be a positive outcome in next few months. While the dialogue still continues, due to sensitivity of the process undergone, not much further detail could be shared at this stage but let me reassure you that the aim is to see that the best possible framework accrues for ICAI. It goes without saying that these processes are generally long drawn and one has to take into account the domestic regulatory structure before agreeing for a final outcome.

During the Canada visit, undertaken along with ICAI Vice President CA. G. Ramaswamy and Additional Secretary Rakesh Sehgal, we also had the occasion to meet Ms. Preeti Saran, Consulate General of India, Toronto and apprised her of the bilateral dialogue and the possible way forward for ICAI in vogue of specified enactments bill i.e. The Ontario Bill 158, The Accounting Professions Act, 2009, which *inter alia* prohibits the use of the designation "Chartered Accountant" contained within the Bill 158.

New Base Rate Concept

Indian banking entered a new era on July 1, 2010, incidentally coinciding with CA Day, when an improved method of pricing loans was finally activated. We welcome the move to a transparent Base Rate that will act as a benchmark for the pricing of all loans dished out by banks. This transition from the Benchmark Prime Lending Rate (BPLR) to the base rate system is targeted to increase transparency in lending rates and help small borrowers negotiate better rates with banks. Consequently, SMEs with healthy credit profiles will now be able to negotiate far better rates with banks. The new regime shall see an increased credit flow to small borrowers, also because of the fact that the earlier stipulation of BPLR as the ceiling rate for loans up to Rs. 2 lakh has been withdrawn. Banks with competitive base rate and efficient treasury operations are well placed to benefit from the new scenario. However, we also believe that the base rate should not be considered a final destination, but only a necessary stop on the long road to the development of a vibrant term money market in India. The base rate does, for now, offer hope of becoming a benchmark interest rate in India. But the financial sector regulators need to move ahead to create the conditions where India gets a robust money market where interest rates across tenures are decided by price discovery. We are sure members will help the SMEs and the society at large reap maximum benefits out of the new Bank Base Rate system.

New Draft Takeover Regulations

The Takeover Regulations Advisory Committee of the SEBI, constituted under the Chairmanship of Shri C. Achuthan, submitted its report for public comments on July 19, 2010. The Committee has suggested comprehensive changes in the existing regulations like open offer trigger hiked to 25 per cent from 15 per cent, clarity on indirect acquisitions, open offer for 100 per cent shares of target company instead of 20 per cent at present, exemption from open offer obligations, governance issues, mode of payment, calculating the offer price, option to delist, etc. The suggestions, having far reaching repercussions, and needs to be carefully analysed before their implementation. You are requested to submit your comments on the draft regulations for our review and consideration at cfmip@icai.org so that broad consolidated view on the same may be framed and submitted to the SEBI.

New Hi-Tech Version of e-Journal Launched

We are happy to inform you that as part of our concerted drive to serve you better, we have launched a new latest hi-tech version of our e-Journal which gives a feeling as if the surfer is browsing through the journal in hard copy, turning page after page. The latest technology adopted has made our online journal more user-friendly and convenient for net-savvy by ensuring easy search, navigation, downloads, e-mail facility, etc. Further, in the new version of e-journal, you can also 'listen' the contents. We hope that our e-Journal will attract greater number of readers. Your comments and suggestions on this new initiative are welcome. However, for the added and alternative convenience of surfers, we will continue to host the journal in the PDF format as well.

Taking the Tradition of Convocations Forward

Taking our relatively new tradition forward, we have scheduled convocation programmes at various regions this year too. We hope that these special programmes to confer the Certificate of Membership to the young Chartered Accountants, for the period from September 2009 to February 2010, will not only promote professional camaraderie amongst the young torch bearers of the profession but will also strengthen the professional bonding, sense of attachment and belongingness with the alma-mater. These programmes are being organised in five regions. The convocation programmes for Western Region has been scheduled for 29th and 30th August in Mumbai and Baroda respectively. The programmes for Southern Region will be organised on 23rd and 25th August in Chennai and Bangalore respectively. Similar programme for Eastern Region will be held in Kolkata on 12th August while the programmes for Central Region will be held on 19th and 22nd September at Jaipur and Kanpur respectively. The first Convocation programme for Associate Members for the period September, 2009 to February, 2010 for Northern Region was successfully held at New Delhi on 20th July, 2010 wherein about 500 certificates were conferred to the new enrolled Associate Members. Secretary Ministry of Corporate Affairs Shri R. Bandyopadhyay was the Chief Guest on the occasion. The second convocation ceremony of the Northern region will be organised on 14th August at Ludhiana. It has been decided that every region will have two convocations — one at Regional Headquarters and another in a city to be rotated.

Pay Revision for ICAI Employees

We are happy to note that we have been able to come to an agreement on the major terms of pay revision for a section of employees consequent to recommendations of Sixth Pay

Commission, and the pay revision has already been effected. We are hopeful that we shall be able to implement the proposed pay revision for the remaining employees very shortly so that the employees of the Institute get a boost in their morale and are motivated to work towards achieving the goals of the organisation in particular and nation in general. We are optimistic that with the current pay revision in place, we shall be able to attract and retain the talent necessary in today's knowledge driven environment.

Student Matters

BoS Knowledge Portal:

The Students' page on the ICAI website provides information about various activities of the Board of Studies. However, it is very important that the information is categorised in a systematic and synchronised manner so that the students are able to search and access the desired information with a click of the mouse. Accordingly, the contents of the Students' page have been restructured. A new link BoS Knowledge Portal has been created on the new page besides other CA course related information. BoS Knowledge Portal has been envisioned as a single webpage access to all publications of Board of Studies. The students can view the contents in a Portable Document Format [PDF] that provides an easy screen-viewing and printing options. Study Material, Revision Test Papers, Suggested Answers, and Practice Manuals for all courses, Supplementary Study Material, Model/Mock Test Papers, Select Cases, Guidance Notes and Notifications/Circulars, etc. can also be downloaded free of charge. We are sure that this initiative of Board of Studies will go a long way in providing latest material to students at their door steps on timely basis.

Transfer/Termination of Articleship:

The Council of the Institute at its recently concluded meeting, in view of the difficulties being faced by members and students, has decided to permit transfer/termination of articles without any restrictions during first year of articleship training. Home transfer during subsequent period shall be allowed on case to case basis for which conditions have been laid down. Transfer of parents has also been added as a justified ground on which termination can be permitted. Requests for transfer not accompanied by the consent of the Principal shall not be accepted. A detailed announcement in this regard has been hosted on the website of the Institute and has also been published in this issue of the Journal and the Students' Journal.

Monitoring of Training:

In the recently-held meeting of the Council, we had the occasion to discuss the insensitiveness of the articles towards the articleship training. We are unanimous in our concerns in this regard and want to ensure that this is stopped at its initial occurrence. We must tell our future professional torchbearers that they must realise and rise to the occasion; otherwise the time will dilute our strong and invaluable heritage and professional dignity. We also realise that this trend cannot be stopped without the support of our members who are responsible for their proper training and maintenance of records in respect thereof.

Examination Results — A Mixed Bag:

The results of the latest CA Final Examination (May, 2010) and Common Proficiency Test-Paper Pencil Mode (June, 2010) are out. Overall, the results have been a mixed bag. While the results of CA Final Examination are disappointing, the results for CPT are satisfying. Nevertheless, we heartily congratulate all those who have passed the examinations. Our special compliments to the rank holders.

We are pained to take note of the poor performance in the CA Final Examination. It is a matter of grave concern for all of us. We are comprehensively analysing the results and suitable remedial measures will be taken in near future. However, students need not feel disheartened as to me the word *'no'* means *'next opportunity'* and the word *'end'* means *'efforts never die'*. It seems that overdependence on private coaching, which does not meet the requirements of the changed pattern of examination, and the insensitiveness towards practical training, have also been contributory factors of the poor results. We have been constantly reiterating that students should take both their articleship training and studies more seriously. Practical training would immensely benefit the students in their examinations as well as in gaining experience. Nevertheless, we assure the students to undertake all the measures to mitigate their hardships.

At the same time, we would like to clear the myth caused by the rumours spread by various parties with vested interests with regard to release of results by ICAI based on demand and supply factors. It has never happened in the history of ICAI that a student, who is otherwise passing, has ever failed. Also, it is worthwhile to note that when economy was in the slowdown mode, the results were much better compared to the present when the economy is in much better shape. It clearly goes on to show that the results are based only on the performance of the students rather than any extraneous factors.

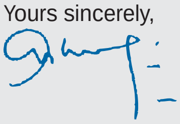
The CPT results, overall, are satisfactory but the better was expected. A total of 27.55% (35168) out of 127643 students have passed the examination. What is heartening to note is the large number (43979) girls appearing for examination. Not only this, the girls have outperformed boys with a pass percentage of 31.72% (13950) compared to 25.36% (21218) of the boys. We hope that the results will be even better in times to come.

To conclude, let's stress on the need for change in our professional outlook in tune with changing times, if we want to call the next decade as the decade of Indian Chartered Accountants. Change is constant, it is signal for rebirth. By changing the inner attitudes of our minds, we can change the outer aspects of our lives. The only thing we must not change is our commitment to our professional ethos and ethics. Let's optimise our independence with responsibility, integrity and professional panache.

Happy Independence Day!

Best Wishes,

Yours sincerely,



CA. AMARJIT CHOPRA
July 27, 2010

July 2010 Issue was Highly Informative and Useful

First of all many congratulations to the editorial team for coming out with quality journals one after the other. Our Journal has improved a lot both in quality and contents. July 2010 Journal is a fine example of the same. This issue is really special as it contains the golden words of our great Past Presidents and also it is taking the trip down the memory lane. Kudos for the brilliant work and I am very much sure that our Journal will continue to reach further heights.

-CA. Hardeep Saini

Our Journal (Issue no. 1, Volume no. 59) is excellent. All the articles from the editorial to theme topic 'Excellence in Financial Reporting' are worth reading, no matter he or she is a CA or not. The features like 'Tracing the Roots,' 'In Conversation,' 'Words of Wisdom,' and 'Special Write-ups' impressed me a lot. All the articles by our hon'ble Past Presidents CA. Y. H. Malegam, CA. P. N. Shah, CA. Y. M. Kale, CA. T. S. Vishwanath and CA. T. N. Manoharan were highly informative and knowledge-enhancing. The 'Words of Wisdom' from ICAI Presidents and the feature titled 'What the Leading Lights Said,' were very useful in understanding the direction of our esteemed profession. I frankly confess that I learned a lot even after four decades in our profession. My heartiest congratulations to ALL those who are directly or indirectly involved for the publication of this Special Issue.

-CA. Subhash Chandra Podder, Kolkata

The July 2010 issue of the journal gives a lot of information about Accounting profession from age old days. This is an excellent presentation of rare facts and most of us who do not know about the history of accounting profession can brief through this journal. I am sure this trend will continue and bring more information in future. I congratulate the good effort made by ICAI.

-CA. Chakravarthy Iyengar, Nagpur

Congratulations. Journal for the month of July 2010 is excellent. All efforts have been put for bringing informative material 'Tracing the Roots', containing 'Accounting Legends', 'Struggle for the Designation Chartered', 'Autonomy of the Profession: Expectations, Challenges and Future', and 'Origin of Accountancy'. It became landmark to have 'Words of Wisdom,' and 'Special Write-ups'. This issue is very informative and knowledge enhancing. It has effectively different layout and presentation showing professional approach of the Editorial Board.

-CA. K. L. Jhanwar, Jaipur

It is heartening to note that the journal has really come of age and effectively catering to the knowledge needs of the members. I highly appreciated the article titled 'IFRS in Real Estate- A Technical Area More than Just Accounting & Reporting' in June 2010 issue wherein the author has systematically and effectively dealt with technical aspects in real estate with reference to IFRS.

-CA. K. K. Thakkar, Ahmedabad

Corrigendum

Readers are hereby informed that Padma Shree was conferred on Late Past President of ICAI CA. R. K. Khanna in 1974 and Padma Bhusan in 1975. This information was erroneously missed out while publishing his quote in the 'Words of Wisdom' section (pg. 108) of July 2010 special issue. The omission is regretted.

-Editor

ERRATA

Attention of the readers is invited to footnote no. 1 appearing on page 147 of the July 2010 issue of the Journal. The footnote reads as under:

> *"[1] The Council, at its 292nd meeting held from January 12 to 13, 2010, has approved the Standards on Auditing (SA) 200, SA 220, SA 501, SA 505, SA 520, SA 620, SA 710, SA 800, SA 805 and SA 810. The Standards are in the process of finalisation pursuant to the deliberations of the Council and will be issued soon."*

The readers are requested to note that all the Standards on Auditing (SAs) mentioned in the above footnote have been finalised and published in the March 2010 and April 2010 issues of the Journal. The complete text of these Standards is also available on the website of the Institute at URL: http://icai.org/post.html?post_id=450&c_id=141.

The inconvenience to the readers is regretted.

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

Classifieds

4806 Delhi based CA firm requires CA/CA Firms on partnership/assignment basis for professional work at various cities in the State of Maharashtra (i.e. Satara, Dhule, Jalna, Ahmednagar, NarayanGaon, Sangli, Latur, Nanded, Karad, Khamgaon, Bhandara, Beed, Wardha, Miraj, Chandrapur and Shahada), Madhya Pradesh (i.e. Sagar, Chindwara, Guna, Vidisha, Ratlam, Katni, Waidhan, Harda, Rewa, Balaghat, Chhatarpur) and Goa. Interested CA Firms may send profile at gsmco.gsmco@gmail.com or contact at 011-41556527.

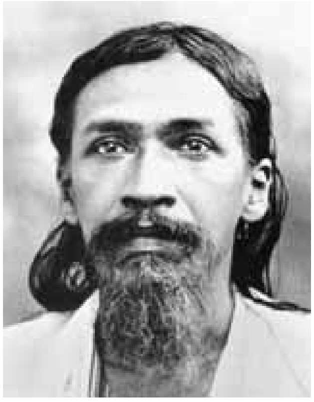
4807 Required CA in Practice to conduct concurrent audit of a reputed company for the following branches: Vadodara, Kolkata, Gurgaon, Jaipure and Bhopal. Email: litto@vguard.in

4808 Kochi based CA with 18 years experience in industry looking to work as advisor/consultant on short/long-term basis. Highly experienced in working in large systems like ERP/Telecom. Contact-9400333521.

4809 Assign/sub-contract audit/taxation work all over India to Delhi based ACA having work experience.Contact-9871714851, email: yoursmaninder@gmail.com

On the ICAI Flag: Code and Courtesy of Display*

Despite a great and outstanding membership, the flag of The Institute of Chartered Accountants of India is relatively less known to the students and members of the Institute at large. Therefore, it was decided to bring certain information related to the flag in their interest. Not everybody knows that there is an inclusive relationship between the flag and the logo of the Institute, i.e. the flag structurally contains the logo of the Institute.



Shri Aurobindo Ghosh

The design of the Institute's logo was suggested by the great nationalist and philosopher Shri Aurobindo Ghosh (1872-1950) and the same was conveyed to the then SIRC Chairman Shri C. S. Sastri, later our President for 1956-57, on his request. The logo contained the picture of *Garuda* — a symbol of ever-vigilant bird, which stays at soaring heights. Shri Aurobindo also suggested the motto for the logo from a *śloka* of the Kathopaniṣada, i.e. *ya eṣa supteṣu jāgarti*, meaning 'one who is awake amongst those who are asleep'. He used to say: '*Man is a transitional being. He is not final. The step from man to superman is the next approaching achievement in the earth evolution.*' The Council considered the Logo as suggested by Shri Aurobindo in its meeting held on August 15, 1950, and approved the same. This day also happened to be the 78th (and the last) birth anniversary of Shri Aurobindo.

Size, Colour, Material of the Flag

The size, colour and material to be used in the Institute's Flag will be as under:

Size:

Dimensions (in mm.)	**Dimension (in ft. and inches) (approx.)**
2700 x 1800	9' x 6'
Or,	Or,
1800 x 1200	6' x 4'

Colour: Deep navy blue coloured background with Institute's coloured logo in the center, primarily in white colour

Material: Silk cloth (in deep navy blue colour)

Courtesy to Flag

1. Whenever and wherever the Flag is flown, the same shall occupy the position of honour and the same is to be distinctly placed.
2. The Flag can be flown on buildings of the Headquarter(s), Regional Councils, Regional Offices, De-centralised Offices and Branches on all days including Sundays and holidays from sunrise to sunset, irrespective of the weather conditions.
3. The Flag may be flown on the aforementioned buildings at night also but only on very special occasions such

***Contributed by the Journal Section of ICAI**

as Chartered Accountants Day, Golden Jubilee Day, Diamond Jubilee Day, etc.

4. The Flag should be hoisted briskly and lowered slowly. If accompanied by appropriate bugle calls regularly or on special occasions, the hoisting and the lowering of the Flag should be simultaneous with the bugle calls.
5. Whenever the Flag is flown on a Speaker's platform, it should be on a staff on the Speaker's right as he faces the audience. If otherwise displayed, it should be flat against the wall above and behind the Speaker.
6. When the Flag is used on occasions like unveiling of statue, it should be displayed distinctly and separately and in no circumstances, the Flag should be used as a cover for a statue or a monument.

Adherence

The ceremonial attending the hoisting, lowering, saluting or half-masting of the Flag must be strictly adhered to by all individuals present on the occasion and the Institutions on which the Flag is flown.

Display on days of national importance

On special occasions like the Republic Day and the National week following it, Independence Day, or, any other particular day of National pride, the Institute's Flag can also be flown and without any restriction of the time limit followed on normal days.

Half-Masting

1. In the event of death of select dignitaries of the Institute (to be specified appropriately), the Institute's Flag can be half-masted at place(s) to be indicated on the day of death of the dignitary concerned. However, in the case of death of the President, the Vice-President or, of the Prime Minister of the country, the Institute's Flag must be half-masted at all places in the country.
2. In the event of intimation of death of any designated dignitary being received in the afternoon, the Institute's Flag can be half-masted on the *following day* also at place(s), provided the funeral has not taken place before sunrise on that day i.e., the *following day* as mentioned.
3. On the day of the funeral of the designated dignitary, the Institute's Flag should be half-masted in the building(s) located at the place, i.e., city/town where the funeral takes place.
4. In the event of any mourning being observed on the death of any national-level dignitary like the President, the Vice-President, or, the Prime Minister of the country, the Institute's Flag should be half-masted throughout the period of the mourning.
5. In the event of a half-mast day coinciding with the day on which the National Flag is to be flown such as Republic Day and Independence Day, the Institute's Flag should be flown at half-mast at the specified building where body is lying and the Flag should be raised to the full-mast position after the body has been taken for the funeral.

Display with Flags of Other Professional Bodies

1. When displayed in a straight line with Flags of other professional bodies in India – National as well as International – the Institute (ICAI) Flag should be on the extreme right.
2. On the occasion of the visit to the Institute or any of its organs by dignitaries from other professional bodies, the Institute's Flag may be flown along with the Flag of the professional body concerned.

Official Display

The Institute's Flag can be flown on all days on the buildings in which the Headquarters, the Regional Councils, the Regional Offices, De-centralised Offices, and the Branches of Regional Councils (own building) of the Institute are situated.

Incorrect Display

1. A damaged or dishevelled Flag shall not be displayed, nor shall it be displayed or fastened, used or stored in any manner as may damage it.
2. The Flag shall not be used as a festoon, rosette or bunting or in any other manner for decoration; nor shall other coloured pieces of cloth be so arranged as to give the appearance of the Institute's Flag.
3. The Flag shall not be used to cover a speaker's desk nor shall it be draped over a speaker's platform.
4. The Flag shall not be allowed to touch the ground or the floor or trail in water.
5. The Flag shall not be used in any form of advertisement nor shall an advertising sign be fastened to the pole from which the Flag is flown.
6. When the Flag is in a damaged or soiled condition, it may not be cast aside or disrespectfully disposed of, but it shall be destroyed as a whole in private, preferably by burning or by any other method consistent with the dignity of the Flag. ■

Meeting with Motilal Vora- Furthering the Interests of Profession

Member of Parliament Mr. Motilal Vora poses with ICAI President CA. Amarjit Chopra and Central Council Members CA. K. Raghu and CA. Atul Bheda at a meeting on 24th June, 2010 at New Delhi.

Convocation at New Delhi - Joining the CA Fraternity

Secretary, Ministry of Corporate Affairs Mr. R. Bandyopadhyay gives Certificate of Membership to a young Chartered Accountant at the Convocation programme for Associate Members for Northern Region at New Delhi on 20th July, 2010, as ICAI President CA. Amarjit Chopra, ICAI Vice President CA. G. Ramaswamy, Central Council Member CA. Vinod Jain and Chairman NIRC CA. Atul Kumar Gupta look on.

Meeting with Labour Secretary

ICAI President CA. Amarjit Chopra discusses matters of professional interest with Mr. Prabhat C. Chaturvedi, Secretary, Ministry of Labour & Employment on 8th July, 2010 at New Delhi. Also present were CA. Anil Khandelwal, Director Board of Studies of ICAI Mr. Vijay Kapur and CA. Namrata Khandelwal, Secretary, PDC of ICAI.

Workshop at Jaipur- Shaping the Vision of the Profession

ICAI President CA. Amarjit Chopra, ICAI Past President CA. Sunil Goyal, Central Council members CA. Vijay Kumar Garg and CA. Subodh Kumar Agrawal and other dignitaries at the Vision Workshop on 4th July, 2010 at Jaipur.

Students' Regional Conference

ICAI President CA. Amarjit Chopra, Central Council members CA. Manoj Fadnis, CA. Anuj Goyal and other dignitaries at the CA Students' Regional Conference on 5th July, 2010 at Kota.

Visit to Bundi (Rajasthan)

ICAI President CA. Amarjit Chopra, Central Council Member CA. Subodh Agrawal with other dignitaries and students during a visit to Bundi (Rajasthan) on 4th July, 2010.

Series: Legends in the Accounting Tradition of India

Rai Bahadur Pandit Balak Ram Pandya (1882-1966)

Only five Indian firms existed at the time of enactment of the Indian Companies Act, 1913, which made it essential for the companies to have persons as auditors as per the requirements of a statutory audit. The number of Indian accountants recognized with full practice was 14. Rai Bahadur Pandit Balak Ram Pandya and his firm figured among those 14 Indian accountants and 5 Indian firms respectively. Pandya represented as a senior proprietor of that firm from Lahore, which was *'the pioneer and prominent firm of Indian auditors in the Northern India'*, according to the History of Accountancy Profession in India by Shri G. P. Kapadia. Pandya joined that firm in 1903 and continued to work till 1966. That firm was established in 1895 by his father Shri Basant Ram Pandya, who was an accountant in the Railways Department of the Government of India.

Rai Bahadur Pandya's name was recommended for the

appointment on the Indian Accountancy Board from the Punjab Region in response to a letter sent by the Government of India in 1930 to the Local Governments regarding the recommendation of persons for the same. Pandit Vidya Sagar Pandya, a member of the Legislative Assembly and one of the 14 Indians practicing accountancy in 1913, and Rai Bahadur Pandya's elder brother, had also been recommended on the same Board by the Madras Government. Later he resolved the dilemma of the Government of India by withdrawing his name saying two brothers serving on the same Board would not appear agreeable to him. Besides being a founding member of the Indian Accountancy Board, Rai Bahadur Pandya also served on the Examination Committee of the Board headed by Mr. J. C. B. Drake who was the Chairman of the Informal Committee of the prospective members of the Indian Accountancy Board during its second meeting. Rai Bahadur Pandya served on the Indian Accountancy Board in its Informal Committee and then in its first (1932), second (1935) and third (1939) constitutions. In the first two constitutions, i.e. in 1932 and 1935, he served as a nominated member, and in the third one, i.e. 1939, he served as an elected member.

Rai Bahadur Pandya commanded great respect in the Accountancy Board due to his words of wisdom that he expressed during the meetings of the Board. In 1939, Sir Ernest Burdon, the Auditor General of India, regarded Pandya's statements as exceptionally intelligent and prophetic, especially his comment: *while the Accountancy Board should aim ultimately at complete autonomy perhaps complete and early dissociation from Government would not be advisable and in the best interests of the profession.* Perhaps Pandya had realized that an early dissociation from the Government might not enable the Board to command a high respect and enjoy a higher prestige. He felt, however, that the Board should make its own efforts to keep its standards high and should strive to be financially independent and self-supporting even while it was linked with the Government. In trying to be self-supporting, however, the Board must think of ways and means to increase its revenue, since it could not have gone on reducing its expenditure which already had been on a low scale.

In the struggle for dignity by the Indian accountants, i.e. fight for a (common) designation of *Chartered Accountant,* Rai Bahadur Pandya had very strongly put forth his opinions in favour of the struggle by the Registered Accountants. He said that *the word Charter was not a monopoly of any society or country,* and that it *'meant what it meant in the dictionary.'* He expressed that it wouldn't mean *'slavish mentality'*, if Indian accountants wanted to be called Chartered Accountants. He reminded the Accountancy Board in 1939 that one of the goals with which the Board was formed was that the Registered Accountants would be given a Charter and it had been postponed year after year. He was against the implementation of Charter by back-door methods. He desired that the Government must take steps constitutionally. While he showed his disgust at the Law Member's statement expressed in the Assembly that Registered Accountants were lower than Chartered Accountants, he patiently advised the Board if that was true, the level of Registered Accountants must be raised. He quite firmly conveyed that the Government must use lawful and proper means to secure the title of Chartered Accountant.

When Rai Bahadur Pandya died in 1966 at the age of 84, he was the Chairman of the Northern Chamber of Commerce and the oldest chartered accountant in active service and he had already devoted a huge 63 years of his life to the accountancy profession. He was a Notary public from 1925 to 1960. He served on the Fellowship of the Punjab University from 1927 to 1942, and served on the Managing Committee of the Hailey College of Commerce (under the University of Punjab, Lahore) from 1927 to 1947. He was a member of Panel of Cost Accountants from 1943 to 1947. Throughout his life, he continued to be associated with a large number of educational, commercial and public institutions.

(Contributed by the Journal Section of ICAI)

Know you Ethics*

Ethical Issues in Question-Answer Form

Q. Whether a member who is carrying out statutory audit and also rendering management consultancy services to his auditee clients can receive fees for such other services, which are in excess of the audit fees?

A. Yes. However, in exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the CA Act, the Council of the Institute has issued Guidelines which specify that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts the appointment as statutory auditor of Public Sector Undertaking(s)/ Government Company(ies)/ Listed Company(ies) and other Public Company(ies) having turnover of Rs 50 crore or more in a year and accepts any other work(s) or assignment(s) or service(s) in regard to the same Undertaking(s)/ Company(ies) on a remuneration which in aggregate exceeds the fee payable for carrying out the statutory audit of the same Undertaking/company.

Provided that in case appointing authority(ies)/regulatory body(ies) specify(ies) more stringent condition(s)/restriction(s), the same shall apply instead of the conditions/restrictions specified under the Guidelines.

Explanation:

1. The above restrictions shall apply in respect of fees for other work(s) or service(s) or assignment(s) payable to the statutory auditors and their associate concern(s) put together;
2. For the above purpose,

(I) The term "other work(s)" or "service(s)" or "assignment(s)" shall include Management Consultancy and all other professional services permitted by the Council pursuant to Section 2(2)(iv) of the CA Act, but shall not include:

(i) audit under any other statute;

(ii) certification work required to be done by the statutory auditors; and

(iii) any representation before an authority.

(II) The term "associate concern" means any corporate body or partnership firm which renders the Management Consultancy and all other professional services permitted by the Council wherein the proprietor and/or partner(s) of the statutory auditor firm and/or their "relative(s)" is/are Director/s or partner/s and/or jointly or severally hold "substantial interest" in the said corporate body or partnership;

(III)The terms "relative" and "substantial interest" shall have the same meaning as are assigned under Appendix (10) to the CA Regulations.

3. In regard to taking up other work(s) or service(s) or assignment(s) of the undertaking/company referred to above, it shall be open to such associate concern or corporate body to render such work(s) or service(s) or assignment(s) so long as aggregate remuneration for such other work(s) or service(s) or assignment(s) payable to the statutory auditor/s together with fees payable to its associate concern(s) or corporate body(ies) do/does not exceed the aggregate of fee payable for carrying out the statutory audit.

Q. Can a Chartered Accountant receive his professional fees in advance partly or in full?

A. Yes, as such there is no bar in the CA Act or in the CA Regulations as well as Code of Ethics in taking the fees in advance.

Q. Whether a member of the Institute will be liable, if he contravenes any of the provisions of CA Act or the Regulations or the Guidelines?

A. Yes, as per Clause (1) of Part II of Second Schedule to the CA Act, a member in practice shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of CA Act or the Regulations made under or any Guidelines issued by the Council.

Q. Is there any ceiling on the number of tax audit assignment that can be taken up by a member in practice?

A. Yes, in exercise of the powers conferred by Clause (1) of Part II of the Second Schedule to the CA Act, the Council of the Institute of Chartered Accountants of India has issued General Guidelines, 2008 which specify that a member of the Institute in practice shall be deemed to be guilty of professional misconduct, if he accepts, in a financial year, more than the specified number of tax audit assignments under Section 44AB of the Income Tax Act, 1961. The number specified for tax audit is 45.

Q. Whether the audits conducted under section 44AD, 44AE and 44AF of the Income Tax Act , 1961 shall be taken into account for the purpose of reckoning the: specified number of tax audit assignments?

A. No, please refer Chapter-VI of Council General Guidelines, 2008 (p. 316 of Code of Ethics, 2009).

Q. Whether a Chartered Accountant is permitted to accept appointment as auditor of a concern while he is indebted to the concern or has given any guarantee or provided any security in connection with the indebtedness of any third person to the concern?

A. In exercise of the powers conferred by Clause (1) of Part-II of the Second Schedule to the CA Act, the Council of the Institute of Chartered Accountants of India has issued General Guidelines, 2008 which specify that a member of the Institute shall be deemed to be guilty of professional misconduct if he accepts appointment as auditor of a concern while he is indebted to the concern or has given any guarantee or provided any security in connection with the indebtedness of any third person to the concern, for limits fixed in the statute and in other cases for amount exceeding Rs. 10,000.

Q. Whether the statutory auditors consisting of ten or more members can conduct the branch audits of the same company?

A. The Council has prescribed certain self-regulatory measures in order to ensure a healthy growth of the profession and an equitable flow of professional work among the members. One of the recommendations of this nature is that the branch audits of a company should not be conducted by its statutory auditors consisting of ten or more members, but should be conducted by the local firms of auditors consisting of less than ten members. This should not be understood to mean any restriction on the right of the statutory auditors to have access over branch accounts conferred under the Companies Act, 1956. This restriction may not apply in the following cases:

(i) where the accounting records of the branches are maintained at the head office of the respective companies; and

(ii) where significant operations of an undertaking or a company are carried out at its branch office.

*Contributed by the Ethical Standards Board of ICAI

CA Day Celebrations of the ICAI – A Report

The 62nd CA Day celebrations of the Institute of Chartered Accountants of India were held on 1st July, 2010 at the Plenary Hall, Vigyan Bhawan in New Delhi. CA. K. Rahman Khan, Hon'ble Deputy Chairman, Rajya Sabha and Shri Salman Khurshid, Hon'ble Minister of State (Independent Charge), Ministry of Corporate Affairs, were the Guests of Honour at the said function. On this momentous occasion, Shri R. Bandyopadhyay, Secretary, Ministry of Corporate Affairs, gave his special address to the Members of the Profession. CA. Ajeet Singh S. Bhandari, the topper in the first CA Final Examination held in November, 1949 was specially invited to this august function and was felicitated befittingly. The following is a report of the function.

At the outset, **Shri T. Karthikeyan**, welcoming the Guests of Honour, and other dignitaries on the dais, distinguished guests, Members and Students *inter-alia*, stated that the CA Day or the Foundation day as it is fondly called is a day to remember, a day to be reckoned with and a day for celebrations. He stated that although the profession of accountants commenced its journey in the year 1913 with the introduction of first statutory provision for audit, yet the great profession of Chartered Accountants formally came into existence on the 1st day of July, 1949 with the establishment of the Institute of Chartered Accountants of India. Since then, through their selfless, dedicated and unblemished track records, the forefathers and the doyens of the profession had made it possible to gain the public confidence and trust which form the basis for the very solid and strong foundation of this profession. Today is a day to remember not only the yeoman services rendered by the forefathers of the profession but at the same time also to recognise the services which, in the subsequent years and today, are being carried on by the leaders of the profession.

As regards, CA. Ajeet Singh Bhandari, he stated that the Institute was really honoured by his august presence on this day and he was the inspiration for the students of this profession by holding the unique distinction of the first recipient of the gold medal for topping the first Final

ICAI Secretary Shri T. Karthikeyan said that the CA Day or the Foundation day as it is fondly called is a day to remember, a day to be reckoned with and a day for celebrations. "The great profession of Chartered Accountants formally came into existence on the 1st day of July, 1949 with the establishment of the Institute of Chartered Accountants of India. Since then, through their selfless, dedicated and unblemished track records, the forefathers and the doyens of the profession had made it possible to gain the public confidence and trust which form the basis for the very solid and strong foundation of this profession."

Examination held in November 1949. He was sure that the students of the present and the future generations will derive inspiration from him and follow suit.

CA. Amarjit Chopra, President, ICAI thereafter gave his Presidential Address to the gathering on this august occasion. He stated that he had a great sense of pride in belonging to this profession a profession which has given any number of Managing Directors apart from the laurels which had been brought by eminent personalities like CA. Rahman Khan, CA. Suresh Prabhu, CA. Krish Somaiya and the names would be endless. Many industries like NTPC, NHPC, Steel Authority etc. have been headed by the Chartered Accountants and this gives a great sense of satisfaction for the profession.

Making a specific mention about the over flowing participants of the day's programme, the President stated that it was giving him an absolutely tremendous sense of satisfaction because of the fact that it reflects the solidarity of this particular profession and the fact that we have produced people who are second to none. Today, we can stand out in the world and compete with the best in the world. When one travels internationally, one could definitely feel the difference and see that the CA Profession is respected everywhere. He was sure that if the last decade belonged to IT, this particular decade is going to belong to the accountancy profession.

Mentioning about the felicitation of CA. Ajeet Singh S. Bhandari, the topper in the first CA Final Examination held in November, 1949, he stated that many years back, the Northern India Regional Council had felicitated its first Chairman Mr. P.R. Mehra who was in the age of around 90 at that particular point of time and taking the initiative from there, today we will be felicitating the first Gold Medalist in the CA Final Examination, CA. Ajeet Singh Bhandari. Requesting the members to join him in cheering CA. Ajeet Singh Bhandari, he stated that CA. Bhandari ji had brought laurels not only to his family and himself but also to this profession because many people would have been inspired by him to become number one.

Further, making an appeal to everyone to contribute generously to the Chartered Accountants Benevolent Fund, he stated that he has already received certain contributions from one of the Past Presidents and also the NIRC for which he was thankful to the particular benevolence.

Mentioning about the initiatives undertaken in the areas of capacity-building of the small and medium practitioners, the President stated that Shri R. Bandyopadhyay, Secretary, Ministry of Corporate Affairs has given thrust to this particular initiative and we are committed in building the capacities of the small and medium practitioners. He stated that at the end of the day's programme, the Institute would be releasing through the hands of the Guests of Honour, the audit tool kit containing software – K Doc and e-Secretary which would facilitate easy and handy preparations of Audit Reports with the help of inbuilt readymade Accounting Standards templates enhancing productivity and reducing time in service delivery. A publication titled, "Issues in Public Finance" was also being released on this occasion.

Further, the President stated that by entering into an arrangement, we would also be releasing Capita line Corporate TP Database (online version) at a very reasonable cost of Rs.10,000/- for all members and whereby use of this database will make transfer pricing easy and comparable. Thanking CA. Sanjeev Maheshwari, Chairman of the Small and Medium Practitioners and Capacity Building Committee for the same, he stated that based on the number of hits, one could consider for making it still cheaper. Further, the President stated that on this occasion, certain mutual reciprocal

ICAI President CA. Amarjit Chopra said the Institute would leave no stone unturned in undertaking certain projects which are of great relevance to this society including probably the end utilisation of the public fund including moneys which have been given for various schemes like JnNRUM, NREGA etc. He assured that they would undertake studies in this regard so as to know what could be the role of Chartered Accountants in these schemes in the times to come.

arrangements are in the offing and one such arrangement with the Institute at Ireland is now pending for approval of the Government of India. Further, the Institute would also be entering into an agreement with the UAE Government with regard to accounting technicians and talks are also on with the Institute at New Zealand and Canada and over a period of time we shall be able to deliver certain good news.

The President further stated that the Institute would leave no stone unturned in undertaking certain projects which are of great relevance to this society including probably the end utilisation of the public fund including moneys which have been given for various schemes like JnNRUM, NREGA etc. He assured that they would undertake studies in this regard so as to know what could be the role of Chartered Accountants in these schemes in the times to come.

Before concluding, the President congratulated the members for having made their presence felt here and which in a way reflects that we are all one in each of our endeavours.

Shri R. Bandyopadhyay, Secretary, Ministry of Corporate Affairs began his special address by congratulating the Institute on its 62nd Birthday. He stated that under the leadership of the Hon'ble Minister, the Ministry of Corporate Affairs has been striving for corporate growth with enlightened regulations. "When we say enlightened regulations, it means that whatever we do, whatever the regulations we give, be it the Act, be it the regulations, be it even the normal government order, the same is discussed with the stakeholders, put on the website and after obtaining the views, comments, criticisms, the decision is taken by the Ministry. The feedback that has been received from various parts of the country, including the professionals like Chartered Accountants and others

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Ministry has been working on the corporate sector with the objective of inclusive growth. There is a general feeling that the corporate sector means only 5 - 10 per cent of the people but the Ministry is today trying to address the questions being asked by the common people involved in the development of corporate growth. For this purpose, the Ministry has brought out two guidelines – one is the Voluntary Guidelines on Corporate Governance and the other is the Voluntary Guideline on Corporate Social Responsibility.

and the corporate world" has given them tremendous support in their endeavours.

Secondly, he stated that the Ministry has been working on the corporate sector with the objective of inclusive growth. There is a general feeling that the corporate sector means only 5 - 10 per cent of the people but the Ministry is today trying to address the questions being asked by the common people involved in the development of corporate growth. For this purpose, the Ministry has brought out two guidelines – one is the Voluntary Guidelines on Corporate Governance and the other is the Voluntary Guideline on Corporate Social Responsibility.

The Ministry has already released these Voluntary Guidelines and although, these were brought in as voluntary guidelines, the corporate sector was expected to follow this and in case for any genuine reason, any particular clause or section of the said guidelines is not followed, they should explain the same to their Board members and shareholders.

On the issue of implementation of the Voluntary Guidelines, some of which may become a code and some of which may come in the Act, he stated that although some of the media persons have raised certain issues on the same, he has informed them that although the Ministry may be having lesser Government officials for the purpose of implementation of the Voluntary Guidelines, yet they have with them 1,60,000 CAs, 49,000 Cost Accountants and 25,000 Company Secretaries. Further, the law also says that for any corporate entity, big or small, its account can be authenticated or accepted only when a CA puts his signature on it and this is the answer he would like to give to those who doubt the propagation of these ideas of the Corporate sector as a whole.

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He exhorted the members to feel proud of their profession and to take the same to the higher levels in terms of ethics and integrity apart from technical upgradation. He requested the members to take advantage of the LLP Act, in respect of which required amendments have already been placed before the Parliament and once the same becomes a law, the members would be able to make much bigger contributions in the accounting sector. He further stated that many countries would like to have MoUs with the Institute and know what the MCA is doing on corporate governance vis-à-vis its relation to the accounting profession. Many developed countries would like to take the help of India and it has been seen that quite a large number of Chartered Accountants are working everywhere in the developed countries of the world with a lot of prestige, confidence and acclamations. Calling this as a decade of challenge and decades of opportunities, he wished that the profession will grow further and all members would become proud of the profession.

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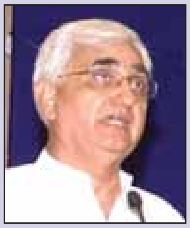
In his acceptance speech, **CA. Ajeet Singh Bhandari**, the first winner of the Gold Medal in the first CA Final Examination held in November 1949, stated that it was a memorable day for him and on this occasion, he would like to remember his late Principal Shri Jamshed R. Batliboi under whom he served his articleship in Bombay about 60 years ago. He learnt a lot from him and that he remembered that great man with full devotion. He further stated that it was a privilege for him to be here and he wished the profession to grow more and his professional brothers make progress in life.



Shri Salman Khurshid
(Minister of Corporate Affairs)

The Hon'ble Minister of Corporate Affairs, **Shri Salman Khurshid**, began his address by expressing his happiness at the attendance he was seeing in the Vigyan Bhawan, Convention Hall and he stated that although he had attended many big events here, he could not recall a single event in which there had been such a kind of attendance. While he had known about IPOs being over-subscribed the sight of the Institute's function being over-subscribed to this extent with people even sitting on the floor and also people standing showed the share of the celebrations being held today. Shri Salman Khurshid stated that although it would not be a romantic thing to say but yet he would like to say that the world he dreams of is a world full of lawyers, a world full of accountants and a world full of school masters. This is because we are on the verge of a professional civilization of creating for ourselves structures that

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Continuing, he stated that if the generation that had given freedom to this country had a passion, had a determination and was willing to make the greatest sacrifices, today we have to give the generations that would come after us the freedom from fear, disease, disaster and distress. The current generation of accountants, political leaders and civil servants who are today at the helm of affairs of this country have to provide a greater happiness to large number of people of this country.

Therefore, when he sees so many people in this place, he is able to see himself as a person addressing an army of professionals equipped to conquer the globe. Today, the President of the most powerful country in the globe says about our Prime Minister, “When he speaks, the world listens.” This is because of his exceptional qualities of leadership and when he goes abroad to G-20 or the Western World, he has behind him an army of professionals who are enlightened and determined to make a difference in this world. This, he would like to call as a Reverse Macaulay Revolution. If Lord Macaulay gave us the institutions of education, today when we participate in international institutions like the World Bank and IMF, we speak not only of freedom of India but also the freedom of Africa and South-East Asia and we also speak of freedom of Europe and freedom of every citizen in the world. What we live for is the fulfillment of our aspirations and giving our children a better world to live in.

While, he would like to refrain from addressing on complex and technical issues relating to the accounting profession because that is what the members of this profession have been doing all the time, Shri Salman Khurshid further stated that today, is a moment of joy and celebration and he would like to offer his warmest congratulations to the President and his team who have taken this profession beyond the horizon, beyond the boundaries of our country to a much larger and bigger world. As we move on and announce to the world that we are ready for a greater role, the responsibilities will weigh heavy on our shoulders. We have to keep innovating and discovering to rise high till we all reach the moon, the sky or the stars.

He would like to look forward to the day when like Neil Armstrong, an Indian accountant from somewhere on the moon would say that he has finally conquered the moon and on that day one would be sending digital audit reports of India’s space stations on the moon. The CA Day Celebrations are moments that come to be remembered, savoured and cherished and he is honoured to be present to share the wonderful moment with some of the brightest people gathered here. However, while he looks around at the gathering here, he feels that the percentage of women in the audience was less and perhaps, they are continuing to work in their offices.

Concluding his address in a lighter vein, he hoped that there would be at least 33 per cent women amongst the members of the profession before a woman becomes the Minister of Corporate Affairs in this country.

CA. K. Rahman Khan, Deputy Chairman, Rajya Sabha in his address to the members of the profession stated that he is privileged to be addressing

CA. K. Rahman Khan, Deputy Chairman, Rajya Sabha in his address said that as the nation embarks on a high growth rate and emerges as an economic power, the profession should prepare itself to play a pro-active and dynamic role in India’s growth. The profession should re-define its role as a watchdog of public expenditure and investment. The Institute should come out of its traditional role of a client-centric approach and emerge as a representative of the civil society in maintaining the financial ethics and propriety of the civil society.

The very fact that the number of CAs in the country had grown from a few hundred in the beginning to more than 1,60,000 plus in the last 60 years reflect the expansion of the profession over the years. The profession has expanded its horizon and is rendering its services in different fields in addition to its traditional role. The CAs are today functioning in various capacities such as Financial Advisors, CEOs, Consultants, Bankers, Administrators and are also involved in the process of policy framing and planning. The increase in the number of CAs in the industry is an indication of the confidence reposed in the professional skills of the CAs.

this army of Chartered Accountants on the Foundation Day and in his 45 years of membership of the profession, for the first time he is seeing such a huge gathering of Chartered Accountants. The ICAI has played a significant role in the overall economic development of the country and it has lived up to the expectations of the nation and the founders of the Institute who had laid a strong foundation on which this dynamic vibrant Institute is standing. On this day, he would like to remember all those leaders of the profession who have worked hard for the cause of the profession and requested all to pay their tributes and salute them.

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As the nation embarks on a high growth rate and emerges as an economic power, the profession should prepare itself to play a pro-active and dynamic role in India's growth. The profession should re-define its role as a watchdog of public expenditure and investment. The Institute should come out of its traditional role of a client-centric approach and emerge as a representative of the civil society in maintaining the financial ethics and propriety of the civil society.

The stakeholders depend on and place their trust on Chartered Accountants and the CAs have a binding obligation towards the stakeholders who repose confidence in them.

Commenting on the vision of the Chartered Accountancy profession for the future, he stated that as a

The Government has brought in several flagship programmes with good intentions wherein a lot of money is being spent and, therefore, ICAI should come out with certain disclosures and ways of looking at the expenditure. CA. K. Rahman Khan was sure that with the required competence, technical skill and know-how, we can serve the society. He made a clarion call to the members of the profession to serve the common man and uplift his standards of livings.

professional fraternity, we need to look beyond our profession and use our vast resources and network to serve our great nation. Explaining further, he stated that whenever there is growth and development, there is a need for financial prudence and fiscal discipline, be it a Gram Panchayat, be it an NGO organisation, quasi-judicial organisation or a Government organisation and we must put in our efforts to be true partners in nation-building. The motto of the Institute "Awake while others sleep" needs to be followed in thought, deed and true spirit.

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Complimenting the Institute for having introduced many post-qualification courses, he requested the Institute to keep in mind the interest of those Chartered Accountants who are practising in small towns, mofussil areas and serving the needs of the small business units located there.

Calling for aiming at an inclusive growth of the entire profession, he stated that the convergence of accounting standards and auditing standards with global standards is a compulsion in the era of globalisation. As more and more Indian Companies are expanding their international operations, acquiring companies outside India, the auditing and accounting standards should be uniform. This would help the Corporate Sector to increase their international presence and also help the Indian CAs to expand their activities globally.

Expressing his happiness over the release of the publication titled "Issues in Public Finance," he stated that he had been urging the Institute for a very long time that its role cannot be only in the corporate field. The profession of accountancy is not only for a particular section, particular corporate, for a businessman, for a tax audit or anything but it is also to maintain the accountability of the entire expenditure

"The biggest challenge before the nation, today, is the cost overrun because no department knows how much they have to budget and how much they have to spend the next year. At times, the amount is exhausted and again, they ask for the money and nobody knows where the money has actually gone. In a project like the Konkan Railways, on which he had headed the Parliamentary Committee, CA. K. Rahman Khan stated that it was a project envisaged for Rs 800 crore and to be completed in three years. However, when it was completed, it had taken 5½ years and about 5500 crores of rupees had been spent on it."

which is constantly growing. When we have a budget of more than 11 lakh crores and which is tax payers' money, we should have a system of government accounting which is transparent and unless we shift the government accounting to the double entry system, one will not be able to bring transparency in the government expenditure.

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Elaborating further, he stated that every department of the Government should publish its balance sheet to the people because today we live in an era of information. While earlier, there were only a few hundred MPs, MLAs who used to get information from the Government, today 120 crores of people of this country have the same right to seek information like any Member of the Parliament. About 10 years back, the Government took the decision to convert the accounting system from single entry into double entry. But, still nobody has taken any interest and hence on this occasion, he would appeal to the profession of Chartered Accountants to start publicising the benefits of double entry system which can bring back accountability and transparency in the Government expenditure. This would also help in keeping the bureaucracy accountable and keeping the public expenditure under check for using the same amount for betterment of the common man. The ICAI should be the advisory to the Government because the Institute was created to regulate the entire accounting profession and not just the corporate accounts or the income tax accounts. Therefore, on this Foundation Day, he would like to remind that we have an obligation to the common man and when we have schemes like NREGA wherein more than Rs. 70,000 crore are going to be spent, the Institute should take up the challenge, offer its services as a social obligation to see as to how these funds are being spent. This is because this is a demand-driven employment guarantee scheme and everyone

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including MPs and Ministers are having apprehensions as to whether this amount has been properly utilised.

Further, the Government has brought in several flagship programmes with good intentions wherein a lot of money is being spent and, therefore, ICAI should come out with certain disclosures and ways of looking at the expenditure. He was sure that with the required competence, technical skill and know-how, we can serve the society. He made a clarion call to the members of the profession to serve the common man and uplift his standards of livings.

He said that while he may be pardoned for sounding a little serious on this happy CA Day, however he felt that as a CA, he had to tell something which has been bothering him and sitting in the Parliament, when he sees the budget as an accountant, he has felt that some particular amount was being wasted and some expenditure was not required. He felt that a Chartered Accountant should voluntarily use his expertise and give his advice to the Government. The C&AG Office is keen on the benefits of double entry system and there should be convergence. It is for the profession to change the system to make the government accounting more transparent.

CA. G. Ramaswamy, Vice President ICAI proposed a vote of thanks and stated that on this day we must pledge ourselves, commit ourselves and rededicate ourselves for the cause of this profession. Pointing out to the speeches by the Hon’ble Guests of Honour, he stated that with the army of professionals, the dream of the Minister to have offices in moon is not far away and the same would be achieved with the rockets of IFRS, accounting standards etc. With the technical knowledge and core competence, the Indian Chartered Accountants are conquering the world. Thanking the Guests of Honour, CA. Ajeet Singh Bhandari and other dignitaries, he assured that the profession would take steps to see that every penny spent by the Government is accounted properly and the funds intended for the welfare measures are audited by Chartered Accountants with a report through them being sent to the Parliament.

The aforesaid programme was followed by a special address on “Future of Accounting Profession in India” by CA. T.V. Mohandas Pai, Member of the Board, Infosys Technologies Limited and a Panel Discussion on Revised Discussion paper on Direct Taxes Code wherein **CA. Ved Jain**, Past President ICAI and **CA. (Dr.) Girish Ahuja** participated as Panelists.

CA. T.V. Mohandas Pai

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CA. T.V. Mohandas Pai, Member of the Board, Infosys Technologies Limited, in his special address said that just as Indian software industry is today a global leader, in 10 years from now, our countrymen will speak about us in the same manner that they speak about the software industry today — a globally competitive and thriving profession. He added that "we need to leverage this advantage and move forward by investing in research and becoming thought leaders. The world belongs to those with the intellectual capacity to bring about change. We should be accountants to the world in 10 years from where we are today as accountants to India."

growth of our economy and the best economic performance ever in the world. "We (CAs) have many things going for us. In the core area of accounting, India is converging with IFRS. This is a seminal achievement for India as we will be aligned with the best standard in the world." He said that the biggest benefit is that we have 160,000 Chartered Accountants with many thousands to come. We are the second largest accounting professional group in the world and with the convergence with IFRS, the market for our services will be global. Today, the world faces the shortage of accounting professionals especially with IFRS being the de facto standard.

He said that India is poised while they have to take full advantage and is perhaps the only country in the world which can take advantage of and have the capacity and capability to provide accounting services to the whole world. He said that he saw rise of a global profession from India with a clear trust to leadership. "Just as Indian software industry is today a global leader, in 10 years from now, our countrymen will speak about us in the same manner that they speak about the software industry today – a globally competitive and thriving profession." He added that "we need to leverage this advantage and move forward by investing in research and becoming thought leaders. The world belongs to those with the intellectual capacity to bring about change. We should be accountants to the world in 10 years from where we are today as accountants to India."

He said that with an economy going up three times in the next 20 years, the demand for the services of CAs will go up manifold. Industries today are facing shortage of accountants with compensation levels going to very high levels. "In the future, the challenge will be our ability to meet the demand for our professionals on the global market place. We have to seriously spend time on capacity building to ensure that we have adequate youngsters joining the profession with proper training so that we will have a dominating presence globally. We have to raise membership to a level of 500,000 over the next 10 years to meet the demands of India itself," he said.

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He said that in an open competitive system, only the best and most skilled will win and this calls for a paradigm shift in the thinking and manifold investment in partnerships. He stressed the need to create large firms with multiple partners with an Indian identity and Indian ethos but with the global outlook. "Our Indian multi-nationals need to make them more competitive," he said adding that the area of consulting will open immense opportunities to our members. Consulting in finance, enterprise matters, technology, risk management to state a few will be in great demand.

He said that in the next 10 - 20 years we are going to be judged by the ethics that we carry and the ethics that we demonstrate to everybody in the world. "We will be judged on a higher level of ethics on a higher value system than earlier and there will be no forgiveness if we fall down".

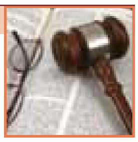
He exuded confidence that CAs have potential to be role models for society. "If you look around the world and see why some countries succeed and some countries do not, you will find that the role of the professional class is what makes the countries succeed."

He said he was confident of the future of the accountancy profession in India. "I have seen the Indian chartered accountants take up the challenge of an open economy in globalisation and come out successful rising to the top of the profession globally. I have seen the rise of aspiration in our younger members who are confident, self-assured, extremely competent and competitive." He said that he believed India will be among the top three economies in the world in the next 20 years and was confident that the profession will be the force multiplier for a country's rise to global domination.

The programme was attended by a large number of members and students of the profession apart from other invitees and was a grand success. ■

LEGAL DECISIONS[1]

DIRECT TAXES



Section 9 of the Income-tax Act, 1961 – Income – Deemed to be accrue or arise in India

Where foreign telecasting company paid commission to its Indian subsidiary for sale of advertising airtime in India at rate of profit attributable services rendered by Indian subsidiary and all transactions were at arms length, foreign company's income from orders procured by subsidiary would not be taxable in India [Assessment Year 2000 - 01]

BBC Worldwide Limited v. DIT, 15th January 2010 (ITAT-Delhi)

The assessee-foreign company was operating as an international media company. The assessee had an indirect subsidiary in India, namely, BWIPL, as its authorized agent in India. The payment from the Indian advertisers for airtime sales and sponsorship was to be received directly by the assessee under this agreement, through EEFC account of specific RBI permission. In consideration for the services provided by BWIPL, it was to receive a 15 per cent marketing commission of the advertisement revenues received by the assessee from Indian advertisers. The assessee claimed that it would not be taxable in India on its airtime sales income, being business profits, in the absence of a permanent establishment in India.

The Delhi Bench of the Tribunal held that CBDT Circular No. 23 of 1969 is eloquently clear, providing that if the value of the profit attributable to the services rendered by the agent is fully represented by the commission paid, it should, prima facie extinguish the assessment. In DIT v. Morgan Stanley and Company Inc. [2007] 292 ITR 416 (SC), the effect of CBDT Circular No. 23 of 1969 was considered. The AAR held that once the Transfer Pricing Analysis was undertaken, there was no further requirement to attribute profits to a permanent establishment. Adjudicating on the issue as to whether the action of the AAR in holding so was correct or not, the Supreme Court held, inter alia, that where the transaction was held to be at arms length, the ruling of the AAR was correct in principle, provided that an associated enterprise, which also constituted a permanent establishment, was remunerated on arm's length basis, taking into account all the risks–taking functions of multinational enterprises and that in such a case, nothing further would be left to attribute to the permanent establishment.

Pertinently, the Bombay High Court, in the case of "SET Satellite" [2007] 307 ITR 205 (Bom.) has held that if the correct arms length price is applied and paid, nothing further would be left to be taxed in the hands of the foreign enterprise. "Morgan Stanley" (supra) as well as CBDT Circular No. 23 were taken into consideration. The facts in the present case are found to be at parity with those present in "SET Satellite"(supra), to the extent noticed above. Both the cases concern years before the onset of the Transfer Pricing regime. As such, "SET Satellite" has rightly been relied on behalf of the assessee and that it is directly applicable to the assessee's case.

The TPO had accepted that the transaction was at arms length price. It was observed that almost everyone in the assessee's line of business was charging the same rate of commission on the sale of airtime on TV Channels or FM Channels. Further, the department had not been able to establish its assertion that the stand that BWIPL was merely soliciting orders for the assessee, was a mere facade. The case made out by the assessee was justified.

Section 10(23C) of the Income-tax Act, 1961 – Exemptions – Religious Trust/Institution

Merely because an institution has earned profit would not be deciding factor to conclude that educational institution exists for profit

Pinegrove International Charitable Trust v. Union of India, 29th January, 2010 (P&H)

The following principles of law can be summed up:-

(1) It is obligatory on the part of the Chief Commissioner of Income Tax or the Director, which are the prescribed authorities, to comply with proviso thirteen (un-numbered) to section 10(23C)(vi). Accordingly, it has to be ascertained whether the educational institution has been applying its profit wholly and exclusively to the object for which the institution is established. Merely because an institution has earned profit would not be deciding factor to conclude that the educational institution exists for profit.

(2) The provisions of section 10(23C)(vi) of the Act are analogus to the erstwhile Section 10(22) of the Act, as has been laid down by the Supreme Court in the case of American Hotel and Lodging Association v. CBDT [2008] 301 ITR 86. To decide the entitlement of an institution for exemption under Section 10(23C)(vi) of the Act, the test of predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. A workable solution has been provided by the Supreme Court in American Hotel and Lodging Association's case. Thus, on an application made by an institution, the prescribed authority can grant approval subject to such terms and conditions as it may deems fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15 per cent and its investment wholly for educational purposes may be expressly stipulated as per the statutory requirement. Thereafter, the Assessing Authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessments are complete with the finding that

[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*

there is no contravention of the statutory provisions, need not be reopened. However, after grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in 13th proviso exists, then by following the procedure envisaged in 13th proviso, the prescribed authority can withdraw the approval.

(3) The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.

(4) The educational institutions, which are registered as a Society, would continue to retain their character as such and would be eligible to apply for exemption under section 10(23C)(vi) of the Act.

(5) Where more than 15 per cent of income of an educational institution is accumulated on or after 01.04.2002, the period of accumulation of the amount exceeding 15 per cent per centis not permissible beyond five years, provided the excess income has been applied or accumulated for application wholly and exclusively for the purpose of education.

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

Long term capital loss cannot be set off against exempt income of long term capital gains under section 10(38) after 1.10.2004 [Assessment Year 2005 - 06]

G. K. Ramamurthy v. Jt. CIT, 9th February 2010 (ITAT-MUM)

There was long term capital gain of Rs. 33,01,57,200/- on sale of certain shares between the period 1.10.2004 to 31.03.2005, in respect of which, security transaction tax (STT) was paid and the same was exempted under section 10(38) of the Act. The assessee was also having long term capital loss in respect of redemption of units and other loss pertaining to the period prior to 01.10.2004 amounting to Rs. 9,23,55,945. The assessee claimed carry forward of long term capital losses of Rs. 9,23,55,945 to the subsequent years.

The case of the revenue was that the long-term capital gain which was exempt under section 10(38), was an income arrived at under similar computation made for arriving at the long term capital loss and, therefore the long term capital loss has to be set off against long term capital gain.

The Mumbai Bench of Tribunal held that the Revenue's case was that the long term capital gain is income notwithstanding the fact that it is exempt under section 10(38). The reasoning of the revenue is fallacious.

Income which do not form part of the total income do not enter the computation of total income at all i.e., under any of the heads of income mentioned in Sec. 14 of the Act. Therefore, the question of aggregating them under Chapter VI does not arise at all. Therefore, the question of set off of the same under section 70(3) also does not arise for consideration. Therefore, the right of carry forward under section 74(1) in respect of the long term capital loss suffered by the assessee is not hit by the provisions of section 70(3).

One more angle of examination of matter is to see the purpose and intention of the legislature in inserting clause (38) of section 10. With a view to simplify the tax regime on securities transactions; it was proposed to levy a tax at the rate of 0.15 per cent on the value of all the transactions of purchase of securities that take place in a recognised stock exchange in India. This tax was to be collected by the stock exchange from the purchaser of such securities and paid to the exchequer. The above provisions relating to the proposed tax were contained in Chapter VII of the Finance (No.2) Bill, 2004, and took effect from 01.10.04 Further, it was proposed to insert clause (38) in section 10, so as to provide exemption from long term capital gains arising out of securities sold on the stock exchange. Thus, section 10(38) has been inserted with a particular object to grant exemption to such income as tax has already been levied on some different footings. If the contention of the revenue to adjust long term capital loss against exempt income (long term capital gain) was accepted that would be contrary to law and contrary to the intention, object and purpose of the legislature in introducing clause (38) to section 10. Further, on acceptance of revenue's view on the issue, there would be an absurd outcome of interpretation if the facts are reversed, then, long term capital loss from taxable assets will have to be adjusted against the long term capital gains exempt under section 10(38). Suppose in the case on hand if there is taxable long term capital gain before 01.10.2004 of Rs. 33,01,57,200 and long term capital loss of Rs. 9,23,55,945, which may be exempt under section 10(38) after 01.10.2004 then the loss from exempt source would be set off against taxable gain, but such set off is contrary to law.

In the light of the above discussion, it was to be held that long term capital loss cannot be set off against exempt income (long term capital gains) under section 10(38) after 1.10.2004.

Section 36(1)(va) of Income-tax Act, 1961 – Employees' Contributions to Other Funds

No disallowance relating to employee's contribution towards Provident Fund and ESI can be made under section 36(1)(va), if payment is made before filing of return [Assessment Year 2002 - 03]

CIT v. AIMIL Ltd, 23rd December 2009 (Delhi)

Clause (iv) of sub-section (1) of section 36 deals with deductions on account of contribution towards a recognised provident fund or an approved superannuation fund made by the assessee as an employer, subject to certain limits and also subject to certain conditions as the CBDT may think fit to specify. Clause (v) of sub-section (1) of Section 36 enables the assessee to seek deduction in respect of sum paid by it as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust.

Section 43B stipulates that certain deductions are to be given only on actual payment.

As per the first proviso of section 43B, if the payment is actually made on or before the due date applicable in the case for filing the return, it would be admissible as deduction. Thus, the "due date" is the date on which return is to be filed.

Section 2(24) of the Act enumerates different components of income. It, inter alia, stipulates that income includes any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948, or any other fund for the welfare of such employees. It is clear from the above that as soon as employees contribution towards provident fund or ESI is received by the assessee by way of deduction or otherwise from the salary/wages of the employees, it will be treated as 'income' at the hands of the assessee. It clearly follows therefrom that if the assessee does not deposit this contribution with provident fund/ESI authorities, it will be taxed as income at the hands of the assessee. However, on making deposit with the concerned authorities, the assessee becomes entitled to deduction under the provisions of section 36(1)(va) of the Act. Section 43B(b), however, stipulates that such deduction would be permissible only on actual payment. This is the scheme of the Act for making an assessee entitled to get deduction from income insofar as employees' contribution is concerned. It is in this backdrop it is to determine as to at what point of time this payment is to be actually made.

If the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is

deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before the return is filed.

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

Units of 'US-64' are not deemed shares; loss incurred on account of transactions of purchase and sale of units of 'US-64' was not speculative loss under section 73 and hence, assessee was entitled to set off in respect of aforestated loss accordingly [Assessment Year 1991 - 92]

Porrits & Spencer (Asia) Ltd. v. CIT, 31st March, 2010 (P&H)

The Supreme Court in the case of Apollo Tyres Ltd. v. CIT [2002] 255 ITR 273 had held that the business of purchase and sale of units by the assessee would NOT amount to a business of speculation.

It was held that even though the provisions of the UTI Act create a fiction to make the UTI as a deemed company and distribution of income received by the unit holder as a deemed dividend, by virtue of these deemed provisions, it cannot be said that it also makes the unit of the UTI a deemed share. A deeming provision of this nature as found in section 32(3) of the UTI Act should be applied for the purpose for which the said deeming provision is specifically enacted, which is confined only to deeming the UTI as a company and deeming the income from the units as a dividend. If as a matter of fact, the Legislature had contemplated making the units as also a deemed share then it would have stated so. In the absence of any such specific deeming in regard to the units as shares it would be erroneous to extend the provisions of section 32(3) of the UTI Act to the units of UTI for the purpose of holding that the unit is a share.

The Supreme Court has specifically rejected the contention of the revenue that Explanation to Section 73 of the Act, (which makes the business of purchase and sale of shares as business of speculation) would be applicable to the transaction of a sale and purchase of units.

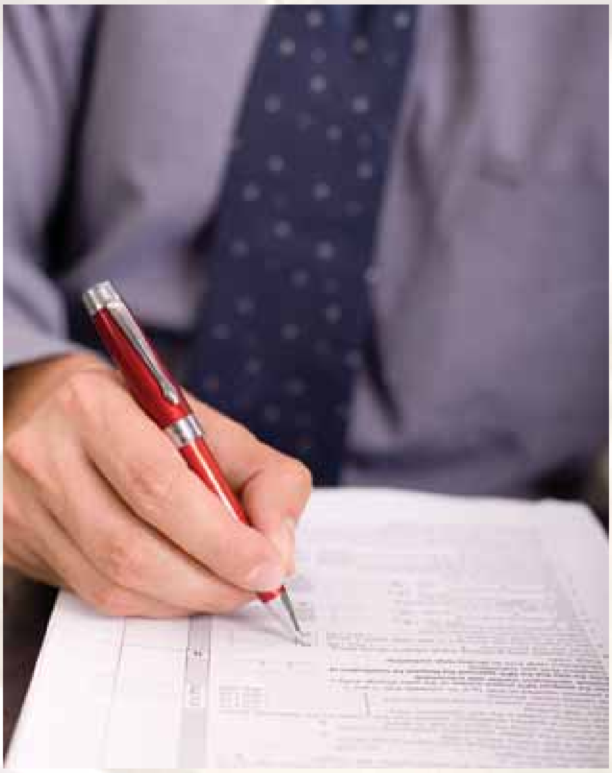
The loss incurred on account of transactions of purchase and sale of units of 'US-64' would not be speculative loss under section 73 and, hence, an assessee would be entitled to set off in respect of such loss.

Section 80HHC of the Income-tax Act, 1961 - Deductions – Profits from Export Business

Where assessee receives interest on fixed deposits in bank, gross interest (which includes only receipts and not expenditure), and not net interest (which includes both receipts and expenditures) should be considered for purpose of working out deduction under section 80HHC [Assessment Year 2003 - 04]

CIT v. Asian Star Co. Ltd, 18/19th March, 2010 (BOM)

The deduction under Section 80HHC is available to an assessee engaged in the export of goods or merchandise outside India to the extent of the profits specified in sub-section (1B) of the provision. The formula is that the profits derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee. Explanation baa was inserted by the Finance Act of 1991 with retrospective effect from 1st April 1987. Under Explanation baa, the expression "profits of the business" means the profits of the business as computed under the head "profits and gains of business or profession" as reduced by ninety per cent of (a) Any sums referred to in clauses (iiia), (iiib), (iiic), (iiid) and (iiie) of Section 28; or (b) Any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits. Since receipts by way of brokerage, commission, interest, rent, charges or other similar receipts have no nexus with the export activity, the legislature thought it fit, for the purpose of deduction under Section 80HHC to exclude such items from business profits. Parliament was, however, conscious of the fact that the expenditure incurred in earning the items which were liable to be excluded had already gone into the computation of business profits. This was because the computation of business profits under Chapter IV is made by amalgamating the receipts as well as the expenditure incurred in carrying on the business. Since the expenditure incurred in earning the income by way of interest, brokerage, commission, rent, charges or other similar receipts had also gone into the computation



of business profits, Parliament thought it fit to exclude only ninety per cent of the receipts received by the assessee in order to ensure that the expenditure which is incurred by the assessee in earning the receipts which has gone into the computation of the business profits is taken care of.

Section 80HHC is a provision which is intended to provide an incentive for export. Parliament, therefore, expressed a legislative intent to exclude items which were unrelated to export turnover from the computation of the deduction and the application of the formula. While excluding such items which are unrelated to export for the purposes of Section 80HHC, Parliament has taken due note of the fact that the exporter assessee would have incurred some expenditure in earning the receipts. The expenditure would have gone into the computation of profits and gains of business or profession since the computation of business profits under Chapter IV of the Act is made by amalgamating the receipts as well as expenditure incurred in carrying on the business. Parliament, however, legislated that in order to remove a cause for distortion, the reduction to be effected of receipts such as brokerage, commission, and interest should be confined to ninety per cent of those receipts. In providing a simplified formula in these terms, Parliament evidently adopted a fair and reasonable statutory basis of what may be regarded as expenditure incurred for the earning of the receipts. Once Parliament has legislated both in regard to the nature of the exclusion and the extent of the exclusion, it would not be open to the Court to order otherwise by rewriting the legislative provision. The task of interpretation is to find out the true intent of a legislative provision. The Memorandum explaining the clauses of the Finance Bill of 1991 can be relied upon as a legitimate instrument of statutory interpretation and to shed light upon the provisions of Explanation baa.

An assessee may well be entitled to a deduction in respect of the expenditure laid out wholly and exclusively for the purpose of business in the computation of the profits and gains of business or profession. However, for the purposes of computing the deduction under Section 80HHC, the provisions which have been enacted by Parliament would have to be complied. A deduction in excess of what is mandated by Parliament cannot be allowed on the theory that it is an incentive provision intended to encourage export. The extent of the deduction and the conditions subject to which the deduction should be granted, are matters for Parliament to legislate upon. Parliament having legislated, it would not be open to the Court to deviate from the provisions which have been enacted in section 80HHC.

In the circumstances, net interest on fixed deposits in the Bank received by an assessee should be considered for the purposes of working out the deduction under section 80HHC and not the gross interest.

Section 94 of Income-tax Act, 1961 – Tax Avoidance – Securities Transactions

Where basic object of purchasing units of UTI by assessee was to earn dividends, which are tax free under Section 80M and to sell units by suffering losses, it cannot be concluded by any stretch of imagination that assessee-appellant used any colourable devise, particularly when it had been recognised with effect from 1.4.2002 by incorporating sub-section (7) of section 94 [Assessment Year 1991 - 92]

Porrits & Spencer (Asia) Ltd. v. CIT, 31st March, 2010 (P&H)

The assessee-appellant had purchased 25 lacs units of 'US'64' of Unit Trust of India (UTI) on 21.5.1990 at the then prevalent market rate of Rs. 15 per unit, for a total consideration of Rs. 3,75,00,000 from ANZ Grindlays Bank. The units were purchased on credit for the purposes of making investment.

On 5.7.1990, the Board of Directors of the assessee-appellant decided for the sale of the units in question. On 6.7.1990, the assessee-appellant received the dividend of Rs. 45 lacs on the said units. On 20.7.1990, the ANZ Grindlays Bank, debited the overdraft account of the assessee-appellant by Rs. 3,75,00,000 i.e. the consideration at which the said units were sold by the bank to the assessee-appellant.

On account of non-availability of surplus funds and cost of holding them on interest being unprofitable, the assessee-appellant sold the units on 21.7.1990 to ANZ Grindlays Bank, at the then prevailing market rate of Rs. 13.01 per unit, for a total consideration of Rs. 3,25,25,000, after deducting interest of Rs. 9,86,300 at the rate of 16 per cent on the total sale consideration of Rs. 3,75,00,000 for a period of 60 days. It is apparent that the assessee-appellant incurred a loss of Rs. 51,61,875 in this transaction, which represents the difference between the purchase price and the sale price plus cost of transferring units, such as expenses on stamps etc,. Accordingly, the assessee-appellant in its return of income for the Assessment Year 1991 - 92 claimed the loss as a short term capital loss and also claimed set-off against its income and offered dividend income of Rs. 45 lacs after the statutory deduction for tax.

According to the revenue the loss incurred on account of transactions of purchase and sale of units of 'US-64' was speculative loss under section 73 and hence, assessee was not entitled to set off in respect of said loss. It was further held that the transactions for purchase and sale of 25 lacs units from the Bank, were not bona fide transactions and same was entered into with a motive to avoid liability for tax, etc.

The Punjab and Haryana High Court held that once the transaction is genuine merely because it has been entered into with a motive to avoid tax, it would not become a colourable devise and consequently earn any disqualification.

The transaction concerning purchase of units had been held to be genuine by the Tribunal. It was also evident that the basic object of purchasing the units by the assessee-appellant was to earn dividends, which were tax free under Section 80M and to sell the units by suffering losses. Thus, it could not be concluded by any stretch of imagination that the assessee-appellant used any colourable devise, particularly when it had been recognised with effect from 1.4.2002 by incorporating sub-section (7) of Section 94 of the Act. By inserting the aforesaid provision, the Parliament has now recognised and regulated the purchase and sale of units and the dividends/income received from such units. Therefore, these transactions could not be held to be not genuine.

Section 261 of the Income-tax Act, 1961 – Supreme Court – Appeal to

Jt. CIT v. Saheli Leasing & Industries Ltd, 7th May 2010 (SC)

In order to enable the Court to refer any case to a larger Bench for reconsideration, it is necessary to point out that particular provision of law having a bearing over the issue involved was not taken note of or there is an error apparent on its face or that a particular earlier decision was not noticed, which has a direct bearing or has taken a contrary view.

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

Even where after disallowance of wrongly claimed depreciation, taxable income of assessee remains nil (or negative) and hence, there arises no tax liability, penalty under section 271(1)(c) is to be levied

Jt. CIT v. Saheli Leasing & Industries Ltd, 7th May 2010 (SC)

The assessee declared nil income. Even after disallowance of 100 per cent depreciation on certain plant and machineries, the taxable income of the assessee was nil and hence, there was no tax liability. According to the assessee, in such a case no penalty under Section 271 (1) (c) could have been levied. The Revenue held that the assessee was liable to pay penalty, with reference to such additions to income to be treated as its total income, with reference to Explanation 4 (a) to Section 271 (1) (c).

The Supreme Court held that the purpose behind Section 271 (1)(c) is to penalise the assessee for (a) concealing particulars of income and/or (b)furnishing inadequate particulars of such income.

Whether income returned was a profit or loss, was really of no consequence. Therefore, even if no tax was payable, the penalty was still leviable. It is in that context, to be noted that even prior to the amendment, it could not be read to mean that if no tax was payable by the assessee, due to filing of return, disclosing loss, the assessee was not liable to pay penalty even if the assessee had concealed and/or furnished inadequate particulars.

Some of the High Courts had taken a contrary view. Thus, Parliament in its wisdom thought it fit to clarify the position by changing the expression “any” by “if any”. The necessary consequence thereof would be that even if assessee has disclosed nil income and on verification of the record, it is found that certain income has been concealed or has wrongly been shown, in that case, penalty can still be levied. The aforesaid position is no more res integra and it stands answered in favour of the Revenue and against the assessee. Thus, this was not a substantive amendment which created imposition of penalty for the first time. The amendment by the Finance Act of the relevant year as specifically noted in the notes on clauses shows that proposed amendment was clarificatory in nature and would apply to all assessments even prior to the assessment year 2003 - 2004.

Thus, in *CIT v. Gold Coin Health (P.) Ltd.* (2008) ITR 308 (SC), after combined reading of the recommendations of Wanchoo Committee, and Circular No. 204 dated 24.7.1976, it was clarified that points had been made clear with regard to Explanation 4 (a) to Section 271 (1) (c) (iii) to intend to levy penalty not only in a case where after addition of concealed income, a loss returned, after assessment becomes positive income, but also in a case where addition of concealed income reduces the returned loss and finally the assessed income is also a loss or minus figure. Therefore, even during the period between 1.4.1976 and 1.4.2003, the position was that penalty was still leviable in a case where addition of concealed income reduces the returned loss.

In the aforesaid case, the expression 'income' in the statute appearing in Section 2 (24) has been clarified to mean that it is an inclusive definition and includes losses, that is, negative profit. This has been held so on the strength of earlier judgments of the Supreme Court in CIT Vs. Harprasad and Co. P. Ltd. (1975) 99 ITR 118 and followed in Reliance Jute and Industries Ltd. Vs. CIT (1979) 120 ITR 921. After elaborate and detailed discussion, the Supreme Court held with reference to the charging provisions of statute that the expression "income" should be understood to include losses. The expression "profits and gains" refers to positive income whereas "losses" represent negative profit or in other words minus income. The ratio of CIT v. Elphinstone Spinning & Weaving Co. Ltd. (1960) 40 ITR 142(SC) had no application to the facts of the case and the question of law projected stood squarely answered in favour of the Revenue and against the Assessee in Gold Coin (supra) as a result thereof, the appeal by the Revenue was allowed.

INDIRECT TAXES

Service Tax

Section 65(105)(zzzza) of Finance Act, 1994 - Works Contract

Turnkey contracts can be vivisected and discernible service elements involved therein can be segregated and classifiable as well as valued for levy service tax under Finance Act, 1994 provided such services are taxable services as defined by that Act; depending on facts and circumstance of each case, services by way of advice, consultancy or technical assistance in case of turnkey contract shall attract service tax liability.

CCE v. BSBK Pvt. Ltd, 6th May 2010 (CESTATE-NEW DELHI)(LB)

Severability of composite and turnkey contract permitted by Constitution by Article 366 (29-A)(b) cannot be said to have been for the mere purpose of levy of sales tax. Severance discerns service elements of the contracts and provides measure of levy to impose service tax on taxable services.

A contract whether composite or Turnkey may involve an activity or cluster of activities in the nature of services and such services may be provided in the course of execution of such contracts while incorporating goods into the contract concerned. Such discernible services may be advice, consultancy or technical assistance and depending upon the nature of the activity, they may be classifiable under appropriate category of taxable service under section 65 A of the Finance Act, 1994. When Article 366(29-A)(b) to the Constitution has made indivisible contracts of the aforesaid nature divisible to find out goods component and value thereof; it can be unambiguously be stated that the remnant part of the contract may be attributable to the scope of service tax under the Provisions of Finance Act, 1994.

On the aforesaid legal and Constitutional back ground a turnkey contracts can be vivisected and discernible service elements involved therein can be segregated and classifiable as well as valued for levy service tax under Finance Act, 1994 provided such services are taxable services as defined by that Act and depending on the facts and circumstance of each case, services by way of advice, consultancy or technical assistance in the case of turnkey contract shall attract service tax liability.

OTHER ACTS

Companies Act

Parts 1B and 1C of the Companies Act, 1956-

Creation of National Company Law Tribunal and National Company Law Appellate Tribunal and vesting in them, powers and jurisdiction exercised by High Court in regard to company law matters, are not unconstitutional; Parts 1B and 1C of the Act as presently structured, are unconstitutional which may be made operational by making suitable amendments

Union of India v. R. Gandhi / Madras Bar Association v. Union of India, 11th May 2010 (SC)(FB)

The Legislature has the competence to transfer any particular jurisdiction from courts to Tribunals provided it is understood that the Tribunals exercise judicial power and the persons who are appointed as President/Chairperson/ Members are of a standard which is reasonably approximate to the standards of main stream Judicial functioning. On the other hand, if a Tribunal is packed with members who are drawn from the civil services and who continue to be employees of different Ministries or Government Departments by maintaining lien over their respective posts, it would amount to transferring judicial functions to the executive which would go against the doctrine of separation of power and independence of judiciary.

When the Legislature proposes to substitute a Tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the Judicial Members of the Tribunal and standards applied for appointing such members, should be as nearly as possible as applicable to High Court Judges, which are apart from a basic degree in law, rich experience in the practice of law, independent outlook, integrity, character and good reputation. It is also implied that only men of standing who have special expertise in the field to which the Tribunal relates, will be eligible for appointment as Technical Members. Therefore, only persons with a judicial background, that is, those who have been or are Judges of the High Court and lawyers with the prescribed experience, who are eligible for appointment as High Court Judges, can be considered for appointment of Judicial Members.

There has been gradual erosion of the independence of the judiciary, and shrinking of the space occupied by the Judiciary and gradual increase in the number of persons belonging to the civil service discharging functions and exercising jurisdiction which was previously exercised by the High Court. There is also a gradual dilution of the standards and qualification prescribed for persons to decide cases which were earlier being decided by the High Courts.

There is dilution by insertion of Chapter 1B in the Companies Act, 1956 with effect from 1.4.2003 providing for constitution of a National Company Law Tribunal. There is a further dilution in the qualifications for members of National Company Law Tribunal which is a substitute for the High Court, for hearing winding up matters and other matters which were earlier heard by High Court. A member need not even be a Secretary or Addl. Secretary Level Officer. All Joint Secretary level civil servants (who are working under Government of India or holding a post under the Central and State Governments carrying a scale of pay which is not less than that of the Joint Secretary to the Government of India for a period of five years are eligible. Further, any person who has held a Group-A post for 15 years with three years' of service as a member of Indian Company Law Service (Accounts) Branch, or who has 'dealt' with any problems relating to Company Law can become a Member. This means that the cases which were being decided by the Judges of the High Court can be decided by two-members of the civil services - Joint Secretary level officers or officers holding Group 'A' posts or equivalent posts for 15 years, can now discharge the functions of High Court.

The proposed Companies Bill, 2008 contemplates further dilution of qualifications mere fact that senior officers of civil services could function as Administrative Members of Administrative Tribunals, does not necessarily make them suitable to function as Technical Members in Company Law Tribunals or other Tribunals requiring technical expertise.

If the members are selected as contemplated in section 10FD, there is every likelihood of most of the members, including the so called 'Judicial Members' not having any judicial experience or company law experience, being required to deal with and decide complex issues of fact and law. If there should be Technical Members, they should be persons with expertise in company law or allied subjects and mere experience in civil service cannot be treated as Technical Expertise in company law. The candidates falling under sub-sections 2(c) and (d) and sub-sections 3(a) and (b) of section 10FD have no experience or expertise in deciding company matters.

Therefore, it was to be held that –

(i) the decision of the High Court that the creation of National Company Law Tribunal and National Company Law Appellate Tribunal and vesting in them, the powers and jurisdiction exercised by the High Court in regard to company law matters, are not unconstitutional.

(ii) Parts 1B and 1C of the Act as presently structured are unconstitutional which may be made operational by making suitable amendments.

Note: The Supreme Court has suggested a number of amendments those are required to be made to make Part 1 B and 1C operational.

CIRCULARS / NOTIFICATIONS

DIRECT TAXES

1. Notification No. 48/2010 dated 9.07.2010

Notification of long-term infrastructure bonds by the Central Government, subscription to which would qualify for deduction under section 80CCF of the Income-tax Act, 1961

Section 80CCF of the Income-tax Act 1961 provides that an assessee, being an individual or a Hindu Undivided Family, shall get a deduction of upto rupees twenty thousand in computing his total income if he subscribes to long-term infrastructure bonds as may be notified by the Central Government for this purpose.

Consequently, the Central Government has, vide this notification, specified the long-term infrastructure bonds, subscription to which would qualify for deduction under section 80CCF. Accordingly, subscription to long-term infrastructure bonds to be issued by the Industrial Finance Corporation of India, Life Insurance Corporation of India, Infrastructure Development Finance Company Limited and a non-banking Finance Company classified as an Infrastructure Finance Company by the Reserve Bank of India would qualify for deduction under section 80CCF. Further, the notification also prescribes the other conditions to be complied with, namely, the limit on issuance, the tenure of the bond, mandatory requirement to furnish the PAN to the issuer, yield of the bond and the end-use of proceeds and reporting or monitoring mechanism.

2. Notification No. 49/2010 dated 9.7.2010

Manner of furnishing return of income by companies, firms and individuals and HUFs subject to tax audit

Sub-rule (3) of Rule 12 of the Income-tax Rules, 1962 lays down the manner of furnishing the return of income by different persons. Clause (a) of the proviso to sub-rule (3) of Rule 12 has been substituted vide this notification. Accordingly,:

(i) A company required to furnish the return in Form ITR-6 shall furnish the return for the assessment year 2010-11 and subsequent assessment years electronically under digital signature.

(ii) A firm required to furnish the return in Form ITR-5 and to whom provisions of section 44AB are applicable, shall furnish the return electronically under digital signature or by transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.

(iii) An individual or HUF required to furnish the return in Form ITR-4 and to whom provisions of section 44AB are applied, shall furnish the return for the assessment year 2010 - 11 and subsequent assessment years electronically under digital signature or by transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V.

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

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

INDIRECT TAXES

A. EXCISE

I Notifications:-

1. Notification No. 25/2010-CE (N.T.) dated 22.06.2010 has amended Rule 2(a) of the CENVAT Credit Rules, 2004 so as to provide that dumpers or tippers used for providing site preparation and clearance, excavation, earth moving and demolition services and mining services would be treated as capital goods if they are registered in the name of such output service provider.

2. Notification No. 26/2010-CE (N.T.) dated 29.06.2010 has amended Rule 3(4) of the CENVAT Credit Rules, 2004 to provide that the CENVAT credit of any duty specified in sub-rule (1) of rule 3 cannot be utilised for payment of the Clean Energy Cess.

3. Notification No. 27/2010-CE (N.T.) dated 01.07.2010 has amended Rule 6(6) of the CENVAT Credit Rules, 2004 to provide that provisions of the sub-rule (1), (2), (3) and (4) shall not apply in a case where the excisable goods are removed without payment of duty for the use of foreign diplomatic missions or consular missions or career consular offices or diplomatic agents in terms of the provisions of Notification No. 6/2006- CE dated 01.03.2006.

In other words, neither any CENVAT credit be reversed nor any amount be paid when excisable goods are removed without payment of duty for the above purpose.

4. Notification Nos. 1-6/2010 CEC dated 22.06.2010 and Notifications Nos. 28-29/2010 CE dated 22.06.2010: Clean energy cess announced in the Budget will be levied on coal @ Rs. 50 per tonne with effect from 01.07.2010. Exemption has been granted in respect of education cess and secondary higher education cess leviable on such products. Further, exemption has been granted in respect of goods produced or extracted as per traditional and customary rights enjoyed by local tribals in Meghalaya without any license or lease.

The procedures relating to exemption, registration, recovery, demand, interest, refund, offences, penalty, etc. in respect of such cess would be governed by the provisions as applicable under the Central Excise Act, 1944 in regard to like matters.

Clean Energy Cess Rules, 2010 have been notified which prescribe the procedures relating to registration, payment of cess, filing of returns, maintenance of records, etc. All coal producers would have to register with the designated officer within 30 days and pay cess on the removal of the produce from their mines. The new levy will be paid on the basis of self assessment. The cess should be shown separately in the invoice or bill issued by the producers.

II. Circular:

1. Circular No. 927/17/2010-CX dated 24.06.2010 has been issued to clarify that the process of pickling and oiling does not amount to manufacture.

"Pickling is removing surface oxides from metals by chemical or electro chemical reaction" and pickle means "the chemical removal of surface oxides (scale) and other contaminants such as dirt from metal by immersion in an aqueous acid solution." Therefore, the process of pickling is only a chemical cleaning process to remove scales and dirt from the metal by immersion in chemical solution and does not result in emergence of any new commercially different commodity.

The Tribunal has also in the case of Resistance Alloys [1996 (84) ELT 507 (T)] & Bothra Metal Industries [1998 (99) E.L.T. 120 (Tribunal)] held that the process of pickling being preparatory process to drawing of wire does not amount to manufacture.

Therefore it has been clarified that mere undertaking the process of oiling and pickling as preparatory steps do not amount to manufacture.

2. Circular No. 928/18/2010-CX dated 28.06.2010 has been issued to explain the amendment made in Notification No. 42/2001-CE (NT) dated 26.06.01 vide Notification No. 24/2010-CE (NT) dated 26.05.10. Notification No. 42/2001-CE (NT) dated 26.06.01 prescribes the procedures and conditions for export without payment of duty under bond. The said notification has been amended to provide that goods which are exempted from payment of duty or chargeable to nil rate of duty shall not be allowed to be exported under bond. Since, 100 per cent EOU's are required to export the goods under bond, in terms of Customs and Excise notifications, the exports from 100 per cent EOU's have been specifically excluded from the purview of this amendment.

As a policy, the Government does not tax exports. There are different methodologies and procedures for refund in different situations. If the goods are exempted, then the department has prescribed a detailed procedure for refund of input taxes through Notification No. 21/2004-CE (NT) dated 06.09.2004, wherein a detailed procedure requiring verification of details like manufacturing process, input-output ratio, wastages, etc., by the departmental officer is prescribed. The reason for the same is that in case of exempted goods, the department does not exercise control. In order to avoid such detailed verification and scrutiny by the department for claiming of refund of input taxes, some of the exporters were exporting the exempted goods under bond and claiming refund under rule 5 of the CENVAT Credit Rules, 2004, though a bond is executed only when goods are liable for payment of excise duty. If there is no excise duty then there is no question of exporting under bond. This was the reason for amending Notification No. 42/2001-CE (NT) dated 26.06.01 in the above manner.

3. Circular No. 929/19/2010-CX dated 29.06.2010 has been issued to clarify that polyester staple fibre

manufactured out of PET scrap and waste bottles is nothing but a textile material and hence will be classified as textile material under heading 55032000 under Section XI and not as article of plastic in Chapter 39.

B. CUSTOM

I. Notification:

1. Notification No. 48/2010 Cus. (N.T.) dated 17.06.2010 has substituted proviso to rule 5(1) of the Re-export of Imported Goods (Drawback of Customs Duties) Rules, 1995 with a new proviso. Rule 5(1) provides that a claim for drawback shall be filed within three months from the date on which an order permitting clearance and loading of goods for exportation is made by proper officer of customs.

The new proviso lays down that the said period of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1 per cent of the FOB value of exports or Rs. 1,000/- whichever is less and a further period of six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2 per cent of the FOB value or Rs. 2,000/- whichever is less.

2. **Notification No. 49/2010 Cus. (N.T.) dated 17.06.2010** has made the following amendments in the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995:

(i) The time period for the following has been extended from sixty days to three months:

(a) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback [Rule 6].

(b) making an application to the Commissioner of Central Excise/Commissioner of Customs and Central Excise for determination of the amount or rate of drawback where the amount or rate of drawback is low [Rule 7]

Further, the aforesaid periods of three months may be extended by a period of three months by Assistant/Deputy Commissioner on an application accompanied with a fees of 1 per cent of the FOB value of exports or Rs. 1,000/- whichever is less and a further period of six months by Commissioner of Central Excise/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2 per cent of the FOB value or Rs. 2,000/- whichever is less.

(ii) The extended period of nine months for filing a supplementary claim under rule 15 will now be available on making an application accompanied with a fees of 1 per cent of the FOB value of exports or Rs. 1,000/- whichever is less. Further, the said period may be extended by six months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 2 per cent of the FOB value or Rs. 2,000/- whichever is less [Rule 15].

(iii) The time period available to an exporter for producing evidence of realisation of export proceeds, where the drawback has been recovered by the Government due to non-realisation of the export proceeds by the exporter, has been reduced from one year to three months from the date of realisation of sale proceeds provided the sale proceeds have been realised within the period permitted by the Reserve Bank of India [Rule 16A].

Further, the aforesaid period of three months may be extended by a period of nine months by Commissioner of Customs/Commissioner of Customs and Central Excise on an application accompanied with a fees of 1 per cent of the FOB value of exports or Rs. 1,000/- whichever is less.

C. SERVICE TAX

I. Notification:

1. **Notification No. 24/2010 ST dated 22.06.2010:**
The Central Government has notified 01.07.2010 as the date on which the new services introduced by the Finance Act, 2010 would become effective. Further, the amendments made in the existing service vide the Finance Act, 2010 would also become effective from 01.07.2010.

2. **Notification No. 25/2010 ST dated 22.06.2010:** With effect from 01.07.2010, air transport of following persons shall be exempt from service tax:
(a) persons in transit in the course of international journey who have not passed through immigration;
(b) crew members on board the aircraft

3. **Notification No. 26/2010 ST dated 22.06.2010:**
In case of domestic air journey (all class), service tax will be leviable @ 10 per cent of the gross value of the ticket or Rs.100 per journey, whichever is less. In case of international air journey undertaken in economy class service tax will be leviable @ 10 per cent of the gross value of the ticket or Rs.500 per journey, whichever is less. These special provisions will apply only where excise duty credit has not been taken on inputs used for providing such taxable service.
Economy class would mean the class attracting the lowest standard fare and where there is only one class of travel, that class. This notification will become effective from 01.07.2010.

4. **Notification No. 27/2010 ST dated 22.06.2010:**
With effect from 01.07.2010, air transport of passengers embarking on a journey originating or terminating in an airport located in any of the North-Eastern States (Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura) or at Baghdogra located in West Bengal shall be exempt from service tax.

5. **Notification No. 28/2010 ST dated 22.06.2010:**
With effect from 01.07.2010, the construction of complex service in relation to Jawaharlal Nehru National Urban Renewal Mission and Rajiv Awaas Yojana shall be exempt from service tax.

6. **Notification No. 29/2010 ST dated 22.06.2010:**
With effect from 01.07.2010, service tax shall be payable on 25 per cent of the gross amount charged in case of "commercial or industrial construction services" and "construction of complex services" provided the gross amount charged includes the value of goods and materials supplied/provided/used for providing the taxable service and the cost of land. This exemption will not be available in cases where the taxable services provided are only completion and finishing services.

7. **Notification No. 30/2010 ST dated 22.06.2010:**
With effect from 01.07.2010, the sponsorship services provided for the tournaments or championships organised by the following bodies shall be exempt from service tax:

(i) National Sports Federations or Federations affiliated to such National Sports Federations, where the participating teams or individuals represent any District, State or Zone;
(ii) Association of Indian Universities – Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India (for the physically challenged), Special Olympics Bharat (for the mentally challenged);
(iii) Central Civil Services Cultural and Sports Board;
(iv) Indian Olympic Association as part of National Games;
(v) Panchayat Yuva Kreeda Aur Khel Abhiyaan (PYKKA) Scheme

8. **Notification No. 31/2010 ST dated 22.06.2010 :**
A negative list of services provided within a port or an airport has been notified with effect from 01.07.2010. In other words, the following services provided within a port or an airport shall be exempt from service tax with effect from 01.07.2010:
(i) repair of ships/boats/vessels owned by the Government (including Navy or Coast Guard or Customs) but excluding Government owned Public Sector Undertakings;
(ii) repair of ships/boats/vessels where such repair amounts to 'manufacture' as per section 2(f) of the Central Excise Act, 1944;
(iii) supply of water;
(iv) supply of electricity;
(v) treatment of persons by a dispensary, hospital, nursing home or multi-specialty clinic (except cosmetic or plastic surgery service);
(vi) services provided by a school or centre to provide formal education other than those services provided by commercial coaching or training centre;
(vii) services provided by fire service agencies
(viii) pollution control services

9. **Notification No. 32/2010 ST dated 22.06.2010 :**
Taxable services provided by a distribution licencee, a distribution franchisee, or any other person authorised to distribute power under the Electricity Act, 2003 for distribution of electricity have been exempted from service tax.

10. **Notification No. 33-35/2010 ST dated 22.06.2010:**
Service tax levy on transport of goods by the Government railways and transport of goods by rail otherwise than in containers would be applicable from January 2011 instead of July 2010. Consequently, exemption for transport of notified goods like defence military equipments, railways equipment /materials, postal mail bags by rail and abatement of 70 per cent of the gross amount charged for transport of goods by the Government railways and transport of goods by rail otherwise than in containers would be effective from January 2011.

11. M.F. (D.R.) Order No. 1/2010 dated 22.06.2010:
With effect from 01.07.2010, a registered architect or a registered chartered engineer or a licenced surveyor of the local body of the city/town/village/development or planning authority (in addition to any Government authority) have been notified as competent authority to issue a completion certificate in respect of residential or commercial or industrial complex, as a precondition for its occupation.

12. Notification No. 36/2010 ST dated 28.06.2010:
Advance payments received prior to 01.07.2010 towards eight new services introduced by the Finance Act, 2010 have been exempted from payment of service tax. Similarly, advances received prior to 01.07.2010 towards activities brought into service tax net on account of expansion of scope of existing services vide the Finance Act, 2010 have also been exempted from payment of service tax. However, such an exemption would not be available to commercial training or coaching services and renting of immovable property service.

For example, service tax would not be payable in case of a domestic air journey performed after 01.07.2010 if the payment for the ticket of such journey has been made prior to 01.07.2010. However, this exemption would be available only if the advance is received by the service provider/ person liable to pay the tax and not by an agent, who in turn transfers such amount to such person after 01.07.2010.

13. Notification No. 37/2010 ST dated 28.06.2010 :
Service tax paid on certain taxable services that are used in relation to or for export of goods are eligible for refund under Notification No. 17/09 ST dated 07.07.2009. The said Notification covers port service within its ambit but does not include 'airport service'. Such anamoly has been corrected by amending the said Notification so as to include 'airport service' in the list of eligible services under the said refund scheme.

14. Notification No. 38/2010 ST dated 28.06.2010 :
With effect from 01.07.2010, commercial or industrial construction when provided wholly within the port or other port, for construction, repair, alteration and renovation of wharves, quays, docks, stages, jetties, piers and railways has been exempted from service tax.

15. Notification No. 39/2010 ST dated 28.06.2010:
Rule 4A of the Service Tax Rules, 1994 has been amended to provide that in case of aircraft operation services, the ticket (in any form, including electronic form whatever may be the name) showing the name of the passenger, description of the journey and the amount of service tax collected would be deemed to be the invoice/ bill /challan for the purposes of the rule. The ticket would be a valid invoice/ bill /challan even if it does not contain registration number of the service provider or the classification of the service received or address of the service receiver.

As per the provisions of rule 4A of the Service Tax Rules, 1944, invoice/ bill/ challan is required to be issued by the provider of taxable service within 14 days of the provision of the taxable service or the receipt of the consideration. In case of air-travel, the airlines or the agent may not issue a separate invoice to the passenger but may issue the ticket showing the price of such ticket as well. In such a case, the requirement of an invoice would cast an additional compliance burden on the service provider. Therefore, the above amendment has been made in the said rule.

16. **Notification No. 40/2010 ST dated 28.06.2010 & Notification No. 43/2010 ST dated 30.06.2010:**
The following services when provided wholly within an airport or a port or other port will continue to be eligible for the abatements available to them under Notification No.1/2006 ST dated 01.03.2006:
(a) Renting of a cab
(b) Erection, Commissioning & Installation Service
(c) Goods Transport Agency service
(d) Commercial or Industrial construction
(e) Construction of complex
(f) Transport of goods by rail
Definitions of port, other port and airport services were amended vide the Finance Act, 2010 so as to provide inter alia that all services provided entirely within the airport/port premises would be classified under these services. This would have led to the situation where abatements and exemptions presently available under individually defined taxable services would get denied when provided within airport or port merely as they would now be taxable under newly introduced taxable services. This Notification has been issued to take care of such situations.

17. **Notification No. 41/2010 ST dated 28.06.2010:**
With effect from 01.07.2010, the following services when provided wholly within the port or other port or airport have been exempted from payment of service tax:
(i) taxable service provided by a cargo handling agency in relation to, agricultural produce or goods intended to be stored in a cold storage;
(ii) taxable service provided by storage or warehouse keeper in relation to storage and warehousing of agricultural produce or any service provided for storage of or any service provided by a cold storage;
(iii) taxable service in relation to transport of export goods in an aircraft by an aircraft operator;
(iv) taxable service of site formation and clearance, excavation and earthmoving and demolition and such other similar activities.
Exemptions to these services are already available under their respective category. The above exemption has been provided in view of the classification of these services getting changed when provided wholly within a port or an airport.

18. **Notification No. 42/2010 ST dated 28.06.2010:**
With effect from 01.07.2010, commercial or industrial construction when provided wholly within the airport has been exempted from payment of service tax.
The definition of commercial or industrial construction inter alia excludes services of such kind provided in respect of airports. On account of the amendment in the definition of airport service, commercial or industrial construction when provided wholly within the airport would be classified as airport service. Therefore, the exclusion to such construction has been provided by way of the above exemption notification.

II. Circular:

1. **Circular No. 124/2010-ST dated 29.06.2010**
has specified accounting codes for the taxable services introduced vide the Finance Act, 2010. Heads of Account under the Major Head "0044-Service Tax" in respect of the new taxable services have been allotted by the Office of the Principal Chief Controller of Accounts, CBEC.
The complete text of the above-mentioned notification and circular are available at www.cbec.gov.in
(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

CORPORATE LAWS

1. **Revised Exposure Margin for Exchange Traded Equity Derivatives**
www.sebi.gov.in
The SEBI has issued Circular No. CIR/DNPD/3/2010 dated 07.07.2010 in relation to exposure margin for exchange traded derivatives which is currently higher of 10 per cent or 1.5 times the standard deviation (of daily logarithmic returns of the stock price) of the notional value of the gross open position in single stock futures and gross short open position in stock options in a particular underlying. The margin is now revised with effect from July 15, 2010 and it will now be the higher of 5 per cent or 1.5 times the standard deviation (of daily logarithmic returns of the stock price). One may refer to the above website for further details.

2. **Exemption from concentration of credit and investment norms for NBFCs**
www.rbi.gov.in
The RBI has issued Notification No. DNBS(PD).214/CGM(US)-2010 dated 09.07.2010 amending the Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, whereby any systemically important non-deposit taking non-banking financial company ("NBFCs-ND-SI") not accessing public funds, either directly or indirectly, may make an application to the Bank for modifications in the prescribed ceilings with regard to Concentration of credit / investment norms. NBFCs-ND-SI may also be issuing guarantees and devolvement of these guarantees might require access

to public funds. It is therefore advised by the RBI that any NBFCs-ND-SI not accessing public funds either directly or indirectly, or not issuing guarantees, may approach the Regional Office of the Department of Non-Banking Supervision, Reserve Bank of India in whose jurisdiction the Registered Office of the Company is located, for appropriate dispensation. One may refer to the above website for further details.

3. **Issuance of Non-Convertible Debentures (NCDs)**
www.rbi.gov.in
The RBI has issued Direction No. IDMD.DOD.10 /11.01.01(A)/2009-10 dated 23.06.2010 whereby it has issued Non-Convertible Debentures (Reserve Bank) Directions, 2010 for issuance of Non-Convertible Debentures (NCDs) of original or initial maturity up to one year by agencies dealing in securities and money market instruments. The Directions shall become effective from August 2, 2010. An NCD is defined to mean a debt instrument issued by a corporate (including NBFCs) with original or initial maturity up to one year and issued by way of private placement. A 'Corporate' is defined to mean a company as defined in the Companies Act, 1956 (including NBFCs) and a corporation established by an act of any Legislature. To be eligible to issue NCDs, a corporate shall be required to fulfill certain criteria, namely, (a) the corporate has a tangible net worth of not less than Rs. 4 crore, as per the latest audited balance sheet, (b) the corporate has been sanctioned working capital limit or term loan by bank/s or all-India financial institution/s, and, (c) the borrowal account of the corporate is classified as a standard asset by the financing bank/s or institution/s. The Directions contains provisions relating to rating requirement, maturity, denomination, limits and the amount of issue of NCDs, procedure for issuance, preference for dematerialisation, documentary procedure, etc. One may refer to the above website for further details.

4. **Applications Supported by Blocked Amount (ASBA) facility in public issues**
www.sebi.gov.in
The SEBI has issued Circular No. CIR/CFD/DIL/7/2010 dated 13.07.2010 whereby it has now provided that the ASBA bid-cum-application forms available for download and printing, from websites of the stock exchanges would now provide electronic interface for ASBA facility i.e. Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). The ASBA forms so downloaded shall have a unique application number and can be used for making ASBA applications in public issues. A sample of the form is enclosed to the above circular. It is also provided that in order that the Stock Exchanges fill up essential details of an issue, the Merchant Banker to the issue shall ensure that the pre-specified details are provided to the Stock Exchanges at least two days before opening of the public issue. This circular shall be applicable to all public issues opening on or after July 19, 2010. It is also provided that the Stock Exchanges shall ensure that, (a) the details furnished by the Merchant Banker to the issue are duly filled in the ASBA form for a specific public issue, before making the same available on websites, (b) the ASBA form for a specific public issue is made available on the websites of the Stock Exchanges at least one day before opening of the public issue, (c) a unique application number for an issue is generated for every ASBA form downloaded and printed from the websites, (d) investors have online access to soft copy of the abridged prospectus/ prospectus of the public issue, and, (e) for revisions of bids, investors can take print of a bid revision form. One may refer to the above website for further details.

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

Determination of depreciation in case of revaluation and revision in the useful life of land and buildings

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 nationalised bank is covered under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, and is regulated by the Reserve Bank of India. The equity of the bank is listed on the Bombay Stock Exchange and the National Stock Exchange. The querist has stated that for accounting purposes, the provisions of the Banking Regulation Act, 1949, are broadly applicable to the bank.

2. The bank purchased freehold land and building in the year 1950 costing Rs. 50 lakh (land Rs. 20 lakh and building Rs. 30 lakh) and accounted for the same separately as 'freehold land' and 'bank's own premises', respectively. On 'bank premises' component, the bank is charging depreciation @5 per cent on written down value basis. In the year 2008, the property has been revalued at Rs. 100 lakh (land Rs. 80 lakh and building Rs. 20 lakh) and the revaluation reserve has been created for Rs. 60 lakh towards land and Rs. 18.50 lakh towards building, assuming the written down value of building at Rs. 1.5 lakh. The valuer has estimated the useful life as 25 years.

3. The bank also purchased a leasehold land in the year 1990 with lease period of 99 years and paid Rs. 99 lakh. The bank subsequently constructed building thereon in June 1992 costing Rs. 50 lakh. The cost of land is debited to 'leasehold land' and construction cost to the 'bank's own premises'. The bank is amortising lease rent @ Rs. 1.00 lakh per annum and is charging depreciation @10 per cent on building since 31.03.1993 on written down value basis. The property has been revalued at Rs. 140 lakh (land Rs. 100 lakh and building Rs. 40 lakh).

4. The querist has also informed that the bank owns more than 200 properties purchased in different years and all the properties have been revalued in the year 2008.

B. Query

5. The querist has sought the opinion of the Expert Advisory Committee on the following issues:

(i) Under the facts described in paragraph 2 above, what should be the applicable rate of depreciation?

(ii) Under the facts described in paragraph 3 above, what should be the applicable depreciation rate on both original cost and revalued portion,

(a) if the valuer has estimated the remaining useful life as 40 years?

(b) if the valuer has not given any useful life and the management, as a policy, is not determining the useful life of the land and buildings?

(iii) Whether different rates of depreciation will be applicable on the 200 properties purchased in different years and revalued in the year 2008. If yes, what is the mechanism to be followed for implementation?

C. Points considered by the Committee

6. The Committee has considered only the issues raised by the querist in paragraph 5 above and has not touched upon any other issue that may arise from the Facts of the Case, such as, treatment of revaluation reserves, etc. Further, while formulating its opinion, the Committee has restricted itself to describing the accounting principles that should be considered for determining the rate of depreciation and has not gone into the calculation of depreciation rate for various assets.

7. The Committee notes that the Reserve Bank of India, vide its circular No. DBOD. No. BP. BC. 89 /21.04.018/2002-03 dated March 29, 2003 regarding Guidelines on compliance with Accounting Standards (AS) by banks, has advised all scheduled commercial banks to ensure strict compliance with the accounting standards issued by the Institute of Chartered Accountants of India, with effect from the accounting year ending March 31, 2003. Accordingly, the Committee is of the view that the Accounting Standards, issued by the Institute of Chartered Accountants of India (ICAI) and other generally accepted accounting principles (GAAPs) would be applicable to the bank in the present case.

8. The Committee notes the introduction paragraph and the definition of the term 'depreciable assets' as contained in Accounting Standard (AS) 6, 'Depreciation Accounting', issued by ICAI, as below:

"Introduction

1. This Statement deals with depreciation accounting and applies to all depreciable assets, except the following items to which special considerations apply:-

…

This statement also does not apply to land unless it has a limited useful life for the enterprise."

"3.2 *Depreciable assets* are assets which

(i) are expected to be used during more than one accounting period; and
(ii) have a limited useful life; and
(iii) are held by an enterprise for use in the production or supply of goods and services, for rental to others, or for administrative purposes and not for the purpose of sale in the ordinary course of business."

9. From the above, the Committee notes that a depreciable asset should essentially have a limited useful life. As per the GAAPs prevalent in India, freehold land is considered to be having an unlimited life and, therefore, cost thereof is not depreciated. In the context of the leasehold land which is recognised as a fixed asset by the bank keeping in view the existing practice of reflecting leases of land in the balance sheets of the lessees, as such leases are scoped out of Accounting Standard (AS) 19, 'Leases', the Committee notes that the land in question has a lease period of 99 years. Thus, it has a limited useful life for the bank. Accordingly, the upfront amount of Rs. 99 lakh paid by the bank for the same should be amortised over its useful life, i.e., 99 years, on a systematic basis. The Committee also notes that in this case, the life of the leasehold land is predetermined by the lease agreement. Therefore, there is no question of revision of its estimated useful life unless the lease agreement is renewed or the lease terms undergo a change.

10. With respect to the building purchased/constructed by the bank, the Committee is of the view that since it fulfills the definition of the term 'depreciable assets' reproduced above, it is a 'depreciable asset'. In this context, the Committee notes paragraphs 5, 7, 11, 20 and 23 of AS 6 which provide as follows:

"5. Assessment of depreciation and the amount to be charged in respect thereof in an accounting period are usually based on the following three factors:
   (i) historical cost or other amount substituted for the historical cost of the depreciable asset when the asset has been revalued;
   (ii) expected useful life of the depreciable asset; and
   (iii) estimated residual value of the depreciable asset."

"7. The useful life of a depreciable asset is shorter than its physical life and is:
   (i) pre-determined by legal or contractual limits, such as the expiry dates of related leases;
   (ii) directly governed by extraction or consumption;
   (iii) dependent on the extent of use and physical deterioration on account of wear and tear which again depends on operational factors, such as, the number of shifts for which the asset is to be used, repair and maintenance policy of the enterprise etc.; and
   (iv) reduced by obsolescence arising from such factors as:
   (a) technological changes;
   (b) improvement in production methods;
   (c) change in market demand for the product or service output of the asset; or
   (d) legal or other restrictions."

"11. The quantum of depreciation to be provided in an accounting period involves the exercise of judgement by management in the light of technical, commercial, accounting and legal requirements and accordingly may need periodical review. If it is considered that the original estimate of useful life of an asset requires any revision, the unamortised depreciable amount of the asset is charged to revenue over the revised remaining useful life"

"20. The depreciable amount of a depreciable asset should be allocated on a systematic basis to each accounting period during the useful life of the asset."

"23. The useful lives of major depreciable assets or classes of depreciable assets may be reviewed periodically. Where there is a revision of the estimated useful life of an asset, the unamortised depreciable amount should be charged over the revised remaining useful life."

11. From the above, the Committee is of the view that the rate of depreciation to be applied to a fixed asset would depend on the depreciable amount of the asset and its useful life. With respect to the 'useful life', the Committee notes that paragraph 8 of AS 6 states that determination of the useful life of a depreciable asset is a matter of estimation and is normally based on various factors, including experience with similar types of assets. Further, from the above reproduced paragraph 23 of AS 6, the Committee is of the view that useful lives of buildings may be reviewed periodically. If the bank does

not have a policy to re-estimate the remaining useful lives of buildings periodically, the depreciable amount (as determined in accordance with paragraph 12 below) should be written off over the remaining useful life in accordance with the original estimate. The review of the useful lives should be done for a class of depreciable assets and not for randomly selected assets. In case of building constructed on the leasehold land, the useful life of the building cannot exceed the remaining lease period of land.

12. With respect to the depreciable amount of an asset, the Committee is of the view that ordinarily, the depreciable amount would be the cost thereof less the estimated residual value. In the context of revaluation of buildings by the bank, the Committee notes the following paragraphs of Accounting Standard (AS) 10, 'Accounting for Fixed Assets', issued by the ICAI:

"27. When a fixed asset is revalued in financial statements, an entire class of assets should be revalued, or the selection of assets for revaluation should be made on a systematic basis. This basis should be disclosed."

"29. When a fixed asset is revalued upwards, any accumulated depreciation existing at the date of the revaluation should not be credited to the profit and loss statement."

The Committee further notes paragraph 26 of AS 6, which is reproduced below:

"26. Where the depreciable assets are revalued, the provision for depreciation should be based on the revalued amount and on the estimate of the remaining useful lives of such assets. In case the revaluation has a material effect on the amount of depreciation, the same should be disclosed separately in the year in which revaluation is carried out."

From the above, the Committee is of the view that while revaluing the buildings, paragraphs 27 and 29 of AS 10 as reproduced above should be kept in mind. The depreciable amount after revaluation would be the revalued amount less the estimated residual value of the building.

13. The Committee notes that AS 10 does not apply to assets under leasing rights (paragraph 5). The Committee has not examined the appropriateness of revaluation of leasehold land held by the bank as that issue has not been raised by the querist.

D. Opinion

14. On the basis of the above, the Committee is of the following opinion on the issues raised in paragraph 5 above:

(i) Under the facts described in paragraph 2 above, the rate of depreciation on building should be determined on the basis of the depreciable amount and its remaining useful life. In case the building has been revalued, the depreciable amount would be the value assigned to the building upon revaluation less its estimated residual value, provided revaluation has been done in accordance with AS 10. The useful life should be determined as explained in paragraph 11 above. Freehold land is not a depreciable asset and, therefore, the question of determination of rate of depreciation for such land does not arise (see paragraph 9 above).

(ii) Under the facts described in paragraph 3 above, with respect to determination of rate of depreciation of the building constructed on leasehold land, the principle stated in (i) above would apply. The cost of the leasehold land acquired on lease for 99 years should be amortised over its lease term on a systematic basis (see paragraphs 9 and 13 above).

(iii) The rate of depreciation of a building depends on the depreciable amount of the building and its expected useful life. Depending on the factors mentioned in paragraphs 10 and 11 above, the useful life may vary in case of each building. The depreciable amount may also vary depending on its cost of purchase/ construction or its revalued amount, as the case may be, and its estimated residual value. Accordingly, the rate of depreciation may vary for each of the buildings and, therefore, should be determined individually for each property. ■

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 .

Research and Development Expenditure Accounting— Capitalise or Charge Off?

Accounting for R&D expense involves a tradeoff between the Principle of Conservatism and the Matching Principle. This is one of the reasons why there is still no convergence between US GAAP and IFRS. US GAAP recommends charging off entire R&D expense to the income statement in the period in which they are incurred which appears to be an extreme take of conservatism. At the same time IFRS allows capitalisation of development expenses provided certain criteria are met. However, this brings in an element of subjectivity in accounting. Read on to know more.

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Research and Development is lifeline of many businesses. It helps them discover new and better processes, methods, techniques and products to make the business more competitive by being more efficient in terms of costs, better products, better delivery systems, etc. Research and Development as an expense or cash outgo in some of the industries like pharmaceutical, software, semiconductor, etc. can be very substantial. Accounting for R&D expenses has been a challenge for accountants. The challenge is to decide whether to charge it off in the income statement immediately as it is incurred, or to create an intangible asset out of this expenditure.

Why R&D Accounting is a Challenge?

Accounting for R&D expenses has been a challenge for accountants. In fact this is one of the areas on which convergence has not yet been achieved between US GAAP and IFRS. The accounting challenge arises from the very nature of this expenditure. R&D can involve quite substantial amount of expenditure. This expense, if the R&D programme is successful, can yield huge economic benefits to the business. However, if the programme is not successful, there can be virtually no economic benefit in spite of huge outgo.

The challenge with the accounting of Research and Development expense is to decide whether to charge it off in the income statement immediately as it is incurred, or to create an intangible asset out of this expenditure. If the expenditure is huge and is charged off to income statement in the period it is incurred and the programme turns out to be successful earning huge economic benefits in the later periods, then, there will be mismatch between the periods in which benefits are recorded and their related expenses are booked. This can be construed as failing the Matching Principle of accounting. This will also pull down the operational income of the business for the period, which in a way may not be a fair reflection of the operational performance of the business for the period. However, conversely, if we do not charge off the expenditure in the income statement in the period in which it is incurred and carry forward the same as an asset and the R&D programme fails without yielding any benefit, then the asset carried in the balance sheet will not have any value and is impaired from the start. This challenges the Principle of Conservatism.

US GAAP Guidance on R&D Accounting

US GAAP has taken a very conservative approach to R&D accounting. SFAS 2.12 recommends charging off the entire R&D expenditure as and when incurred to the income statement. However, a study of the appendix attached to SFAS 2 clarifies the background analyses before this conclusion was arrived at. FASB considered four different alternatives for R&D accounting before finalising on one of them. SFAS 2.37.

1. Charge off all expenses as and when incurred
2. Capitalise all expenses
3. Charge off or capitalise expenses based on specific conditions
4. Accumulate costs separately until the issue of future benefits can be determined.

From the reading of SFAS it appears that as far as FASB was concerned the clincher for determining R&D accounting for it was the uncertainty involved in the likely future benefits of any R&D programme. SFAS 2 – 39 & 40.

SFAS 2.41 talks about inability to establish direct relationship between R&D expenses and benefits. However, this conclusion is highly debatable. There may be cases where it is not possible to establish a correlation for e.g. – If a new method of packaging developed by in house R&D in an FMCG business house has resulted in higher sales or not. However, there are innumerable cases where a correlation can be directly established – there are numerous examples in Pharmaceutical sector, Biotech, Computer Software, Electronic Equipment industry where R&D can directly be related to the economic benefits it has generated.

One more test that R&D fails as per SFAS 2.44-45 is “Measurability”. It is difficult to establish direct relationship between the amount of R&D and the amount of resultant future benefits to the enterprise. Research and development costs therefore fail to satisfy the suggested measurability test for accounting recognition as an asset. However, this assumption looks challengeable as well. There are number of assets in the Balance Sheet which are recorded at the cost of acquisition, so an intangible asset created from R&D can also be measured in the same way. As for other assets in the balance sheet, if the amount of benefit estimated from this intangible asset is lower than the amount recorded in the balance sheet, the impairment provisions can always be applied. Please note that future benefits are at best, estimates.

The FASB did consider the idea of capitalising the R&D expenses selectively that is identifying the programmes that can be capitalised and the programmes that can be charged off. SFAS 2.53 & 54. However, it could not be satisfied with the idea of selective capitalisation.

To overcome this capitalise v/s charge off decision, FASB even considered the idea of parking these expenses as a separate item in the financial statements, somewhere in the balance sheet, till their benefit or lack of it to the business is established and then they can be accounted for accordingly. This idea seemed to challenge the basic structure of financial statements and as is very apparent this was rejected. SFAS 2.59

> **“One more test that R&D fails as per SFAS 2.44-45 is “Measurability”. It is difficult to establish direct relationship between the amount of R&D and the amount of resultant future benefits to the enterprise. Research and development costs therefore fail to satisfy the suggested measurability test for accounting recognition as an asset. However, this assumption looks challengeable as well. There are number of assets in the Balance Sheet which are recorded at the cost of acquisition, so an intangible asset created from R&D can also be measured in the same way.”**

Indian GAAP and IFRS Guidance on R&D Accounting

The guidance on accounting for R&D in Indian GAAP is in AS 28. IFRS covers the same under IAS 38. As far as these two GAAPs are concerned there is absolute convergence on the method of accounting for R&D expenses. Under these GAAP, to assess for the purpose of accounting, R&D has been broken into two parts. (IAS 38.52) (AS 26.39). – Research Phase and Development Phase. It may be noted that as far as definitions of these two phases are concerned, US GAAP is also consistent with what has been mentioned in IFRS or Indian GAAP. SFAS 2.8a and 8b.

Part 1 - Research – This is stage that typically precedes Development stage and involves basic research for improved knowledge on processes, products, methods, techniques, etc. At this stage though an entity gains new knowledge or is in the process of doing so. It is very difficult for it to demonstrate that whatever gain of knowledge that it is acquiring in the research phase, it will be able to apply the same to its commercial operations in the future and convert it into economic benefits.

IAS 38.54 recommends that the expenditure on Research should be charged off to Income statement as and when incurred. Indian GAAP guidance is the same. AS 26.41

Part 2 – Development – If the business has gained any new knowledge, either by its own research or otherwise and feels that this knowledge can be put to use for commercial benefit. It has to apply this new knowledge to develop an improved or new product, process, method, etc to make its use for economic gain. This phase can be identified as the Development phase. This typically follows the Research Phase. This stage is where the knowledge gained in the Research phase is applied to design and develop a product, process, method, technique, etc, which can going forward be commercialised for economic gain.

There are two ways of accounting for Development Expenses. If the entity is still not able to demonstrate that it is capable of and also has the intention to generate future economic benefits out of the output of these Developmental Expenses then it has to charge off these expenses as well. However, if the entity satisfies the *six* conditions mentioned in IAS 38.57 (Indian GAAP AS 26.44), it can create an intangible asset out of these Development Expenditure. These criteria are intended to demonstrate that the entity has the capability and intention to generate future economic benefits out of the output of these development expenses.

“There are two ways of accounting for Development Expenses. If the entity is still not able to demonstrate that it is capable of and also has the intention to generate future economic benefits out of the output of these Developmental Expenses then it has to charge off these expenses as well. However if the entity satisfies the six conditions mentioned in IAS 38.57 (Indian GAAP AS 26.44), it can create an intangible asset out of these Development Expenditure. These criteria are intended to demonstrate that the entity has the capability and intention to generate future economic benefits out of the output of these development expenses.”

This also highlights the basic differences in the approach of US GAAP and IFRS. Whereas US GAAP is more prescriptionary in nature and gives the directions for accounting and leaves very little on the judgment of the accountant, IFRS leaves the judgment to the accountant / entity after broadly laying down the directions to be followed.

What Can Form Part of R&D Expense

Research and Development expenses can include the following categories of expenses – Material costs, costs of consumables, services used for R&D, Manpower related costs of personnel engaged in R&D, overheads that can be reasonably and consistently allocated to the R&D activity and amortisation of patents, Licenses, etc that are used in R&D. It is however, interesting to note that if these expenses are to be capitalised based on the above criterion we end up capitalising the amortisation that forms part of the R&D as well…. Capitalising the amortisation!!

The intangible asset so recognised is amortised over the period over which it has useful life. Amortisation begins from the period from which the asset is available to use. There is a rebuttable presumption in Indian GAAP AS 26.63, that the life of an intangible asset will not exceed ten years. However the final call has to be taken by the entity. If the asset is deemed to have indefinite life then it has to be tested for impairment periodically as per IAS 36 (Indian GAAP – AS 28).

Examples of Research and Development Expenses

Some examples of Research and Development expenses highlighting the differences between them.

1. To gain knowledge on the reasons of why and how a particular disease is caused and how it can be countered in humans is Research Phase. Once it is established that a molecule can counter this disease, the phase of working on that molecule to make it a marketable medicine fit for human consumption can be categorised as development phase.
2. In mechanical / automobile industry – searching for an alloy that can make the product more economic is research. Once an alloy is identified developing a final product that actually delivers on the desired result and passes all necessary safety regulations to become marketable is development.
3. In FMCG, designing a new method of packaging that can increase the reach of the product or reduces the cost of

delivery of the product can be categorised as Development Expense.

Research and Development Expenses – Benefits Under Income Tax

With a view to encourage Research and Development in India, Government of India has enacted certain provisions in the Income Tax Act which enable businesses to claim weighted deduction on the amount spent on R&D. In fact businesses can also claim entire amount of capital expenditure spent in the same period in some cases.

The provisions related to deduction on R&D expenditure are contained in Sec 35 of the Income Tax Act (herein after referred to as the Act).

The Act provides for weighted deduction on R&D expenses in the following cases. There are guidelines prescribed for claiming these deductions as mentioned in the respective subsections of the Income Tax Act.

1. an amount equal to one and one-fourth times of any sum paid to a approved company to be used by it for scientific research will be eligible for deduction (see sec 35 1 ii a).
2. an amount equal to one and one-fourth times of any sum paid to a approved and specified university, college or other institution to be used for research in social science or statistical research will be eligible for deduction (see sec 35 1 iii).
3. a sum equal to one and one-fourth times of the amount paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person with a specific direction that the said sum shall be used for scientific research undertaken under a program approved in this behalf by the prescribed authority. (See Sec 35 2 AA)
4. a sum equal to one and one-half times of the expenditure incurred on scientific research is allowed as a deduction for a company engaged in the business of bio-technology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article as is notified. (See Sec 35 2 AB) if it incurs any expenditure on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority, then, there shall be allowed a deduction of a sum equal to one and one-half times of the expenditure so incurred. (See Sec 35 2 AB). The authority prescribed for this purpose is Department of Scientific and Industrial Research, Ministry of Science and Technology, New Delhi.

Deductions with respect to Capital Expenditure is available as mentioned below. Please note that weighted deduction of one and one-half times the Capital Expenditure is also available under section 35 2 AB

1. In respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee. Other than expenditure on acquisition of Land. (See Sec 35 1 iv)
2. A sum equal to one and one-half times of the capital expenditure other than expenditure on Land or Building, incurred for the purpose of scientific research is allowed as a deduction for a company engaged in the business of bio-technology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article as is notified. (See Sec 35 2 AB).

> **Research and Development expenses are very unique in nature. They are in a way necessary to sustain the business in the competitive market place. They can generate tremendous assets for the business. However, there is a great deal of uncertainty regarding the success of these programs in generating the economic benefits for the business.**

Conclusion

Research and Development expenses are very unique in nature. They are in a way necessary to sustain the business in the competitive market place. They can generate tremendous assets for the business. However, there is a great deal of uncertainty regarding the success of these programs in generating the economic benefits for the business. Whereas Research expenses can be charged off to Income statement in the period in which they are incurred as they are very “far off” from possible commercial benefit, development expenses should be carefully reviewed before charging them off or capitalising them as intangible assets.

In the Indian context the businesses should also note the special weighted deduction provisions available in the Income Tax for R&D and take benefit of them. ■

IFRS: Are Indian Banks Ready?

Convergence to IFRS is likely to pose significant challenges for banks, as shown by global experience. Certain large Indian banks, which have the benefit of going through the process of international GAAP such as US GAAP in the past, have recognised the challenges of convergence and have already started planning their detailed roadmap to achieve a smooth convergence. It is time for other banks to take the cue and follow suit. Critical to the successful implementation of IFRS in the Indian context would be the level of regulatory sponsorship, the appropriate level of investment in systems and processes and consistency in market practices for areas where judgment is critical. The article provides an overview of the issue.

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Why Do We Need IFRS in India?

Indian Companies are listed on overseas stock exchange and have to prepare accounts with respect to GAAP followed in respective countries. Foreign companies having subsidiary in India have to prepare there accounts in order to meet overseas reporting. FDI and FII's are more comfortable with one global accounting language which can be understood globally.

In line with the global trend, the Institute of Chartered Accountants of India (ICAI) has planned convergence with International Financial Reporting Standards (IFRS) for certain defined entities with effect from April 1, 2011. Convergence to IFRS would mean India would join a league of more than 100 countries, which have converged with IFRS.

Applicability of IFRS for Indian Concerns

Roadmap for convergence in respect of Companies other than Banking Companies, Insurance Companies and NBFCs

Converged Accounting Standards will be applied to specified class of companies in phases:

Phase-I Conversion of opening balance sheets as at April 1, 2011, if the financial year commences on or after April 1, 2011.	Companies which are part of NSE - Nifty 50
	Companies which are part of BSE - Sensex 30
	Companies whose shares or other securities are listed on stock exchanges outside India
	Companies, whether listed or not, which have a net worth in excess of Rs.1,000 crore
Phase-II Conversion of opening balance sheets as at April 1, 2013, if the financial year commences on or after April 1, 2013	The companies, whether listed or not, having a net worth exceeding Rs. 500 crore but not exceeding Rs. 1,000 crore
Phase-III Conversion of opening balance sheets as at April 1, 2014, if the financial year commences on or after April 1, 2014	Listed companies which have a net worth of Rs. 500 crore or less
Note 1: When the accounting year ends on a date other than March 31, the conversion of the opening Balance Sheet will be made in relation to the first Balance Sheet which is made on a date after March 31.	
Note 2: Companies covered in Phase I will prepare their financial statements for 2011 - 12 in accordance with converged Accounting Standards, but will show previous years' figures as per the financial statements for 2010 - 11 i.e. as per non-converged Accounting Standards. However, the entity shall have the option to add an additional column to indicate what these figures could have been if converged Accounting Standards had been applied in that previous year.	

Non-listed companies which have a net worth of Rs. 500 crore or less and whose shares or other securities are not listed on Stock Exchanges outside India and Small and Medium Companies (SMCs) will not be required to follow the notified Accounting Standards which are converged with the IFRS (though they may voluntarily opt to do so) but need to follow only the notified Accounting Standards which are not converged with the IFRS.

Roadmap for convergence in respect of Banking Companies, Insurance Companies and NBFCs

Following is the roadmap for convergence in respect of insurance companies, banking companies and non-banking finance companies for complying with converged Accounting Standards:

According to a August 2008 report titled, 'IFRS Convergence: Challenges and Implementation Approaches for Banks in India, the financial impact of convergence with IFRS will be significant for banks in India, particularly in areas relating to loan loss provisioning, financial instruments and derivative accounting. This is likely to have a significant impact on financial position and financial performance, directly affecting key parameters such as capital adequacy ratios and the outcomes of valuation metrics that analysts use to measure and evaluate performance.

Roadmap for Insurance companies

All insurance companies will convert their opening balance sheet as at April 1, 2012 in compliance with the converged Accounting Standards.

Roadmap for Banking Companies

Date of conversion of opening balance sheet in compliance with converged Accounting Standards	Class of Banking Companies
April 1, 2013	All scheduled commercial banks and those urban co-operative banks (UCBs) which have a net worth in excess of Rs. 300 crore
April 1, 2014	Urban co-operative banks which have a net worth in excess of Rs. 200 crore but not exceeding Rs. 300 crore

Urban co-operative banks which have a net worth not exceeding Rs. 200 crore and Regional Rural banks (RRBs) will not be required to apply the converged Accounting Standards (though they may voluntarily opt to do so) and need to follow only the existing notified Accounting Standards which are not converged with IFRSs.

Roadmap for Non-Banking Financial Companies

Conversion of opening balance sheet in compliance with converged Accounting Standards	Categories of NBFCs
April 1, 2013	Companies which are part of NSE – Nifty 50
	Companies which are part of BSE - Sensex 30
	Companies, whether listed or not, which have a net worth in excess of Rs.1,000 crore
April 1, 2014	All listed NBFCs and those unlisted NBFCs which do not fall in the above categories and which have a net worth in excess of Rs. 500 crore
Note: if the financial year commences on any other date than April 1, then the conversion of the opening Balance Sheet will be made in relation to the first Balance Sheet which is made on a date after April 1.	

Unlisted NBFCs which have a net worth of Rs. 500 crore or less will not be required to follow converged Accounting Standards, though they may voluntarily opt to do so, but need to follow only the notified Accounting Standards which are not converged with the IFRSs.

Challenges Faced by Companies in IFRS Implementation:

- IFRS is itself a moving target with changes being done continually
- There are not many trained resources for IFRS
- Also training IFRS in organisation will be huge task
- Not many people are aware and have understanding of IFRS

Benefits of Convergence with IFRSs

- *The Economy:* As the markets expand globally the need for convergence increases. The convergence benefits the economy by increasing growth of its international business. It facilitates maintenance of orderly and efficient capital markets and also helps to increase the capital formation and thereby economic growth. It encourages international investing and thereby leads to more foreign capital flows to the country.

- *Investors:* Investors want the information that is more relevant, reliable, timely and comparable across the jurisdictions. Financial Statements prepared using a common set of accounting standards help investors better understand investment opportunities as opposed to financial statements prepared using a different set of national accounting standards. For better understanding of financial statements, global investors have to incur more cost in terms of the time and efforts to convert the financial statements so that they can confidently compare opportunities. Convergence with IFRS contributes to investors understanding and confidence in high quality financial statements.
- *The Industry:* The industry is able to raise capital from foreign markets at lower cost if it can create confidence in the minds of foreign investors that their financial statements comply with globally

accepted accounting standards. With the diversity in accounting standards from country to country, enterprises which operate in different countries face a multitude of accounting requirements prevailing in the countries. Convergence of accounting standards simplifies the process of preparing the individual and group financial statements and thereby reduces the cost of preparing the financial statements using different sets of accounting standards.

- *The Accounting Professionals:* Convergence with IFRS also benefits the accounting professionals in a way that they are able to sell their services as experts in different parts of the world. The thrust of movement towards convergence has come mainly accountants in public practice. It offers them more opportunities in any part of the world if same accounting practices prevail throughout the world. They are able to quote IFRS to clients to give them backing for recommending certain ways of reporting. Also for accounting professionals in industry as well as in practice, their mobility to work in different parts of the world increases.

IFRS – Impact on Banks:

According to a August 2008 report titled, *'IFRS Convergence: Challenges and Implementation Approaches for Banks in India',* the financial impact of convergence with IFRS will be significant for banks in India, particularly in areas relating to loan loss provisioning, financial instruments and derivative accounting. This is likely to have a significant impact on financial position and financial performance, directly affecting key parameters such as capital adequacy ratios and the outcomes of valuation metrics that analysts use to measure and evaluate performance.

Banks in India need to start thinking through the challenges and develop a roadmap for successful convergence at the earliest. The proposed convergence with IFRS is likely to create significant challenges. Most importantly, the initial and ongoing IFRS convergence will affect reported net worth, available capital and capital adequacy for Indian Banks.

In addition to the general accounting standards and practices that constitute Indian GAAP, banking companies are currently required to adhere to accounting policies and principles that are prescribed by the Reserve Bank of India (RBI). For example, financial reporting policies for provision for loan losses and investments are specified by the RBI. Adoption of IFRS requires a significant change to such existing policies and could have a material impact on the financial statements of financial companies. In addition to the financial accounting impact, the convergence process is likely to entail several changes to the financial reporting systems (including IT systems) and processes adopted by banks in India.

By virtue of operating in a regulated industry, banking companies are subject to regulatory reviews and inspections and are also subject to minimum capital requirements. IFRS requires increased use of judgement and extensive use of unobservable valuation inputs and assumptions. The regulatory review process would need to be adjusted to acknowledge the inherent judgements involved in the application of IFRS. Additionally, application of IFRS may result in higher

"Under IFRS, de-recognition of financial assets is a complex, multi-layered area that follows the principle of transfer of risks and rewards. In the Indian context, this will impact mainly the securitisation activity. Securitisation transactions — where credit collaterals are provided or guarantee is provided to cover credit losses in excess of the losses inherent in the portfolio of assets securitised — may not meet the de-recognition principles enunciated in IAS 39. This will result in failure of de-recognition test under IFRS and lead to collapse of securitisation vehicles into the transferor's balance sheets. Banks will need to assess the impact and consider the potential impact on capital adequacy and ratios such as return on assets."

loan losses and impairment charges, thereby impacting available capital and capital adequacy ratios. Similarly, use of fair values would introduce additional volatility in reported capital with its consequent impact on capital adequacy.

While regulators, standard setters and law makers sit together to abide by the roadmap for implementation of International Financial Reporting

Standards (IFRS) in India, a wide section of the industry is debating the impact and the implementation challenges of transitioning into IFRS.

A remarkable and important element of smooth transition into IFRS is the convergence of RBI guidelines with the principles laid down in IFRS. In other words, the successful adoption of IFRS is based on flexibility and acceptability of IFRS by RBI. Banks will have to soon adjust to accounting changes that are enforced by IFRS.

Top Five Technical Accounting Challenges for Banks

1. Loan / Investment Impairment:

IFRSs prescribe an impairment model that requires a case by case assessment (for significant exposures) of the facts and circumstances surrounding the recoverability and timing of future cash flows relating to the credit exposure. Should there be an expectation that all contractual cash flows would not be recovered (or recovered without full future interest applications), an account would be classified as impaired and impairment be measured on present value basis using effective interest rate of exposure as the discount rate. For group of loans that shares homogeneous characteristics (such as mortgage and credit card receivables), impairment can be assessed on a collective basis. The aim of an individual or a collective assessment is to capture the incurred loss for a specified portfolio. General provisions are permissible only to the extent that they relate to a specified risk that can be measured reliably and for incurred losses. No provisions are permitted for future or expected losses. For investments, a similar analysis is conducted, the key difference being that the fair value of the investments is also considered as an input in addition to the financial /credit standing of the issuer, etc.

The bedrock of this impairment assessment is a system that considers all the facts and circumstances and requires the use of informed judgement. This aspect represents the most significant difference from Indian GAAP for banks in India. Current Indian GAAP / RBI guidelines require a limited use of judgement and are mechanistic nature with prescribed loss/provision rates.

What should banks focus on to meet this challenge?

- Develop/Strengthen a data capture system to enable the impairment assessment after determining tactically where information will be collected / who will make the impairment assessment/ templates and information gathering and storage system, etc.
- Use and align this process of information gathering assessment to strengthen the credit risk management function and feed into other strategic initiatives such as internal ratings, Base II compliance and potential application of internal ratings based/advanced approaches.
- Improve and strengthen the loss forecasting mechanism within the organisation in parallel with fine tuning risk adjusted pricing for fresh loans being sanctioned by the bank.
- Certain system changes would need to be made for accounting for impairment, for example, computation of discounted future cash flows to facilitate the booking of the required accounting adjustment.

2. Use of Fair Value:

Under IFRS, a significant percentage of the balance sheet would have to be fair valued compared to the current practice of carrying it at historical cost /lower than the cost or fair value. Accordingly, fair value methodologies and practices would need to be re-examined to ensure that they are current, up to date and are validated and back tested in current market conditions. Fair value measurement is infrequently used under Indian GAAP and in most cases where it is, the aim is primarily to capture a lower of cost of fair value measurement base. Under IFRS, there may be significant increase in the extent that fair value measurement need to be used. For instance all financial assets and liabilities will need to be initially measured at fair value.

While in number of instances, fair value may be represented by transaction prices, the onus on banks will be to prove that transaction prices represent fair value. In addition, there will be number of instances where unrealised gains can/should be recognised, for example, trading instruments and those where the bank elects the fair value option. Further due to the stringent criteria prescribed under IFRS, a Held To Maturity (HTM) classification, (which currently results in an amortised cost valuation basis for a significant part of most Indian banks' investment portfolio), is unlikely to be available leading to fair value measurement for a substantial part of the portfolio. Again this is a significant shift from current accounting treatment under Indian GAAP.

What should banks focus on to meet this challenge?

- Fair valuation methodologies and practices would need to be re-examined to ensure that they are current, up to date and are validated and back tested in the current market conditions.
- Adequately trained personnel need to be made responsible for this significant area of expertise and judgement.

- Profit planning and budgeting need to be fine-tuned to incorporate the expected increase in income statement volatility arise of the increased use of fair values as a measurement attribute.

3. Derivatives and hedge accounting:

Under IFRS, all derivatives are recognised on the balance sheet at fair values with changes in fair values being recognised generally in the income statement other than in case of qualifying cash flow hedge relationship. Application of hedge accounting would bring down reducing income statement volatility. However, this will entail onerous and stringent documentation requirements, mandatory effectiveness tests and determination of fair value based on observable inputs. This will also call for a much heightened awareness of rules for hedge relationships and certain processes and system changes.

What should banks focus on to meet this challenge?

- Derivative valuation models need to be validated in back tested.
- To enhance the organisational awareness of the rules of IFRS. Certain process and system changes need to be made, documentation and hedge effectiveness testing processes need to be incorporated.
- Certain strategic decision need to be made as to where and when hedge accounting is to be applied.

4. De-recognition of financial assets:

Under IFRS, de-recognition of financial assets is a complex, multi-layered area that follows the principle of transfer of risks and rewards. In the Indian context, this will impact mainly the securitisation activity. Securitisation transactions — where credit collaterals are provided or guarantee is provided to cover credit losses in excess of the losses inherent in the portfolio of assets securitised — may not meet the de-recognition principles enunciated in IAS 39. This will result in failure of de-recognition test under IFRS and lead to collapse of securitisation vehicles into the transferor's balance sheets. Banks will need to assess the impact and consider the potential impact on capital adequacy and ratios such as return on assets.

What should banks focus on to meet this challenge?

- Access the impact of transactions that would fail de-recognition and consider the potential impact on capital adequacy and ratios such as return on assets.
- Work towards developing new securitisation structures that are designed to meet the de-recognition norms under IFRS.
- Assess at a strategic level if the organisation is willing to compromise on credit ratings for securitised pools in order to achieve the desired capital and accounting results of de-recognition.
- Certain processes and system changes will need to be made for accounting for these transactions for current practice.
- Create an assessment model that incorporates the full cost benefit analysis of undertaking securitisation transactions even if they don't meet the de-recognition norms as a funding alternative to raising deposits.

5. Consolidation of Entities:

Under IFRS, consolidation is not driven purely by the ownership structure of an entity but will have to focus on the power to control an entity to obtain economic benefit. IFRS provides more rigorous consolidation tests and in practice can result in the consolidation of a larger number of entities as compared to under Indian GAAP. Banks will need to perform consolidation assessments as early as possible, particularly for non-shareholding related factors that impact consolidation, to assess its impact.

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What should banks focus on to meet this challenge?

- Collate and inventories the full set of entities where consolidation assessment need to be made and perform those assessments as early as possible including the consideration of non shareholding related factors that impact consolidation.
- Ensure that common accounting policies are applied across the group.
- Prepare the impact of factors arising out of consolidation such as how disclosures at a group level can be collated and populated, chart of accounts, group reporting packages, reporting timelines.
- Consider specifically how inter-company transactions and deferred taxation related aspects will be dealt with.

Are Banks Ready?

Indian banks are hiring consultants to train their employees in International Financial Reporting Standards (IFRS) as they take the lead in ensuring compliance with the IFRSs.

To come up with the guidelines on the new accounting norm, a working group committee has been formed by the Indian Banks' Association (IBA), the apex bankers' lobby in the country, and RBI.

Convergence to IFRS is likely to pose significant challenges for banks, as shown by global experience. Certain large Indian banks, which have the benefit of going through the process of international GAAP such as US GAAP in the past, have recognised the challenges of convergence and have already started planning their detailed roadmap to achieve a smooth convergence. It is time for other banks to take the cue and follow suit. Critical to the successful implementation of IFRS in the Indian context would be the level of regulatory sponsorship, the appropriate level of investment in systems and processes and consistency in market practices for areas where judgment is critical. A move to IFRS can be a compared to the mountain peak which can certainly be scaled if well planned and appropriately executed! ■

Accounting for Overburden Removal (OBR) in Opencast Coal Mines

India is endowed with significant mineral resources. India produces 89 minerals out of which 4 are fuel minerals, 11 metallic, 52 non-metallic and 22 minor minerals. There are evidences that exploitation of minerals like coal, iron-ore, copper, lead-zinc has been going on in the country from time immemorial. However, the first recorded history of mining in India dates back to 1774 when an English Company was granted permission by the East India Company for mining coal in Raniganj. In India, 80 per cent of mining is in coal and the balance 20 per cent is in various metals and other raw materials such as gold, copper, iron, lead, bauxite, zinc and uranium. India with diverse and significant mineral resources is the leading producer of some of the minerals. The mining industry in India has not been so far a subject-matter of specific accounting pronouncements by the accounting bodies like the ICAI. This has resulted in varying accounting practices in this industry in respect of some typical item of expenditures like overburden removal (OBR) accounting.

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The mining industry in India has not been so far a subject-matter of specific accounting pronouncements by the accounting bodies like The Institute of Chartered Accountants of India (ICAI). This has resulted in varying accounting practices in this industry in respect of some typical item of expenditures like overburden removal (OBR) accounting. The International Financial Reporting Standards (IFRS) will be implemented in India within next two years and specific accounting in this regard has assumed importance, as this accounting will play an important part in the financial position of an Indian company in the global scenario. At present, i.e. on 31st March 2009, Coal India Ltd. (CIL) is having a huge balance of Rs. 7,000 crore in OBR account. Proper bidding by an Indian company for acquisition of a foreign asset may be jeopardised in absence of implementation of globally accepted accounting in this regard. Besides recasting of financial data for convergence into accepted accounting /

practice for acquiring a foreign asset may also disturb the proper functioning of the Indian company.

A slipshod entry on the subject may lead many things kept unclear for which the following items are required to be discussed:

- The concept of overburden , its removal and the incidence of costs to be incurred as the mine progresses
- Stripping ratio
- Standard/Average ratio
- Theoretical ratio
- Advance stripping
- The present accounting practice of OBR accounting in CIL
- The authors' opinion as to the correct accounting that may be adopted.

Concept of OBR and Behaviour of Costs

Open-cast method of extraction of coal is the oldest method of coal mining and is currently the most dominant method in India and the world. Basically, it means exposing coal for mining by removing non-coal deposit or overburden (OB) above it. The OB is either soft to be removed by machines or made suitable for removal by drilling and blasting. The initial top soil needs to be placed near the surface of the mine as this needs to be backfilled at the closure of the mines as per the Environment Act.

In India, open-cast mines ranges from small (0.15 MT capacity) to large (25 MT capacity) size. The life of a mine varies on the basis of reserves of coal and the expected mining of coal per annum. However, a minimum life of 15 to 20 years is assumed for a moderately big mine.

The layout of an open-cast mine has been diagrammatically explained in Fig - 1.

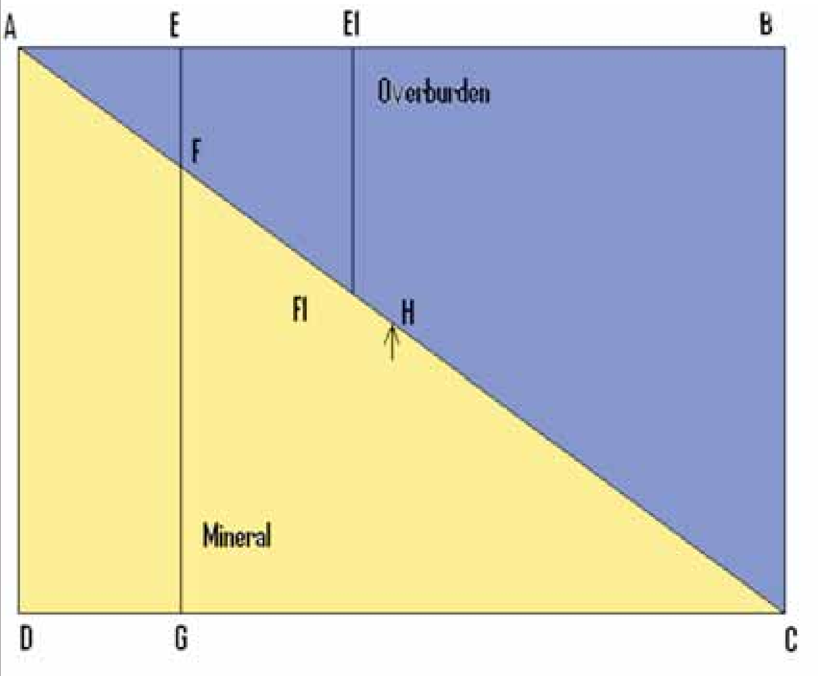


Fig: 1

Initially mining starts from A which is technically called 'out crop end'. This way, mining is easier and proportionately more coal is obtained through less OBR. As mining progresses, more OB has to be removed and proportionately less coal is obtained. At H the ratio of OB to be removed and coal obtained tends to equalise and becomes 1:1. After this point, mining becomes costlier and becomes uneconomical unless supported by commensurate increase in sale price and cost of raising of coal is substantially reduced through improved techniques of production and or cost control. In practice, however, even in the initial stage, more overburden than required is removed for operational reasons, i.e. to have more space for movement of surface machinery and equipments for better safety and to effect economy in the use of oil in surface machinery like dumpers due to sufficient lead distance available for their economic movement. Thus, in the above figure although it is theoretically possible to extract AFGD quantity of coal by removing AEF quantity of overburden, in practice additional quantity of overburden EE1F1F is removed for the purpose stated above. The quantity EE1F1F is called 'advance stripping' which constitutes the work-in-progress of a mine. The figure ACD represents the total coal (in tones) that can be extracted, while ABC the OB to be removed during the life of a mine. 'C' is called the 'dip end' of the mine. The ratio ABC:ACD is called the average/standard ratio of the entire mine which represents the overburden to be removed for getting one tone of coal. This standard ratio is generally to be reviewed every five years and depending upon radical geological changes a revised ratio is arrived as follows:

(Revised estimate of OBR for the entire project - OBR charged so far in coal account: Revised estimate of coal to be raised in future)

Actual Layout of an Opencast Mine

In order to have a simple explanation of mine layout, the mine has been shown as rectangular. However, the actual layout of an opencast mine, the nature of coal seam and the volume of a bench, i.e. surface after excavation, are exhibited in Fig: 2 and Fig: 3 respectively:

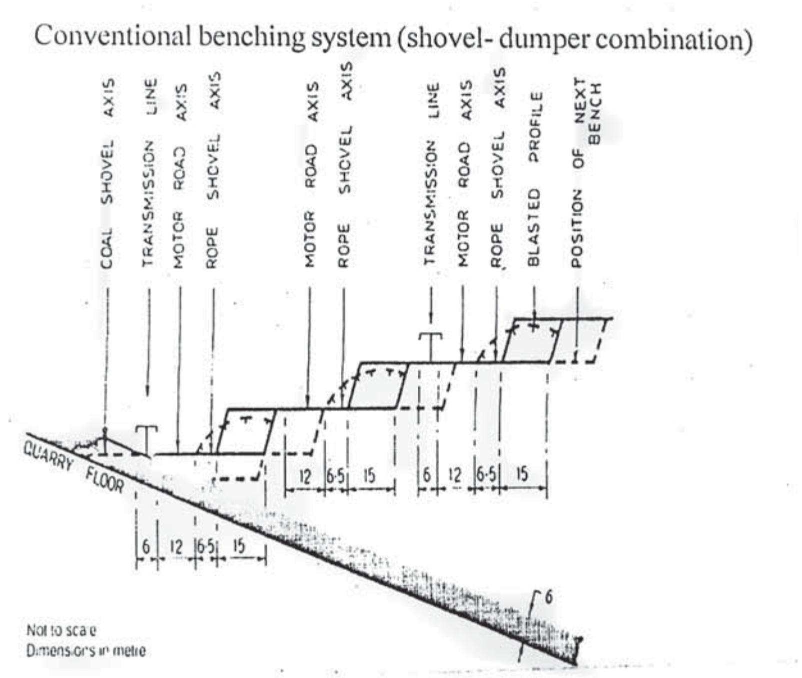


Fig: 2

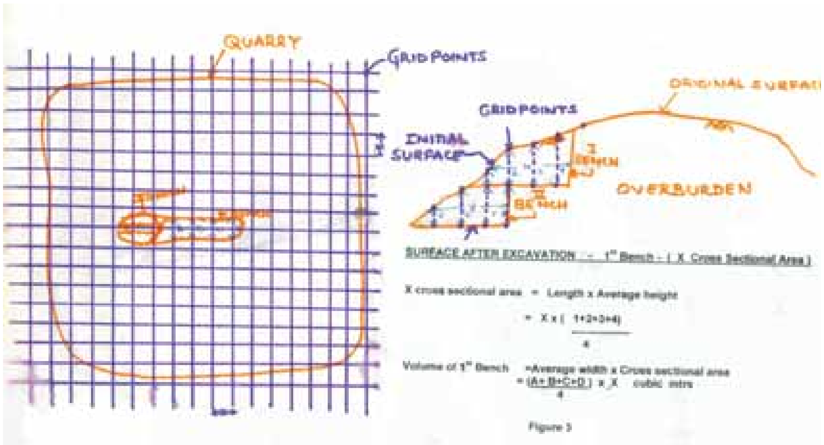


Fig: 3

System of Accounting

The cost of mineral raised is inevitably connected with cost of removal of overburden, as such the latter cost would also form part of mineral cost. The accounting system in this connection has therefore to consider the following elements to determine the charge / cost of overburden removal.

- Actual quantity of OB removal
- Standard ratio/ Average ratio
- Theoretical ratio
- Advance stripping
- Ratio Variance Reserve
- Standard cost rate

Standard/Average ratios are the ratio of the OBR quantity in cubic meters to the quantity of coal in tones for a project as per project report or revised thereafter. It is prudent to deduct coal and OB raised during development period from the total coal and OB as per project report and 'Adjusted Average Ratio' should be worked out since OBR accounting is done after the Project is brought to revenue. Similarly, where there is a revision of estimates of future reserve, the formula would be: Revised estimate of OBR – OBR so far charged to coal): Revised estimate of coal for future raising. In Fig: 1, the ratio of ABC to ACD represents the Standard ratio.

Theoretical ratio is the quantity of OB that is necessary corresponding to actual quantity of minerals raised (inclusive of quantity of coal fully exposed but not extracted due to technical reasons). In Fig: 1, the ratio of AEF to ADGF represents the theoretical ratio.

Advance Stripping

In Fig: 1, as against the mineral raised AFGD tones, the OB that is theoretically to be removed is AEF cubic meters as per the project report of the open-cast mine. The actual overburden stripping however is AE1F1 cubic meters which indicate advance stripping EE1F1F cubic meters. Accordingly, overburden removal in the following years will get reduced to the extent of advance stripping and would yield a 'reserve

> **Open-cast method of extraction of coal is the oldest method of coal mining and is currently the most dominant method in India and the world. Basically, it means exposing coal for mining by removing non-coal deposit or overburden (OB) above it. The OB is either soft to be removed by machines or made suitable for removal by drilling and blasting.**

account'. This has been explained in the table below where the data is for physical terms only. For easy calculation the stripping ratio of a typical mine is taken as 1:1 and calculation is done for a period of first 7 (seven) years of the life of a mine. This is exhibited in the yearend as current assets.

year	Theoretical ratio I	Coal raised (tones) 1	Overburden as per Theoretical ratio 2	Actual OB removal in m³ 3	OB charged to coal as standard ratio 4	Advance stripping in m³ 5 (3-2)	Reserve in m³ 6 (4-2)
1	0.5:1	2000	1000	1500	2000	500	1000
2	0.7:1	3500	2450	4000	3500	1550	1050
3	0.6:1	4000	2400	4000	4000	1600	1600
4	1:1	4200	4200	4800	4200	600	---
5	1.5:1	1000	1500	800	1000	-700	-500
6	2.5:1	800	2000	600	800	-1400	-1200
7	3.5:1	700	2450	500	700	-1950	-1750
Total		16,2 00	16000	16200	16200	+200	+200

Standard Cost Rate is the estimated cost rate for a particular year arrived at on the basis of expenditure estimated to be incurred on key machineries utilised for the OBR in the mine. At present the activity of the OBR has been outsourced in case of a number of mines/projects. In such cases, ascertainment of costs would depend on the contract value of the work.

Ratio Variance Reserve is the difference between the quantity of OBR as per the theoretical ratio and the standard ratio valued at standard cost rate per year. This is normally a credit figure and after due adjustment should appear in the liability side of the Balance Sheet.

The above system of accounting was in practice since April 1, 1976, in the CIL. The system was introduced with the following important objectives:

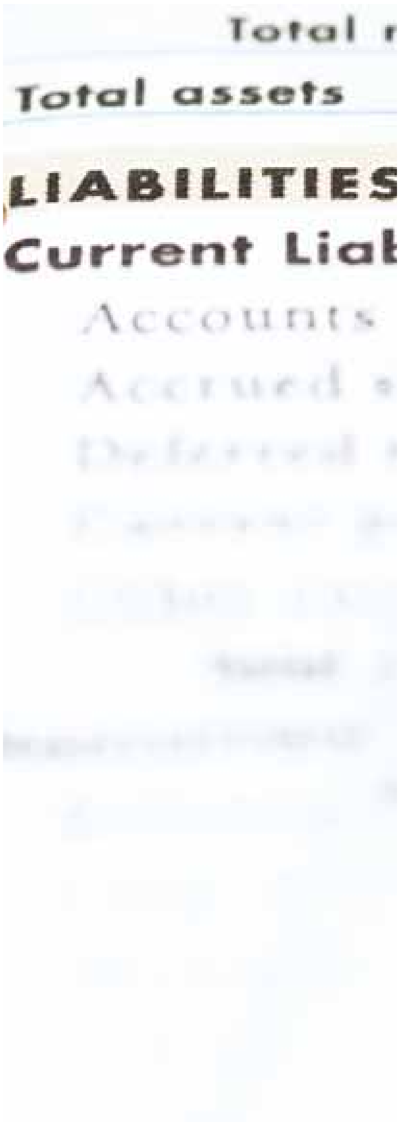
- The system is simple and easy to operate.
- It would result as a safeguard against erroneous publication of inflated financial result of a particular period at the expense of subsequent period.
- There will be equitable distribution of OBR cost between production of coal and OBR deferred revenue account.
- Application of standard cost rate to the quantity of OBR reserved/ deferred for the ratio variance will result in elimination of scope of carrying any idle capacity and or inefficiency cost of previous years that finds as a separate place in the Profit & Loss account.
- Charging of the OBR to coal account at a standard ratio would act as a safeguard against mining for coal only and passing on the overburden removal to the successor.
- Application of standard cost rate and standard ratio would benefit the company in pricing in long term coal supply agreement.
- Conduct physical verification of WIP annually by project official/CIL for ensuring correct assessment of theoretical ratio, correct reporting of coal and overburden, elimination of any balance in WIP at the end of life of the mine and realistic assessment of future standard ratio.
- Above all, the possibility of having huge balance in the Deferred Revenue Account at the end of a mine's life will be fully eliminated.

"The cost of mineral raised is inevitably connected with cost of removal of overburden, as such the latter cost would also form part of mineral cost. The accounting system in this connection has therefore to consider the following elements to determine the charge / cost of overburden removal."

CIL's Policy on OB Accounting

It is necessary to disclose CIL's Accounting policy regarding OB accounting which reads as follows:

> **The accounting system envisages that in OCPs are having capacity of 1 MT or above cost of OBR is charged on average stripping ratio evaluated at current working cost of OBR with due adjustment for advance stripping and ratio variance. Net of balance of advance stripping and ratio variance at the end of the year is shown as deferred expenditure or current liabilities as the case may be.**



The accounting system envisages that in OCPs are having capacity of 1 MT or above cost of OBR is charged on average stripping ratio evaluated at current working cost of OBR with due adjustment for advance stripping and ratio variance. Net of balance of advance stripping and ratio variance at the end of the year is shown as deferred expenditure or current liabilities as the case may be. Periodic review of Average ratio is done as the forecast made in PR may change with time and progress of mines in which case adjustment has to be made. The reported quantity of overburden is considered in the accounts where the variance between reported quantity and measured quantity is within the permissible limits:

Annual qty of OBR of the Mine	Permissible limits of (variance) %	(whichever is less) Quantum in M cum
Less than 1 Mcum	+/ - 5	0.03
Between 1 and 5 Mcum	+ / - 3	0.20
More than 5 Mcum	+ / -2	(-)

As stated in the preceding paragraphs that in open cast projects, generally the proportion of overburden removal to coal raised is much more in initial years and gradually comes down in later periods except when some unforeseeable occasion when major geological changes are encountered when the proportion may change materially. In order to charge the cost of overburden uniformly throughout the life of the project, OBR accounting was introduced to ensure that the total cost of particular period in terms of coal is not unduly affected due to dissimilar stripping ratio of Coal and OB prevailing in different period. Periodic review of Average ratio is done as the forecast made in PR may change with time and progress of mines in which case adjustment has to be made.

At present, following features are witnessed in the CIL's OCPs'

- More mines are opened with higher capacity > 5MT.
- Equipments like surface miner, higher configuration of HEMM have now being increasingly used both in mining of coal and removal of overburden making forecasting of production with greater degree of certainty.
- Even under the normal rhythm of the mine, the shaping of the face may require some amount of advance stripping.
- Due to production of coal/ overburden more than the capacity of mines, the life of mine have been reducing, resulting in mismatch with projected life of the mines.
- Due to shortening of mines life in view of the reasons stated above, it becomes difficult to adjust the Ratio variance Reserve Account and pose problems in assessment of tax.
- The subsidiaries are at present earning huge profits and it is possible to accommodate the entire OB expenditure annually.
- Due to land problem, the expansion scheme are either deferred or postponed. Pending availability of the land to be acquired , expansion schemes are undertaken with part of land acquired in which case it becomes difficult to go for rationale system of accounting

In foreign countries, the entire expenditure on the OBR in a particular year is charged in the year of operation. At present in the CIL, the net of balances of advance stripping (valued at current cost) and ratio variance is shown as Deferred Revenue Expenditure under the head 'miscellaneous expenditure to the extent not written or adjusted' or 'current liabilities', as the case may be. There has been a lot of controversy in the above presentation and accounting treatment. The central point of discussion rests on the following points:

1. Whether the existing accounting system of OBR is in accordance with the Indian Accounting Standards (AS 26, 29),
2. Whether the present system of accounting violates the Indian Accounting Standards.
3. Whether the Para 94 of the Framework for the Preparation & Presentation of Financial Statements issued by ICAI regarding matching costs and revenue and assets and liabilities are followed in present system of OBR accounting which recognises Overburden Removal Adjustment Account in the Profit & loss account.
4. Whether the part of OBR cost (Overburden Removal Adjustment Account) included in the closing inventory of coal violates the principles stipulated in AS2 issued by ICAI.
5. Whether violation/ non compliance of items stated in 1 to 4 above affects the true and fair view of presentation of financial statements.

The relevant Accounting Standard AS 29, as issued by the ICAI, defines liability as a present obligation of the enterprise arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits. The Standard excludes an obligation from future events from the definition of liability. Considering this fact, the 'Overburden Reserve Account', which is a provision for future operating costs but shown as liability in the Balance Sheet for the year, fails to comply with the definition of liability.

Para 94 of the *Framework for the Preparation & Presentation of Financial Statements,* as issued by ICAI regarding matching costs and revenue and assets and liabilities are not followed in present system of OBR accounting which recognises Overburden Removal Adjustment Account in the Profit & loss account. OBR Adjustment Account includes a portion of future operating costs in the Profit & Loss account for the year with no corresponding revenue. Thus the principle of matching cost to revenue is violated.

As per the AS2 issued by ICAI, costs of inventories includes all costs, i.e. purchase costs, cost of conversion and other costs for putting the inventories to its original position and location. Conversion costs include all fixed and variable costs directly linked to production of finished goods. A portion of the OBR cost (OBR Adjustment Account) included in the closing inventory of coal violates the principles stipulated in the AS2 issued by ICAI, as the cost included is not in reference to the year as well as not directly related to the goods produced during the year.

Accounting Standard AS26 issued by ICAI, which deals with recognition of 'intangible assets', does not include within its purview 'Advance Stripping' as intangible assets, since it does not fulfill the criteria of intangible assets.

In so far violation of the above Accounting Standards read with the principle of matching costs and revenue are concerned, there appears to be an element of non-exhibition of true and fair view of the financial and operating results of the CIL and its subsidiaries. Realising this fact and the present features of the CIL open-cast mines, it is imperative and prudent that the entire overburden expenditure for the year is accounted for in the profit and loss for that period. ■

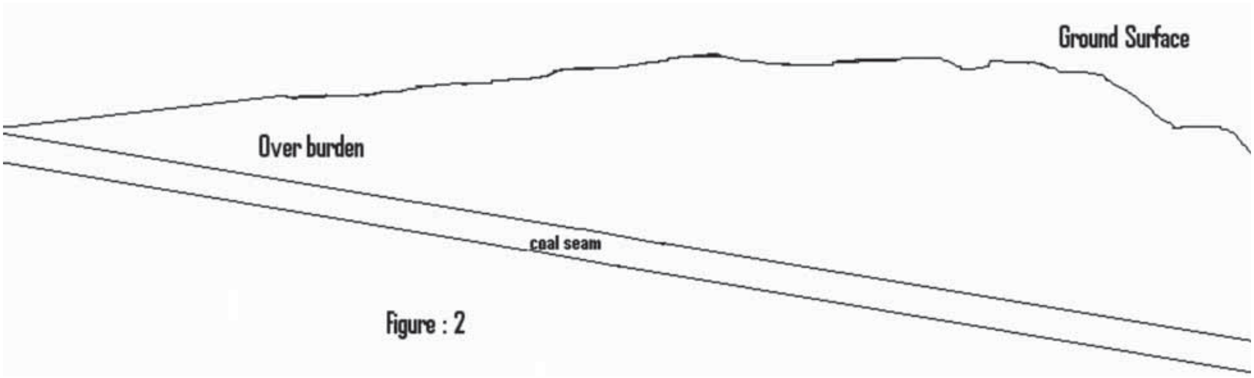


Figure : 2

Around Human Resource Audit

An organisation being a combination of people, affected by complex internal and external environment, creation of several groups among groups creates conflicting and absurd situation which is a common phenomena. Since it is a combination of inter-personal relations, most of the key problems are because of conflicting nature of people, their behaviour, attitudes, and desires as individual and in groups. Now the real issue is how organisation behaviour can become increasingly effective which might be titled as "human resource audit."

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Leadership is concerned with interpersonal relations, which are supplemented by giving guidance, effective communication with an ability to lead. Stimulation creates inter-personal relations while the phrase "human behaviour" refers most complex situation so perceptual awareness is a required condition for effective inter-personal relations. Since individuals are living together in groups, creation of groups in a group is not a mere accident, so to influence people for achieving group goals is the essence of inter-personal relations while to understand the human behavior in operations, employment of various techniques of communication being a part of inert-personal relations is the key issue of any human resource audit.

In any organisation, individuals involve their own needs and objectives while to utilise the potential is a skill to achieve group goals specifically in the situation where each individual may have his own perception, value, identity dignity and ego. Though people act differently but at the same time, they are also unique because of different needs, attitudes, aspirations, level of ethical philosophy, skill, levels of accountability with different potentials.

Since all characteristics may interact with each other, their predominance in a specific situation changes quickly and unpredictably because of influenced by various external factors [their family, their group, society, etc.,] also. This fact must always be recognised and the management should prepare to deal with them. In other words, to understand the complexity and individuality of behaviour is the first stage of Human Resource Audit.

Now various models have been developed to understand the complexities which are based on assumption about people, which also creates an influence on managerial behaviour. Among various models, one is Theory X and Theory Y proposed by Douglas Mc- Greor which points out that individuals are two types – one is pessimistic while second is optimistic. Another model is Rational-Economic Theory developed by Edgar H. Schein which lays down four conceptions about people i.e. rational-economic man, social man, self-actualising man and complex man, and accordingly he suggested the employment of different strategies to stimulate them. Raymond E. Miles expressed three types of models i.e. traditional models, human relations models and human resource models. H. J. Reitz postulated patterns in perception and analysed the factors influencing the perception. For example, a reprimand in front of a group shall be perceived differently in comparison to a situation made in the privacy of the office. In other words, in addition to understand how perception affects behaviour, individuals should also be seen and understood in their interactions with others in group situations. It means creation of groups in a group, their characteristic, interactions and communication i.e. influence is another step while conducting the human resource audit.

To create effective interpersonal relations i.e. creating and maintaining the environment to achieve group goals, another process is to employ motivational systems. The reason being the preponderance of individuals in democratic system always lies on negative side with reference to any existing or potential organisation. Even this fact could also be concluded in professional organisation.

Motivation is a process under which a leader stimulates the individuals in the group to induce them to act in a desired manner. Since each individual is unique because of having different perception, motives may be quite complex and often conflicting. For example, an individual may be motivated by desires of his economic needs but at the same time, he also wants self-esteem, status, a feeling of accomplishment, peaceful environment. Since motivation implies a drive towards an outcome, while satisfaction involves outcomes already experienced, it means high job satisfactions does not mean a reasonable level of motivation for such job or vice-versa. In other words, highly motivated person with low job sanctification shall look for another position, while an individual having their position reasonable, but because of considerable lower level of their package, he shall search another job. In this way, determination and analysis of the existing degree of job-satisfaction and the level of motivation is an important step of human resource audit.

While determining the level of motivation and its influence, various theories of motivation must also be kept in mind. One among various leading theories of motivation is “the carrot and the stick” i.e. the use of rewards and penalties in order to induce desired behaviour. Another most widely referred to theories is the “hierarchy of needs” theory put forth by physiological Abraham Maslow by identifying in an ascending order such as physiological needs (e.g. food, water, clothing, shelter, etc.); security needs; affiliations needs, esteem

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needs (e.g. power, prestige, status, and self confidence) and at last, need for self-actualisation which is the desire to become what one is capable of becoming to maximize his potential and to accomplish something. Similar type of the classification was also put-up by Bray-field and Crocket in “Employees Attitudes and Employers

Performance" – Psychological Bulletin Vol. 52 No. 5 page 396 - 424 (1955). Another approach for motivation is Expectancy Theory proposed by Victor H Vroom in Works and Motivation (New York: Jhon Wiley & Sons, Inc 1964). The perception is, individuals will be motivated to do things to achieve some goals to the extent that they expect that certain actions on their part will reach them to achieve such goals. In other words, everything done in world is done in hope. Another model was laid down by Porter and Lower as "effort depends on the value of reward" i.e. "perceived effort and probability of reward" and the result is performance. For executive motivation, Arch Patton identified some thoughts.

In the sequence, money, positive reinforcement, participation, job enrichment are some techniques. Since human behaviour is quite complex and absurd, it could be desired to be looked as a system of variables and interactions in which certain motivating techniques are key element. It is the essence of system and contingency approach for motivation. Since everybody is exceptional, influenced by complex environment, the human resource audit is not the discovery but to find out whether management are fully aware of the current state of understanding and apply it as best they can do in the operations for which they are responsible.

Since, interpersonal relations are because of followership which means willingness of people to follow that makes a person as a leader, leadership and motivation are closely interconnected because leaders may not only respond to these motivators but also arouse or dampen them by means of the organisational climate they develop. Since effectiveness of motivation techniques depends upon contingencies, leadership is required to identify the nature and strength of human needs with designing the way to satisfy them so that all sub-ordinates (or followers) will contribute willingly to organisational goals in accordance with their maximum capability. And there are a series of research to identify various kinds of leadership styles, theories and behavior. Some of them are the trait approach to leadership, the situational approach, managerial grid, path goal approach, etc. Informal groups also contribute too much complexity. Now there is a need to leadership by taking into account the expectations and perceptions of subordinates, employment of motivational techniques, situational factors, interpersonal relations, rewards and punishments. In other words, there is an audit of human behavior and control while performing their duties and job in organisation from top to bottom.

"Selection of managers is one of the most critical and difficult task. There should be a clear understanding of the nature and purpose of the position which is to be filled. No challenge or no opportunity for growth or no sense of accomplishment or too much broad job creates dissatisfaction, stress, frustration, organisational conflicts and loss of control."

Since there are action guidelines, there is an information system, people are well selected and trained, there must be a periodical audit for maintaining an effective management system.

Staffing involves effective recruitment, selection, placement, appraisal and development of individuals to occupy their roles in the organisation structure. Since staffing is creating internal factors, it is not carried out in vacuum. Selection and then direction in vacuum is sufficient to frustrate the management as a whole by which the organisation may go in liquidation, what is important is human resource planning while considering the ratio of manager – subordinated and their relations in fast changing environment.

The ratio of managers – subordinates depends upon various factors such as size and complexity of the organisation structure, its future plans and staff turnover, age for retirement, vacancies created because of volume of business, promotions and demotions, separations. And for this, position requirement, and accordingly qualification, working knowledge and skill are relevant factor. In other words, there shall be a periodical analysis of manager inventory. It means very close scrutiny and analysis of selection, placement, promotion and demotion, their training, work allocation, performance and their compensation i.e. audit of staffing.

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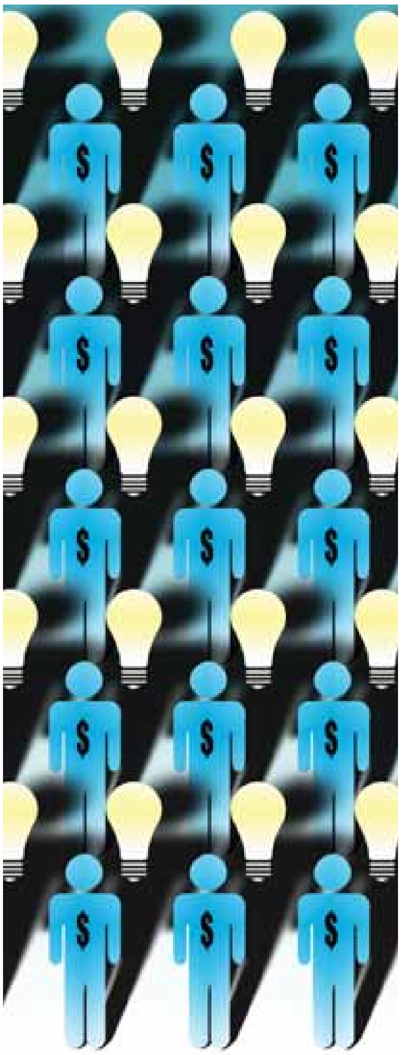
Although the human resource audit is highly desirable, it needs to be followed by periodic reports. There may be a graphic representation also, indicating full and independent report about behavioral, personal and working attitudes, with practical recommendations – Practical guidelines may help them to overcome weak delegation which is the key for proper decentralisation which includes determining the results to be achieved, assigning tasks and delegating authority.



individuals don't have full time job, they involve in leg pulling, they channel their energy against each other instead of towards the aims of the organisation. In other words, there shall be an audit of managerial skills, their position, authority – responsibility, level of delegation of authorities, superior – subordinate relations i.e. their job evaluation and compensation given by the organisation to them along with their cost.

Now evaluation of communication system prevailing in the organisation is also a required condition for effective human resource audit because it effects on interpersonal relation as well as a tool for effective leadership. There are several approaches and methods for communication. It means there should be a communication audit to find out most effective communication techniques with the focus on interpersonal relations and listening. The four major communication networks that need to be audited are as follows:-

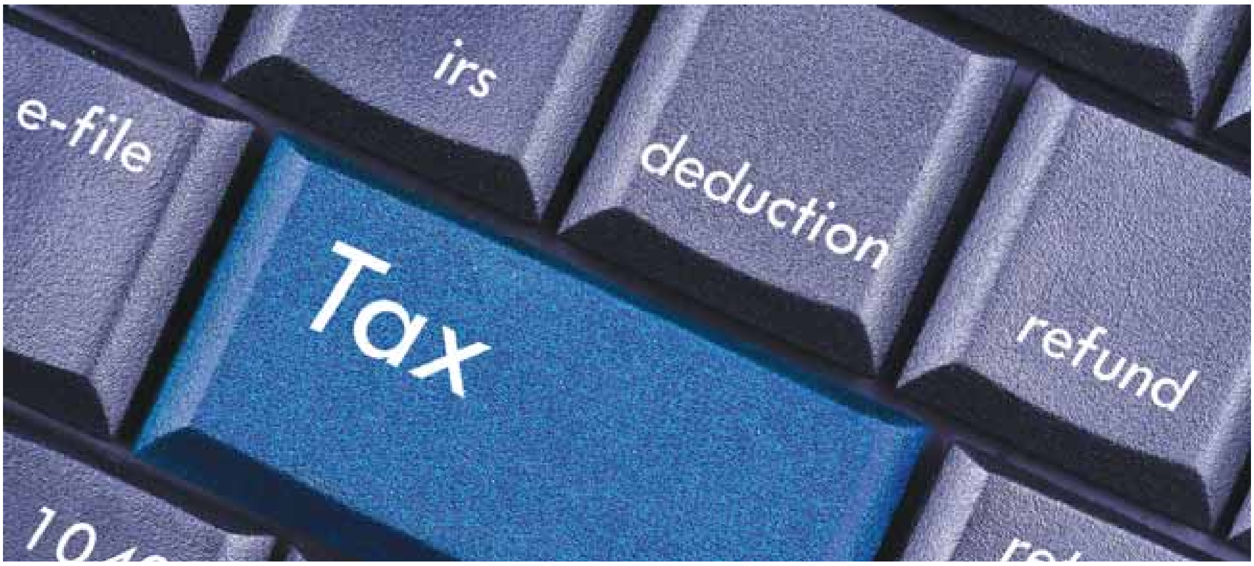
- The regulative networking e.g. policies, procedures, rules, systems and relationships;
- The research network e.g. meetings, group discussions, suggestions, investigations;
- The motivation network;
- The communication network which includes management bulletin, notice board etc.

And at the end, the process of audit includes inspections, observations, questions, interviews, discussions in groups, analysis of written documents to determine time lag in communication, decision, etc. For each process of techniques, there should be a clear strategy and method of utilisation. Full confidentiality about source of information and analysis must always be maintained otherwise it creates another endless complexity. Opinions of subordinates in reference to function and behavioural attitude of their support might be possible only when they feel full confidentiality with free environment while conducting the audit because from staff themselves, most reasonable level of utilisation of staff could be found out which is a way of organisational life.

Although the human resource audit is highly desirable, it needs to be followed by periodic reports. There may be a graphic representation also, indicating full and independent report about behavioral, personal and working attitudes, with practical recommendations – practical guidelines may help them to overcome weak delegation which is the key for proper decentralisation which includes determining the results to be achieved, assigning tasks and delegating authority. There is a clear recommendation for giving organisation charts and position descriptions to develop and nurture an appropriate organisation culture. The key managerial operations should be presented as checklist questions under appropriate grouping. Various behavioural patterns understood during audit along with recommendations for harmonising objectives and enhancing creativity should also be reported. The complexity of review process and recommendations are also a subject matter of the environmental factors including organisational climate. The levels of freedom to managers and their subordinates have a great deal while preparing a recommendation about leadership. What is relevant is to determine responsibility to achieve predetermined goals. The report should be very brief containing full information by using diagrams, charts, graphic representation. However, it is not a discovery of thought but having great deal in complex environment, it is a continuous exercise at different levels under the given situation to understand the behaviour to search an effective order which is an essence of the audit.■

Foreign Tax Credit – Reducing Your Tax Burden in India

The return filing season is upon us. Taxpayers across the country are grappling with collation of documents/ finalising their accounts to determine the income earned during the previous year. With Indian taxpayers now increasingly doing business globally, many are reporting foreign sourced income on which tax may have been paid/ withheld in the country of source of the income. Generally, this foreign tax paid is available as a credit while computing the taxes payable in India. However, credit for foreign taxes is not always computed with reference to the actual tax paid or withheld. In many instances, underlying tax credit and benefit of tax sparing may also be available. Accordingly, it is imperative that possibility of availability of underlying tax credit and tax sparing should be evaluated in case of foreign sourced income. In this article, we attempt to highlight the concepts of Foreign Tax Credit including its important variants viz. Underlying Tax Credit and Tax Sparing.



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

Foreign Tax Credit

Generally, countries follow a mix of source and residence based concept of taxation i.e. a country seeks to tax the worldwide income of a person who is a resident in that country as well as tax all the income which arises to a person (whether resident or non-resident) in its territory. This results in dual taxation of the income, firstly in the country of source of income and secondly in the country of residence of the person earning income, thereby significantly increasing the total cost for taxpayer. To eliminate this double taxation, countries enter into bilateral treaties with each other to allocate the taxing rights of each other over the income earned by resident of one country in the other country's territory. Under this arrangement, the countries either exempt a particular income from tax in one country or stipulate a maximum rate of tax for a particular source of income (for e.g. most of the Double Taxation Avoidance Agreements ('DTAA') provide for a gross tax rate of 10 - 15 per cent for income in the nature of royalty or fees for technical services). Further, the tax which is paid in the source country by the person receiving income is allowed as a credit by the country of residence while computing the tax payable in the country of residence. Additionally, most countries also provide for unilateral relief under its domestic law, which would aid in eliminating tax cascading where no DTAA exists.

Foreign tax credit – An Indian perspective

Chapter IX of the Income-tax Act, 1961 ('Act') contains the provisions relating to double taxation relief. Section 90 of the Act permits the Government of India to enter into DTAAs with other sovereigns for granting of relief from double taxation whereas Section 91 of the Act provide for grant of unilateral relief in cases where a taxpayer resident in India derives income from a country with which India does not have a DTAA. However, it may be noted that unlike certain countries like USA, the Indian domestic law does not specify any guidelines or rules outlining the manner and computational mechanism for computing the eligible tax credit. This has in the past led to controversy as to the manner in which credit for foreign taxes should be computed. Here it may be noted that the proposed Direct Tax Code does contain a specific provision enabling the Central Government to specify methods and manner of claiming credit of foreign taxes and such other particulars in this regard as may be necessary.

Foreign tax credit – Grant of credit in treaty cases

Article 23 of the UN as well as the OECD Model Convention contains the provisions relating to elimination of double taxation. The said Model Conventions specify two approaches – exemption method or credit method for elimination of double taxation. Under the exemption method, generally, one of the country party to the DTAA gives up its right to tax the income earned by the taxpayer. Under the credit method, the country of residence grants credit of the taxes paid by a taxpayer by allowing as a deduction from the taxes payable an amount equal to the taxes paid in the source country or the tax payable in the country of residence, whichever is less.

The treaties entered into by India generally follow the credit method. However, it is noteworthy that treaties signed with certain countries such as Austria, Greece and Brazil follow the exemption method, either fully or for specified sources of income.

Under the credit method, India generally provides for a credit of the taxes paid by the taxpayers in a foreign country by allowing as a deduction from the total tax payable on such income in India. However, the amount of tax paid in foreign country which is available as a credit is limited to the tax paid in foreign country or tax payable in India on such income, whichever is less. For example, the relevant extract of the India-USA DTAA is reproduced below:

“Under the credit method, India generally provides for a credit of the taxes paid by the taxpayers in a foreign country by allowing as a deduction from the total tax payable on such income in India.”

"Article 25 – Relief from Double Taxation

1...

2(a) Where a resident of India derives income which, in accordance of the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States."

Similar provisions are also contained in the DTAAs entered into by India with certain other countries.

As a result of grant of credit of foreign taxes while computing the tax payable in India, the effective tax rate in India would not exceed the tax rate applicable on income in India. See below for an illustrative example:

X, a resident of India, earns an income equivalent to INR 30,000 from US and INR 70,000 from India. The withholding tax on the income in US is 15 per cent while the tax rate in India is 30 per cent. In such facts, the following position would emerge where credit for tax withheld in US is available vis-à-vis a scenario where credit is not available:

Particulars		Foreign tax credit not available	Foreign tax credit available
Total income earned in US		30,000	30,000
Tax payable on income earned in US (30,000 x 15)	[A]	4,500	4,500
Total income in India (30,000 + 70,000)		1,00,000	1,00,000
Total tax on income in India (1,00,000 x 30%)		30,000	30,000
Tax Payable in India	[B]	30,000	25,500
Total tax paid on the income	[A+B]	**34,500**	**30,000**
Effective tax rate for X		**34.50%**	**30.00%**

Foreign tax credit – Grant of credit in non-treaty cases

The Article relating to relief from double taxation specifically provides for credit of foreign taxes paid by an Indian taxpayer. However, there are many countries with which India does not have a DTAA. In such a case, the taxpayer would not get protection as provided under the DTAA. Considering the same, the Act contains the provisions relating to unilateral grant of credit under section 91. As per sub-section 1 of section 91 credit of foreign taxes paid in a country with which India does not have a tax treaty is available as a deduction while computing the taxes payable in India. The amount of credit in such a scenario would again be limited to the lesser of tax paid in the foreign country and tax payable on such income in India. The same is reproduced as under:

"(1) If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal."

"The Article relating to relief from double taxation specifically provides for credit of foreign taxes paid by an Indian taxpayer. However, there are many countries with which India does not have a DTAA. In such a case, the taxpayer would not get protection as provided under the DTAA. Considering the same, the Act contains the provisions relating to unilateral grant of credit under section 91. As per sub-section 1 of section 91 credit of foreign taxes paid in a country with which India does not have a tax treaty is available as a deduction while computing the taxes payable in India."

In this case, credit for taxes paid outside India can be computed as per the following illustration:

X, a resident of India, earns an income equivalent to INR 1,00,000 from country X with which no DTAA exists. Assuming the applicable tax rate on the income in the said country is 25% while the tax rate in India is 30%. In this scenario, the foreign tax credit will be computed as under:

(a) Tax in Country X (1,00,000 x 25%) = 25,000

(b) Tax in India (1,00,000 x 30%) = 30,000

(c) Foreign tax credit available (lesser of a or b) = 25,000

(d) Actual tax payable in India = 5,000

In the above instance if the tax rate in Country X would have been 35 per cent, then the foreign tax credit would have been computed as under:

(a) Tax in Country X (1,00,000 x 35%) = 35,000

(b) Tax in India (1,00,000 x 30%) = 30,000

(c) Foreign tax credit available (lesser of a or b) = 30,000

(d) Actual tax payable in India = Nil

The primary rule in case of foreign tax credit is that while tax credit for the taxes paid in foreign country is generally available as a deduction from the tax payable in India, the amount of foreign tax credit can never exceed the taxes payable in India.

Given the above background, certain typical issues faced by the tax

payers whilst computing foreign tax credit are discussed below:

Foreign tax credit – How to compute in case income from several foreign countries

As stated earlier, the Act contains the provisions enabling the availability of credit of taxes paid in foreign countries on income chargeable to tax in India; however it does not provide any computational mechanism. In such a case, confusion may arise as to method of computing tax credit, especially in cases where the taxpayer resident in India has income from more than one foreign country or has loss in some foreign countries and profits in some foreign countries. The immediate question that may come to mind is whether at the time of computing credit, income as well as tax in all the foreign countries ought to be clubbed together or credit should be computed on a country to country basis.

This matter came up for consideration before the Hon'ble Mumbai High Court in the case of *CIT vs. Bombay Burmah Trading Corp. Ltd.* (2003) 259 ITR 423. In that case, the Revenue sought to reduce the relief by pooling the eligible income and the credit by adopting the lesser of the two taxes with reference to the pooled amount. The Bombay High Court found the same to untenable and held that relief has to be worked out on country-wise basis. Relevant extracts of the observations made by the Bombay High Court is as under:

"Basically under section 91(1), the expression "such doubly taxed income" indicates that the phrase has reference to the tax which foreign income bears when it is again subjected to tax by its inclusion in the computation of income under the Income-tax Act, 1961. Further, section 91(1) shows that in the case of DIT relief to the resident, the relief is allowed at the Indian rate of tax or at the rate of tax of the other country whichever is less. Therefore, the relief under section 91(1) is by way of reduction of tax by deducting the tax paid abroad on such doubly taxes income from tax payable in India. Under the circumstances, the scheme is clear. The relief can be worked out only if it is implemented country-wise. If the argument of the Department is to be accepted then, it would be impossible to compare the rate of tax of the foreign country with the rate under the Indian Income-tax Act..."

Whether to compute on gross foreign income or on income net of deductions

One other typical situation where confusion may arise on the eligible amount of foreign tax credit is a situation where the Indian taxpayer may get a deduction under chapter VI-A of the Act or certain portion of the foreign sourced income may be exempt in India. In this scenario, the question that may arise is whether the credit should be available on the tax paid on the total foreign income earned by the taxpayer or on the proportionate income on after claim of deduction or exemption. This issue came under consideration before the Andhra Pradesh High Court in the case of Commissioner of Income-tax vs. M. A. Mois (210 ITR 284). In the said case, the Andhra Pradesh High Court held that credit should be granted only to the proportion of such income which has actually suffered incidence of tax in India. To arrive at this conclusion, it relied on the judgement of the Division Bench of Andhra Pradesh High Court in the case of CIT vs. C. S. Murthy (169 ITR 686) wherein it was held as under:

"*...by merely including the foreign income in the total income it could not be said that the whole foreign income was subjected to tax in India. It laid down the criteria that not only the foreign income must be included in the total income in the assessment made under the Income-tax Act in India, but it should also be subjected to tax in India. For claiming relief under section 91 of the Act, these two conditions must be satisfied."*

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Having discussed the plain provisions relating to ordinary foreign tax credit, we now proceed to analyse its important variants viz. underlying tax credit and tax sparing.

Underlying Tax Credit

Under the provisions of domestic tax laws of various countries, corporate profits are subject to a two-tier taxation – first at the corporate level as corporate income-tax and second at the shareholder level as and when the profits are distributed as dividend. This results in an economic double taxation i.e. the same income being taxed twice in the hands of different persons. Whilst ordinary foreign tax credit as discussed above assists in mitigating juridical double taxation (i.e. same income being doubly taxed in the hands of the same person), it is not effective in mitigating economic double taxation. This economic double taxation substantially increases the

Under the provisions of domestic tax laws of various countries, corporate profits are subject to a two-tier taxation – first at the corporate level as corporate income-tax and second at the shareholder level as and when the profits are distributed as dividend. This results in an economic double taxation i.e. the same income being taxed twice in the hands of different persons. This economic double taxation substantially increases the tax cost and significantly influences the decision making. With a view to mitigate this economic double taxation, concept of underlying tax credit was circulated.

tax cost and significantly influences the decision making. With a view to mitigate this economic double taxation, concept of underlying tax credit was circulated. Under this concept, credit is granted by the country of residence to its taxpayers not only for the tax withheld on the dividends but also for the corporate tax paid on the underlying profits out of which the dividend has been paid. The concept is referred to as underlying tax credit because the credit is given for the corporate taxes paid by the dividend paying entity before payment of dividend.

The concept of underlying tax credit generally operates only in case of dividend payout.

An illustrative example of the underlying credit is as under:

X Inc, a foreign company has earned an income equivalent to INR 1,00,000. The corporate tax payable on the same is 20 per cent. It distributes 100 per cent of the post tax profits as dividend. The withholding tax rate on dividend is 10 per cent. A Ltd. is the parent company of X Inc. and holds 100 per cent shares of X Inc. A Ltd is taxed at a rate of 34 per cent. In such facts, the following position would emerge where credit for underlying tax is available vis-à-vis a scenario where the underlying credit is not available:

Particulars		Underlying tax credit not available	Underlying tax credit available
Total income earned by X Inc		1,00,000	1,00,000
Corporate Tax payable on income (1,00,000 x 20%)		20,000	20,000
Amount distributed as dividend		80,000	80,000
Withholding tax on dividend @ 10%		8,000	8,000
Income for the parent company *		80,000	1,00,000
Tax on the same @ 34%		27,200	34,000
Underlying tax credit	[A]	-	20,000
Credit for withholding tax on dividend	[B]	8,000	8,000
Total credit available	[A + B]	8,000	28,000
Balance Tax payable in India		**21,200**	**6,000**

** In order to give a credit on a comparable basis, parent company A Ltd will gross up the income to include the foreign tax paid, and will start the calculation from the same income as that earned by the subsidiary company, X Inc. While the above illustration is just an example of method of computing underlying tax credit, different countries may actually have a separate method of computing the underlying tax credit.*

Among the various industrialised countries, the USA has an effective tax system which allow for credit of underlying taxes paid by subsidiaries of US corporations. This intent of the US tax administrators to provide credit of underlying taxes to the US corporations is also reflected in the various DTAAs entered into by USA. For e.g. the following clause of Article 25 (Relief from Double Taxation) of the India-US DTAA may be referred to –

"1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income

(a)…..
(b) in the case of a United States company owning at least 10 per cent of the voting stock of a company which is a resident of India and from which the United States company receives dividends, the income tax paid to India by or on behalf of the distributing company with respect to the profits out of which the dividends are paid."

Further, as the India-US DTAA has provisions for underlying tax credit, it may be possible for an US investor in India to claim credit for the Dividend Distribution Tax suffered under Section 115O of the Act, on the dividends received from its Indian investments. However, in case of DTAAs where there is no underlying tax credit available, the issue on whether ordinary foreign tax credit would be available for Dividend Distribution Tax or not is not free from doubt.

India, however, does not have a tax system which allows credit of the underlying taxes paid by the overseas subsidiaries of Indian corporations. India generally taxes dividend without giving credit for any underlying taxes. However, there are certain exceptions such as the treaties signed with Mauritius and Singapore, where credit is provided for the underlying taxes paid.

"The concepts of foreign tax credit and underlying tax credit are useful tools for avoiding double taxation in case where tax has been levied in the country of source. However, in many cases it is seen that tax is not levied in the country of source as measure of fiscal incentives, particularly the developing countries as means to encourage more investment. Generally, the incentives are in the form of a tax holiday for a certain period of time i.e., a taxpayer is not required to pay tax in such a country for a specified period of time if it undertakes certain specified activities or does business in certain specified areas etc., (e.g. section 10AA, section 10B etc., of the Act)."

Tax Sparing

The concepts of foreign tax credit and underlying tax credit are useful tools for avoiding double taxation in case where tax has been levied in the country of source. However, in many cases it is seen that tax is not levied in the country of source as measure of fiscal incentives, particularly the developing countries as means to encourage more investment. Generally, the incentives are in the form of a tax holiday for a certain period of time i.e., a taxpayer is not required to pay tax in such a country for a specified period of time if it undertakes certain specified activities or does business in certain specified areas etc., (e.g. section 10AA, section 10B etc., of the Act). However, the country of residence of such company may not extend similar incentives and thereby levy tax on the income derived from the source country. In such a case, the benefit which was intended for the taxpayer does not reach him as he has to pay taxes in its country of residence. In fact, in such situations, it is actually the country of residence that is benefited as in absence of payment of tax in source country, the taxpayer would not have any tax credit and therefore, the country of residence would be entitled to levy as well as collect tax on such untaxed income of

its taxpayer in the country of source. To address this anomaly, the concept of tax sparing was formulated. Under this concept, the country of residence grants credit for the taxes which would have been levied by the country of source had the tax exemption been not granted by it.

The concept of Tax Sparing has been explained by the Commentary on Article 23, Methods for the Elimination of Double Taxation under the UN Model Convention. Relevant extracts of the same are as under:

"One of the principal defects of the foreign tax credit method, in the eyes of the developing countries, is that the benefit of low taxes in developing countries or of special tax concessions granted by them may in large part inure to the benefit of the treasury of the capital-exporting country rather than to the foreign investor for whom the benefits were designed. Thus, revenue is shifted from the developing country to the capital-exporting country.

Tax cost has always represented a major point of consideration for taxpayers, especially in cross border transactions where there is all likelihood that the income may suffer economic or juridical double taxation. While the above tools operate in their own manner, they are all effective to mitigate double taxation of the same income and to reduce the overall tax cost. Hence, it would be prudent to identify availability of ordinary foreign tax credit or underlying tax credit or tax sparing while determining the total income and the tax payable.

The effectiveness of the tax incentive measures introduced by most developing countries thus depends on the interrelationship between the tax systems of the developing countries and those of the capital-exporting countries from which the investment originates. It is of primary importance to developing countries to ensure that the tax incentive measures shall not be made ineffective by taxation in the capital-exporting countries using the foreign tax credit system. This undesirable result is to some extent avoided in bilateral treaties through a "tax sparing" credit, by which a developed country grants a credit not only for the tax paid but for the tax spared by incentive legislation in the developing country."

An illustrative example of how tax sparing works is as under:

X Inc. has established a subsidiary, A Ltd. in India. The subsidiary exports 100 per cent of its production and is eligible for exemption under section 10(B) of the Act. During the period under consideration, A Ltd. earned a net income of INR 1,00,000 which is exempt under section 10(B) of the Act. The total profits are distributed as dividend to its parent company X Inc. In such facts, the following position would emerge where credit for underlying tax is available vis-à-vis a scenario where the underlying credit is not available:

Particulars	**Tax Sparing not available**	**Tax Sparing available**
Total income earned by A Ltd	1,00,000	1,00,000
Income exempt due to section 10(B) of the Act	1,00,000	1,00,000
Amount distributed as dividend	1,00,000	1,00,000
Withholding tax on dividend @ 10%	10,000	10,000
Credit for withholding tax on dividend available to X Inc	10,000	10,000
Underlying tax credit	-	-
Tax Sparing (1,00,000 x 30% tax rate in India)	-	30,000
Aggregate tax credit available to X Inc	**10,000**	**40,000**

Tax sparing clauses are negotiated between two countries while entering into a DTAA. Generally, the tax sparing clause is found in DTAAs entered between a developed country and a developing country.

Paragraph 4 of Article 25 (Avoidance of Double Taxation) of the India – Cyprus DTAA contains the provisions relating to Tax Sparing. The same is reproduced as under:

"4. The tax payable in a Contracting State mentioned in paragraph 2 and paragraph 3 of this Article shall be deemed to include the tax which would have been payable for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development. For the purpose of paragraph 2 of Article 10 of the amount of tax shall be deemed to be 10 per cent or 15 per cent, as the case may be, of the gross amount of dividend, for the purpose of paragraph 2 of Article 11, the amount of tax shall be deemed to be 10 per cent of the gross amount of interest and for the purpose of paragraph 2 of Article 12, the amount of tax shall be deemed to be 15 per cent of the gross amount of royalties and fees for included services and for the purpose of paragraph 2 of Article 13, the amount of tax shall be deemed to be 10 per cent of the gross amount of technical fees."

Tax sparing clauses are also found in India's DTAAs with UK, Australia, Canada, China, Japan etc. It may be noted that in certain DTAAs entered into by India, the Tax sparing clause specifically states the incentives granted under the Act against which benefit of Tax sparing is available while in certain DTAAs the clause is generic in nature.

Conclusion

Tax cost has always represented a major point of consideration for taxpayers, especially in cross border transactions where there is all likelihood that the income may suffer economic or juridical double taxation. While the above tools operate in their own manner, they are all effective to mitigate double taxation of the same income and to reduce the overall tax cost. Hence, it would be prudent to identify availability of ordinary foreign tax credit or underlying tax credit or tax sparing while determining the total income and the tax payable. ■

Revised Discussion Paper on Direct Taxes Code: A Synopsis

A Revised Discussion Paper (RDP) on Direct Taxes Code (DTC) has been released by the Central Board of Direct Taxes (CBDT) on 15th June, 2010, taking into consideration the vital and critical issues raised by the various stakeholders on the DTC. Eleven significant issues have been considered and each issue is discussed in a separate chapter of the RDP. The Direct Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has submitted its suggestions on the RDP on DTC to the Ministry of Finance. The following is the synopsis of the proposals contained in the RDP of the DTC and a brief summary of the suggestions given by the Institute with regard to each issue –

(Contributed by Direct Tax Committee of ICAI. It can be contacted at dtc@icai.org)

1. Minimum Alternate Tax (MAT) – Gross Assets vis-à-vis book profit [Chapter I of RDP]

Proposal in the RDP

It is proposed to continue to compute MAT with reference to book profit since there may be practical difficulties and unintended consequences when MAT is computed on the basis of gross value of assets, especially in case of loss making companies and companies having long gestation period.

Suggestions

(1) The Code should provide for carry forward of credit for MAT paid on book profits for a period of ten years for set-off in the years in which the company is liable to tax under the normal provisions of the Code.

(2) Further, the Code should also provide for carry forward of unavailed MAT credit under the Income-tax Act, 1961 as on the date of implementation of the Code, for the unexpired period under the new Code.

(3) Also, the rate of MAT on book profits under the Code should be suitably harmonised with the revised corporate tax rate under the Code.

2. Tax treatment of savings – EET v. EEE [Chapter II of RDP]

Proposals in the RDP

(1) The EEE method of taxation would continue for Government Provident Fund (GPF), Public Provident Fund (PPF) and Recognised Provident Funds (RPFs) and the pension scheme administered by Pension Fund Regulatory and Development Authority. Approved pure life insurance products and annuity schemes will also be subject to EEE method of tax treatment.

(2) Investments made, before the date of commencement of the DTC, in instruments which enjoy EEE method of taxation under the current law, would continue to be eligible for EEE method of tax treatment for the full duration of the financial instrument.

Suggestion

Investment in Senior Citizens Savings Scheme and infrastructure bonds may also be brought within the scope of EEE.

3. Taxation of retirement benefits and perquisites [Chapter III of RDP]

Proposals in the RDP

(1) The proposal to introduce Retirement Benefits Account Scheme is now dropped.

(2) Employer's contribution to an approved provident fund, superannuation fund and New Pension Scheme within the limits prescribed shall not be considered as salary in the hands of the employee.

(3) Further, retirement benefits like gratuity, VRS compensation, commuted pension and leave encashment received by an employee at the time of superannuation will be exempt subject to specified monetary limits.

(4) The method of valuation of perquisites will be appropriately provided in the rules.

(a) An exemption has been proposed in line with the provisions of the Income-tax Act, 1961, with appropriate increase in monetary limits, in respect of the perquisites in relation to medical facilities/ reimbursement provided by an employer to its employees.

(b) Further, it has been clarified that the DTC does not propose to compute perquisite value of rent free accommodation based on market value.

Suggestion

Exemption may also be provided in respect of leave travel concession and house rent allowance.

4. Taxation of Income from house property [Chapter IV of RDP]

Proposals in the RDP

(1) Gross rent of a let-out house property will be the amount of rent received or receivable for the financial year.

(2) Gross rent will not be computed at a presumptive rate of 6 per cent of the rateable value or cost of construction/acquisition.

(3) Gross rent will be nil in case of house property which is not let out. As the gross rent will be taken as nil, no deduction for taxes or interest etc., will be allowed.

(4) In case of any one house property, which has not been let out, an individual or HUF will be eligible for deduction on account of interest on capital borrowed for acquisition or construction of such house property (subject to a limit of Rs.1.5 lakh) from the gross total income.

Suggestions

(1) The Code should provide for excluding unrealised rent while computing income from house property, subject to fulfillment of certain conditions.

(2) If the unrealised rent is recovered in any subsequent year, it can be brought to tax in that year, after providing for the statutory deduction at the prescribed percentage.

(3) Further, a clarification may be given as to the year of taxability of arrears of rent, and deduction permissible against such rent.

(4) Also, interest for the pre-construction period should also be allowed as deduction. The manner of allowing such deduction may be considered and provided for in the Code.

5. Taxation of capital gains [Chapter V of RDP]

Proposals in the RDP

(1) Capital gains on transfer of listed equity shares or units of an equity oriented fund held for more than one year from the end of the financial year in which they are acquired.

Capital gains arising from transfer of an investment asset, being equity shares of a company listed on a recognised stock exchange or units of an equity oriented fund, which are held for more than one year from the end of the financial year in which they are acquired, shall be computed after allowing a deduction at a specified percentage of capital gains without any indexation. This adjusted capital gain will be included in the total income of the taxpayer and will be taxed at the applicable rate. The loss arising on transfer of such asset held for more than one year will be scaled down in a similar manner.

(2) Capital gains on transfer of other assets held for more than one year from the end of the financial year in which they are acquired.

For taxation of capital gains arising from transfer of investment assets held for more than one year (other than listed equity shares or units of equity oriented funds), the base date for determining the cost of acquisition is proposed to be shifted from 1.4.1981 to 1.4.2000. The capital gains will be computed after allowing indexation on this raised base.

The proposal to introduce Capital Gains Savings Scheme is now dropped.

(3) Capital gains on assets held for less than one year from the end of the financial year in which asset is acquired.

The capital gain arising from transfer of any investment asset held for less than one year from the end of the financial year in which it is acquired will be computed without any specified deduction or indexation. It will be included in the total income and will be charged to tax at the rate applicable to taxpayer.

(4) Income of FIIs from purchase and sale of securities

(a) The income of FIIs from purchase and sale of securities would be chargeable as capital gains.

(b) The capital gains of FIIs would not be subject to TDS. The FIIs would be required to pay advance tax in line with the current practice.

(5) Securities Transaction Tax (STT)

STT is proposed to be calibrated based on the revised taxation regime for capital gains and flow of funds to the capital market.

Suggestions

(1) Capital gains on sale of equity shares and units of equity oriented fund (purchased before the date of implementation of Code) on which STT has been paid, should be exempt from tax if held for more than one year and should be subject to tax @15 per cent, if held for less than one year, in line with the principle of promissory estoppel. Appropriate transition regime providing for the same should be incorporated in the Code.

(2) The benefit of availing exemption of capital gains by investing in Capital Gains Savings Schemes would not be available under the Code. Therefore, rationalisation of indexation is necessary, since, in respect of capital gains on sale of assets held for more than one year from the end of the financial year of purchase, this is the only benefit available. The cost inflation index should take into account 100 per cent (as against prevailing 75 per cent) of average rise in consumer price index, since the indexation benefit is the only benefit available in respect of capital gains under the Code.

(3) STT paid should be allowed as a deduction while computing capital gains since it is considered as part of the cost of acquisition of the capital asset as per the proposed provisions.

(4) Capital losses arising out of sale of unlisted shares which remain unabsorbed as on the date of implementation of the Code should be permitted to be set-off also against capital gains on sale of listed shares and units of equity oriented fund after the implementation of the Code, since such gains would become taxable under the Code.

6. Taxation of Non-Profit Organisations [Chapter VI of RDP]

Proposals in the RDP

(1) There would be no requirement of applying for fresh registration under the DTC for NPOs already registered under the Income-tax Act, 1961 and holding valid registration on the date on which DTC comes into effect. However, for facilitating the administration of the new provisions, they would be required to provide additional information

(2) Exemption would be available in respect of income of a public religious institution, provided it fulfills the following conditions:

(i) it should be registered under the Code.

(ii) the trust/institution should apply its income wholly for public religious purposes;

(iii) it should be registered under the State law, if any;

(iv) it should be established for the benefit of the general public;

(v) the trust / institution should file the return of tax bases before the due date;

(vi) it should maintain books of account and obtain an audit report from a qualified accountant in case its gross receipts exceed a prescribed limit;

(vii) the funds or the assets of the trust / institution should be invested or held, at any time during the financial year, in specified permitted forms or modes; and

(viii) the funds or the assets of the trust / institution should not be used or applied or deemed to have been used or applied, directly or indirectly, for the benefit of interested person.

Donations to these institutions will not be eligible for any deduction in the hands of the donor.

(3) Partly religious and partly charitable institutions will also be considered as NPOs, if they are registered under the Code. Exemption would be available in respect of their income from public religious activity, provided they fulfill the following conditions-

(i) the trust deed / memorandum of the institution should contain a clause specifying the application of its gross receipts in a pre-determined ratio between charitable and religious activities;

(ii) separate books of account and separate financial statements are maintained in respect of religious and charitable activities;

(iii) fulfillment of the conditions stipulated in (2) above.

The tax treatment of income from charitable activities of such trusts and institutions would be in the same manner provided for NPOs, if they fulfill the conditions prescribed in the Code. Donations to such trusts and institutions would not be eligible for deduction in the hands of the donor.

(4) Up to 15 per cent of the surplus or 10 per cent of gross receipts, whichever is higher, is proposed to be allowed to be carried forward to be used within three years from the end of the relevant financial year.

(5) Donations by an NPO out of its accumulated surplus to another NPO would not be considered as application for the charitable purpose.

(6) To maintain continuity and minimise litigation, the phrase "charitable purpose" is proposed to be retained in place of "permitted welfare activity".

(7) A basic exemption limit is proposed to be provided and the surplus in excess of such limit would be subject to tax.

(8) The cash system of accounting to be continued since it is simple to follow and easy to administer.

(9) The Central Government shall be

empowered to notify any non-profit organization of public importance as an exempt entity.

Suggestions

(1) The permissible period of accumulation may be increased from three to five years.

(2) The additional two conditions required to be complied with by partly religious and partly charitable institutions should be relaxed, since it is not practically possible to pre-determine the ratio for application of gross receipts between charitable and religious purposes.

(3) The trust/institution should be given an option to apply the income received during the last quarter of the financial year in the immediately following financial year. Such application should be deemed to be application in the same financial year.

(4) The Companies Act, 1956 requires the companies registered under section 25 of the said Act to follow mercantile system of accounting. The proposed requirement for all NPOs to mandatorily follow cash system would be contrary to the requirement under the Companies Act, 1956, in cases where such NPO is a company registered under section 25. This conflict may be resolved.

(5) It has been clarified that donations by an NPO out of its accumulated surplus to another NPO will not be considered as application for charitable purpose. This condition should be relaxed in case of dissolution of trust/institution and consequent takeover by, or transfer to, another trust/institution.

7. Special Economic Zones – Taxation of existing units [Chapter VII of RDP]

Proposal in the RDP

In general, as a policy measure, the scope and the period of profit linked deductions are not proposed to be extended, since they have the effect of transferring profits from a taxable entity to a non-taxable entity. However, under the DTC, there are specific provisions for protecting such deduction for the unexpired period in the case of SEZ developers. The RDP proposes a similar provision to protect profit linked deductions of units already operating in SEZs for the unexpired period.

Suggestions

As per the provisions of the Code, as revised by the RDP, the benefit under the Code would be available only in respect of units which become operational before the date of implementation of the Code. The benefit should be made available under the Code even if the units become operational after the date of implementation of the Code, if steps have been taken for setting up the unit (say, like, the plans have been approved by the prescribed authority) before such date. A suitable time period may be provided within which such units should become operational after the implementation of the Code.

At present, the MAT provisions under section 115JB are not applicable to the income accrued or arising from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or SEZ, as the case may be. Such exemption may be continued in the Code as well.

8. Concept of Residence in the case of a company incorporated outside India [Chapter VIII of RDP]

Proposals in the RDP

(1) A company incorporated outside India will be treated as resident in India if its "place of effective management" is situated in India.

"Place of effective management of the company" means-

(i) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(ii) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions."

(2) Controlled Foreign Corporation (CFC) provisions are proposed to be introduced, as an anti-avoidance measure, to provide that the passive income, earned by a foreign company controlled directly or indirectly by a resident in India, which is not distributed to shareholders (leading to tax deferral) would be deemed to have been distributed. Accordingly, it would be taxable in India in the hands of resident shareholders as dividend received from the foreign company.

Suggestions

(1) Since there is tremendous scope for litigation in respect of clause (ii) of the definition of "place of effective management", the scope of the definition should be restricted to clause (i) of (1) above and clause (ii) should be removed. Further, clause (i) should be drafted in such a manner that it should not include cases where one or two meetings of the Board of Directors of a foreign company is held in India. The principle of substance rather than form should be taken into consideration while determining the "place of effective management".

(2) Safe harbor rules may be introduced for non-applicability of CFC provisions, if say, passive income is within a certain percentage of total income, or a certain percentage of passive

income is distributed. Further, the parameters for treating a company as a "Controlled Foreign Corporation", and the specified income from such company which would be subject to tax in the hands of the Indian shareholder should be clearly spelt out in the Code.

9. DTAA vis-à-vis Domestic Law [Chapter IX of RDP]

Proposal in the RDP

It is proposed to provide that the domestic law or the DTAA, whichever is more beneficial to the taxpayer, shall prevail. However, DTAA will not have preferential status over the domestic law in the following circumstances:-

- when the General Anti Avoidance Rule (GAAR) is invoked, or
- when CFC provisions are invoked or
- when Branch Profits Tax is levied.

10. Wealth-tax [Chapter X of RDP]

Proposals in the RDP

(1) Wealth-tax is proposed to be levied largely on the same lines as provided in the Wealth-tax Act, 1957. Consequently, wealth-tax would be leviable only on specified "unproductive assets".

(2) All taxpayers except non-profit organizations would be subject to wealth-tax.

(3) The threshold limit and rate of tax would be suitably calibrated in the context of overall tax rates.

11. General Anti-Avoidance Rule (GAAR) [Chapter XI of RDP]

Proposals in the RDP

(1) As per the proposed GAAR provisions, every arrangement for tax mitigation would not be liable to be categorised as an impermissible avoidance arrangement. The GAAR provisions would be attracted only in a case where an arrangement, apart from obtaining a tax benefit for the assessee, also falls within the ambit of any one of the four conditions i.e. it is not at arm's length or it represents misuse or abuse of the provisions of the Code or it lacks commercial substance or it is entered or carried on in a manner not normally employed for bona-fide business purposes.

(2) The following safeguards are also proposed for invoking GAAR provisions:-

(i) Guidelines to be issued by CBDT providing for the circumstances under which GAAR may be invoked.

(ii) A threshold limit would be specified and GAAR provisions will be invoked only in respect of an arrangement where tax avoidance is beyond such limit.

(iii) The forum of Dispute Resolution Panel (DRP) would be available where GAAR provisions are invoked.

Suggestions

(1) The threshold limit for invoking GAAR should be relatively high so that inconsequential transactions and small assessees are not subject to rigors of GAAR.

(2) Where GAAR provisions are invoked, a forum which should be adequately represented by departmental officers, professionals as well as the industry, should be available. In the absence of such balanced representation, an appreciation of the commercial perspective from a businessman's point of view is often lost sight of.

(3) The onus of proving that an arrangement has been made with an intention of obtaining tax benefit should be on the revenue authorities invoking GAAR provisions.

(4) The power to invoke GAAR is bestowed upon the Commissioner of Income-tax. When the GAAR provisions are invoked, the remedy of appeal to Income-tax Appellate Tribunal should be available. Suitable provisions may be introduced in the Code to provide for such remedy.

(5) While tax avoidance on part of taxpayers should not be condoned, an equally adverse view should be taken if the persons charged with responsibility of application of the law exceed certain limits. In order to project an appropriate sense of evenhandedness in dealing with taxpayers, provisions relating to accountability (including certain minimum actions/ consequences) should be incorporated in the Code, and not left to be formulated independently. ■

Note - The suggestions given by the Direct Taxes Committee of the ICAI on the Revised Discussion Paper on DTC have been briefed above in a concise manner along with the proposals contained in the Revised Discussion Paper. Kindly visit the home page of the Direct Taxes Committee at http://www.icai.org/post.html?post_id=965&c_id=57 , wherein the entire text of the following have been hosted -

(1) Revised Discussion Paper on DTC, as released by the CBDT on 15th June, 2010;

(2) The suggestions of the Direct Taxes Committee of the ICAI on the DTC considered in the Revised Discussion Paper; and

(3) The suggestions of the Direct Taxes Committee of the ICAI on the Revised Discussion Paper submitted to the Ministry of Finance on 30th June, 2010

Implementation of GST – A Gift of 2010

Keeping the ball of change in the Indian indirect tax system rolling, the Department has come up with a new system change called Goods and Service Tax (GST). The proposed date of its implementation was April 1, 2010, which has been deferred till October 1, 2010, or may be even later. The new system envisages the importance of uniformity in tax rates across India and also meant to put a check on cascading effects of the existing Central and State VAT system. It is also designed to boost the Indian exports and to provide a competitive edge in the international market. With the revolutionary step of implementation of GST, the Government also has to face some hard reality in terms of lack of proper infrastructure, Constitutional inability and problem in arranging a common consensus of all the States to bring them under one umbrella. It would be a tough challenge for The Empowered Committee of State Finance Ministers to put all in one basket and implement the new improved tax structure in India. This article deals with the concept of GST, its justification, structure, rate of tax and its working mechanism.

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Indian economy, which is going ahead with a steady rate, reaching all new peaks, is now waiting for a compelling and energetic turnaround in its taxation framework both in Direct and Indirect taxes. The new taxation framework will have inbound ability to help Government of India to enhance revenue and maintain the democratic consensus. Here, we will restrict our discussion on the indirect tax only.

In the last two decades, we have seen same major changes and reforms in indirect-tax structure in India starting from the implementation of MODVAT with effect from March 1, 1986, and CENVAT in 2002 - 03. Subsequently, after the Constitutional amendments empowering the Centre to levy taxes on services, service taxes were also added to the CENVAT in 2004 - 05. A year later, State level VAT was introduced which after a huge agitation has been adopted by almost all the States. Now, let us prepare ourselves for a new era in the indirect tax regime viz, Goods and Service Tax (GST). Since the release of First Discussion Paper on

November 10, 2009 by The Empowered Committee of State Finance Ministers, it has been made clear that it is going to be implemented from April 1, 2010. However, 'Report of The Task Force on Good and Service Tax' published on December 15, 2009 recommends its implementation to be delayed till October 1, 2010. Extracts from Para 11.9 of this report is given herewith "We have recommended that the implementation of the GST should be postponed to 1st October, 2010. We believe that it should be possible to adhere to this timeline. The benefits from the switch over to the GST are contingent upon the purity of the GST design. In the context of VAT, international experience shows that any design-related 'VAT mistakes are very hard to rectify'. Therefore, it must be ensured that there are no design related mistakes at birth. However, if there is a trade-off between the timeline and the design of the GST, the dilemma must be resolved in favour of design."

As we are almost at the door step of implementation of GST, to welcome it and make it a success, let us equip ourselves with the concept of GST, its justification, structure, rate of tax and its working mechanism.

What is GST?

GST is a tax on goods and services, which is leviable at each point of sale or provision of service, in which at the time of sale of goods or providing the services the seller or service provider can claim the input credit of tax which he has paid while purchasing the goods or procuring the service. There is no distinction between taxable goods and taxable service and they are taxed till the goods/services reach the consumer.

Justification of GST

In our previous tax system of both Government of India and State Government, there was a burden of *tax on tax.* The introduction of the Central VAT (CENVAT) and the State VAT has removed the cascading effects by giving the set-off for the taxes paid to a great extent. The CENVAT provides set-off for taxes paid on inputs and services up to the stage of production and the State VAT provides set-off for taxes paid on inputs as well as taxes paid on previous purchases.

But both the CENVAT and the State VAT have certain incompleteness. The CENVAT does not extend to include chain of value addition below the stage of production. It has also not included several Central taxes, such as additional excise duties, additional customs duty, surcharges, etc., in the overall framework of the CENVAT, and thus kept the benefits of comprehensive input tax and service tax set-off out of the reach of manufacturers/dealers.

Similarly, there are several taxes in the States, such as, luxury tax, entertainment tax, etc., which have still not been subsumed in the VAT. Also the burden of Central Sales Tax (CST) on inter-State movement of goods has been lessened with reduction of CST rate from 4 to 2 per cent, this burden has also not been fully phased out. After the introduction of GST, all these effects of the multiple taxes will be removed as this will establish a continuous chain of set-off from the original producer's point and service provider's point up to the retailer's level, eliminating all cascading effects.

Thus, we can conclude that the implementation of GST will not only harmonise the tax effect but also phase out some of tax burden. Hence, it seems to be justified.

Dual GST

The GST is a dual GST. The dual GST is required because India is a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both levels of the Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism. Hence, there is a Central GST to be administrative by Central Government and a State GST to be administrated by State Government. Central GST will replace the existing CENVAT and Service tax and the State GST will replace the State VAT.

> **Since the release of First Discussion Paper on November 10, 2009 by The Empowered Committee of State Finance Ministers, it has been made clear that it is going to be implemented from April 1, 2010. However, 'Report of The Task Force on Good and Service Tax' published on December 15, 2009 recommends its implementation to be delayed till October 1, 2010.**

IGST

Inter State Goods and Service Tax (IGST) covers the transaction which crosses the geographical boundaries of a particular state, i.e. transaction involving two states. The Centre will be responsible for the levy of IGST which will be aggregate of CGST and SGST. The IGST will also cover the stock transfers and consignments. However, specific provisions regarding these have not been drafted as of now. Inter-State sellers will pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on their purchases. Exporting States will transfer to the Centre the credit of SGST used in payment of IGST. Importing dealers will claim credit of IGST while discharging their output tax liability in their own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST.

Let us further explore with the help of an example: Suppose, there is a seller 'A' in the state of West Bengal. Let us also assume that opening balance of credits available with seller 'A' in the books of accounts is:

IGST – Rs. 400/- lakh, CGST- Rs. 300/- lakh and SGST- Rs. 100/- lakh

Now, if the seller 'A' sells some goods to the buyer 'B' in the other state, say Punjab, and incurs the IGST liability of Rs. 1,000/- lakh. Accordingly, the IGST liability of the seller 'A' will be discharged as:

In this case, the portion of liability which has been discharged by utilising SGST, i.e. Rs. 100/- lakh, will be transferred to the Centre by the concerned Government of West Bengal. Reason being the Center is short paid by Rs. 100/- lakh.

This IGST of Rs. 1,000/- lakh can be utilised by the buyer 'B' for discharging the output tax liability in his own state, i.e. Punjab,. It can be in form of IGST, CGST and SGST or all of them. This facility thus makes the IGST more flexible. We can say that IGST can be utilised for payment discharging of all three liabilities being IGST, CGST and SGST.

In this case, Centre will transfer the portion of IGST which has been utilised to pay SGST i.e. being Rs. 150/- lakh to the concerned State Government, i.e. Punjab.

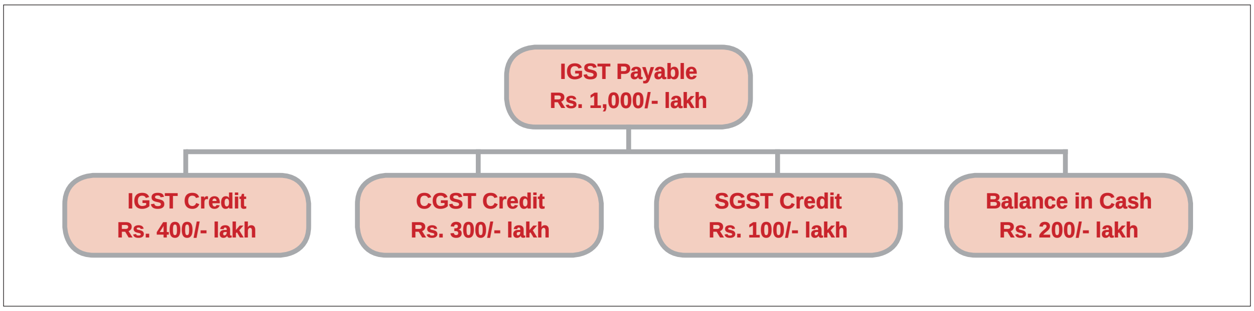
In this scenario, the role of Central agency will be very important as it will act as a clearing house. It will procure the information from the return filed and after verifying the details furnished to the Department, will settle the amounts of the respective Governments. This will in turn require a strong database management and system monitoring to be in place.

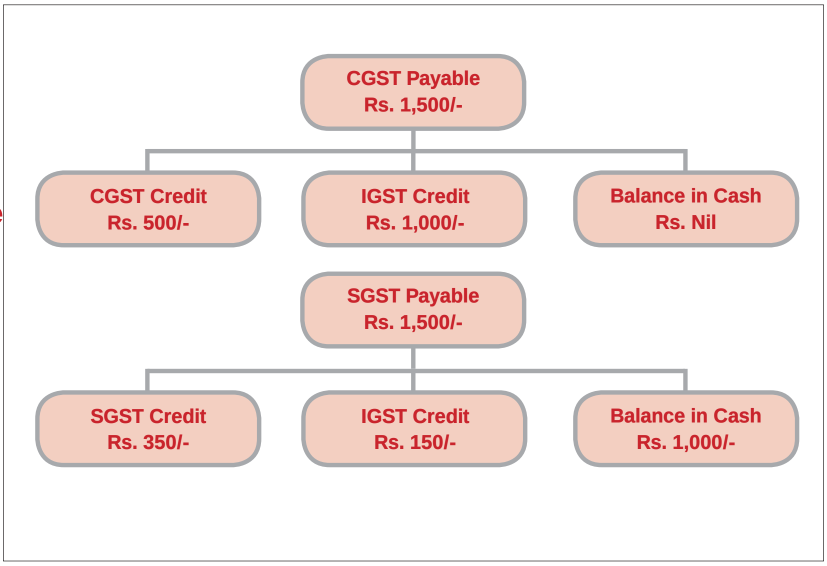
Taxes to be subsumed

Initially, the following Central taxes and State taxes are recommended to be subsumed:

Central Taxes:

i) Central Excise duty,
ii) Additional Excise duty,





"After the introduction of GST, all these effects of the multiple taxes will be removed as this will establish a continuous chain of set-off from the original producer's point and service provider's point up to the retailer's level, eliminating all cascading effects."

iii) The Excise duty levied under the Medicinal and Toiletries Preparation Act,
iv) Service tax,
v) Additional Custom duty commonly known as Counter vailing duty (CVD),
vi) Special Additional duty of Custom 4 per cent (SAD),
vii) Surcharges, and
viii) Cesses.

Sate taxes:

i) VAT/Sales tax,
ii) Entertainment tax (unless it is levied by the local bodies),
iii) Luxury tax,
iv) Taxes on Lottery, Betting and Gambling,
v) State Cesses and Surcharges in so far as they relate to supply of Goods and Services,
vi) Entry tax not in the lieu of Octroi,

Purchase tax

The states, which earn a huge amount of revenue from purchase tax, are opposing to subsume purchase tax in fear of losing their revenue while majority of other states have agreed to subsume the purchase tax as well in the GST regime. The main opposing states include food grain producing state as they collect good amount of tax thereon.

Alcoholic Products

Alcoholic beverages would be kept out of the preview of GST. This will continue to be governed by the existing tax laws applicable to them.

Tobacco Products

Tobacco products will be subject to GST with input tax credit (ITC).

Petroleum Products

Few petroleum products, such as Crude Motor Spirit (including ATF) and HSD, would be kept outside the GST as is the prevailing practice in India.

GST Rate Structure

In the 'First Discussion Paper' published by The Empowered Committee of State Finance Ministers suggested the following rate structures:

i) Lower rate for necessary items and items of basic importance,

ii) Standard rate for goods in general,

iii) Special rate for precious metals, and

iv) A list of exempted items.¬

Export will be zero-rated and similar benefits may be given to the special economic zone (SEZ). No benefit to the sales from an SEZ to domestic tariff area (DTA) will be allowed. Imports will be subjected to levy GST. The Paper is silent on the rate to be applied. Here, recommendations made by the 'Report of The Task Force of Goods and Service Tax', 13th Finance Commission published on December 15, 2009, is worth mentioning:

Chapter V- Rate of Tax Para 5.1

"The choice of a single or a multiple VAT rates is highly controversial. There is a belief that the public will accept a VAT type GST more easily if products consumed by low-income households are taxed at lower rates than products consumed by those that are better off. Administrators who actually implement the tax know that every additional rate will significantly increase cost and complexity. The cost of auditing the classification of exempt and taxable items and the applicable rates thereon at every stage of production, distribution and sale is also extremely high. Therefore, they support the elegance of a single rate (other than the zero rates)..."

"In this scenario, the role of Central agency will be very important as it will act as a clearing house. It will procure the information from the return filed and after verifying the details furnished to the Department, will settle the amounts of the respective Governments. This will in turn require a strong database management and system monitoring to be in place."

Chapter V- Rate of Tax Para 5.9

"In the light of the above, the Group recommends one positive rate, each for CGST and SGST on all goods and services. In addition, there should be a zero rate applicable to all goods and services exported out of the country."

Chapter V- Rate of Tax Para 5.79 point (i)

"The rate of CGST and SGST on all non-SIN goods should be fixed at the single rate of 5 percent and 7 percent, respectively......"

Thus, it seems that a GTS of 12 per cent, i.e. (5+7), will be applicable. However the rate of IGST has not been disclosed yet. IGST will defiantly have a higher rate though creditable. It will also create a credit crunch as at present the CST rate is only 2 per cent for inter-State transactions.

Composition and Compounding Schemes under GST

There will be a compounding cut-off at Rs. 50/- lakh of gross annual turn over and a floor rate of 0.5 per cent across the States. The scheme would also allow option for GST registration for dealers with turnover below the compounding cut-off.

Providing Threshold Exemption for GST

Unlike State VAT Act which provided different threshold limit below which VAT is not applicable, the GST will have a uniform threshold limit across the country below which no GST will be applicable:

- CGST in case of Goods- Rs. 1.5/- crore
- CGST in case of Services – ‘appropriately high’, i.e. not yet decided.
- SGST in case of both Goods and Services- Rs. 10/- lakh

“The choice of a single or a multiple VAT rates is highly controversial. There is a belief that the public will accept a VAT type GST more easily if products consumed by low-income households are taxed at lower rates than products consumed by those that are better off. Administrators who actually implement the tax know that every additional rate will significantly increase cost and complexity.”

GST Impact on Business Function - IT System/Process

GST would require appropriate changes in the IT systems, viz. Master Records and Transaction Records.

- System Output to be aligned with GST
  - Invoices
  - Purchase orders
  - Returns
  - MIS Reports
  - Declaration Forms
  - Stock Records
- Master data /templates to be aligned with GST
  - Supplier Registration No.
  - Customer Registration No.
  - Item code (Classification) master
  - Tax rates master
  - Credit eligibility master
  - Invoice/ Return / Declaration forms/ PO templates
  - MIS Reports templates
- Transaction data / processes to be aligned with GST
  - Tax & credit fields in transaction templates
  - Output tax computation modules
  - Tax credit computation modules
  - Records/ Reports generation modules
  - Inventory valuation module

The Government also has to address the issues like constitutional amendments, legislations and rules for administration of the CGST and the SGST, harmonious structure of the GST and the States’ autonomy in a federal framework, dispute resolution and advance ruling, need for compensation during implementation of the GST, proper law and module for computation and input tax credit. Also, the Government has to finalise the rate and which of the Central and State taxes finally to be subsumed under the new GST Act. Further, a proper IT infrastructure has to be building to interlink the data and easy accessibility of that. Issues like set-off, i.e. cross-utilization, of the Central and the State GST with each other will be permissible or not needs to be addressed explicitly. The frequency of filling a return also needs to be finalised.

GST is a welcoming concept which will be implemented ultimately. However, there are some major amendments to be done and infrastructural reforms to be carried out in order to achieve the desired objective of this system. More transparency needs to be brought in the proposed law and the Department has to clearly spell out all the related provisions. India can afford the delay and then the failure. It will defiantly bring parity in the tax mechanism. It will be regarded as a good step towards the advancement of our economy. ■

Export of Taxable Service – Paradigm Paralysis

In a case of the Microsoft India, the Custom Excise and Service Tax Appellate Tribunal (CESTAT), *prima facie,* found that product-support services and consulting services provided to end users of the foreign client located in India cannot be considered export of service. It observed that marketing support provided to the foreign principal as agent also does not qualify to be export. Customer care services and promotion of products and services of a client is a taxable service. The Central Board of Excise and Customs (CBEC) has a circular that if the services are provided to a person located outside India, such services shall be considered as export. However, the Tribunal ordered pre-deposit of a huge amount. The Tribunal observed that marketing support service may not be considered as export in spite of the circular that has generated considerable anxiety among service providers. Here, the author has put forth an analytical study on the export of services under the Indian law.

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Recently, in the case of Microsoft India (Pvt.) Limited, the Hon'ble CESTAT in a stay proceeding, *prima facie,* found that product support services and consulting services provided to end users of the foreign client located in India cannot be considered export of service. The Tribunal further observed that marketing support provided to the foreign principal as agent also does not qualify to be export. Customer care service and promotion of products and services of a client is a taxable service falling under taxable service categorised as Business Auxiliary Service. Microsoft India has entered into a market development agreement with overseas entity to maximise the markets for Microsoft products in India. Microsoft considered such income as export of service tax and did not pay any service tax on such income received, however, the revenue felt that the service cannot be considered as export of service as the services of marketing of Microsoft products rendered by Microsoft were performed and used in India for furtherance of business of overseas entity. Accordingly, the revenue issued demand notice on the appellate demanding service tax on such income.

In view of the Central Board of Excise and Customs (CBEC) circular stating that if the services are provided to a person located outside India, such services shall be considered as export, it was expected that the Microsoft's case will become infructuous. However, the Tribunal ordered pre-deposit of a huge amount. The Tribunal's observation that marketing support service may not be considered as export in spite of the circular has generated considerable anxiety among service providers. A detailed analysis will be made on the export of services under the Indian law.

Service tax is an indirect tax levied under the Chapter V of the Finance Act, 1994, on certain specified services provided for a consideration. The Apex Court has observed that service tax is a VAT which in turn is destination-based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer; it would, logically, be leviable only on services provided within the country.

It is a general rule that governments encourage exports of goods and services but don't export tax. Therefore, exports of goods and services are generally tax free and zero rated. As service tax is destination-based consumption tax, government has formulated rules for export and import of services. All taxable services under the Export Rules have been classified under three categories:

(i) Property-based Services: Services of general insurance, architect, interior decorator, real estate agent, etc., have been classified under this category. These services provided in relation to an immovable property situated outside India are considered as export.

(ii) Performance-based Services: Services of stockbroker, courier agency, custom house agent, practising chartered accountant, practising cost accountant, practising company secretary, commercial training or coaching etc., are classified under this category. These services if performed fully or partly outside India are considered as export.

(iii) Residual Services: All other services not specified in property based or performance based services have been classified under this category. In this category, *interalia,* services of management consultants, business auxiliary Services, business support services has been included. Further, services of general insurance, survey and map-making, auction of property and legal consultancy not related to immovable property have also been classified under this category. The Export Rules further provide that when the services are provided in relation to business or commerce, such services will be considered as export if the recipient is located outside India. In other cases, such services will be considered as export if the recipient is located outside India at the time of provision of such service.

Rule 3(2) of the Export Rules stipulates that taxable services shall be considered as export provided that:

1. Such service is provided from India and *used outside India;* and
2. Payment for such service provided outside India is received by the service provider in convertible foreign exchange (FOREX).

It is interesting to note that the Rule 3(2) of the Export Rules is applicable to all above three categories. Since it is export of services, there is no qualm that services should be provided from India or that such export should bring in FOREX. Contentious issue is when the services can be said to be

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'used outside India'. The service tax legislation has not expressly provided any criteria for determining basis on which a particular service can be construed as being 'used in India' or 'used outside India'. The word 'use' means to put into service or apply for a purpose, to employ, to avail oneself of, to practice, to seek or achieve an end by means of, to exploit, to take or consume, or, to partake of. It is easy to decide a place of consumption or exploitation of goods but difficult to say the same about the services.

Before, we analyse administrative and judicial interpretation, it will be appropriate to examine relevant provisions for import of service in India. The Import Rules also follows the categorisation of all taxable services under the Export Rules. As the Service tax is destination-based tax, taxable services received in India are taxed in the hands of the service recipient under the reverse charge mechanism as if he himself is the service provider. As per the Import Rules, Category (i) services are considered as received in India if provided in relation to an immovable property situated in India. Category (ii) services are considered as received in India if partly performed in India and Category (iii) services are considered as received in India, if such services as are received by a recipient located in India for use in relation to business or commerce.

It is worth emphasising here that under the Import rules, Category (iii) services intended for commercial/ business use are considered as received in India, if received by recipients located in India. The use of such services in India or outside India and/or location of the recipients at the time of provision of service is immaterial. Category (iii) services intended for personal use are not considered as received in India if received by Indian recipient located temporarily outside India. On comparing the above situation with the Export Rules, it may be noticed that Category (iii) services intended for personal use and not for commercial use are considered as export only if recipient, at the time of provision of service, is located outside India. It may be further noted that Category (iii) services intended for commercial use are considered as export if provided to a recipient located outside India without any precondition that recipient, at the time of provision of such service, should be located outside India.

In general, where a service is considered as imported, then in similar situations, such service should also be considered as export. Intention of the law maker is clear that for Category (i) services, location of immovable property and for Category (ii) services, location of performance is the relevant factor and similarly, for Category (iii) services relating to business or commerce, location of recipient is the relevant factor. However, it is trite to say that no provision of law should be read in such a way as to make another provision infructuous. We cannot ignore Rule 3(2) of the Export Rules stipulating about use of service outside India.

It is also relevant to note that the Section 80-O of the Income-tax Act (IT Act) permits deductions on certain income earned, *interalia*, from industrial,

“...under the Import rules, Category (iii) services intended for commercial/business use are considered as received in India, if received by recipients located in India. The use of such services in India or outside India and/or location of the recipients at the time of provision of service is immaterial. Category (iii) services intended for personal use are not considered as received in India if received by Indian recipient located temporarily outside India.”

commercial or scientific knowledge, experience or skill provided that same is made available for “use outside India”. The IT Act further provided that services rendered or agreed to be rendered outside India shall include services rendered from India but shall not include services rendered in India. Therefore, it seems that provision of service from India and use of such service outside India are relevant factors for claiming the deductions under the Section 80-O of the IT Act, as in the case of export of taxable services without payment of service tax also, service from India and used outside India are relevant factors. In both the cases, government grants appropriate incentive and relief on export of services to encourage export. Hence, in the present context, administrative and judicial interpretations of term for “use outside India” under the Section 80-O of the IT Act are also relevant.

Administrative Interpretation

The CBEC has clarified that for the services falling under the Category (iii), the relevant factor is the location of the service receiver and not the place of performance. In this context, the phrase ‘used outside India’ is to be interpreted to mean that the benefit of the service should accrue outside India. Thus, for the Category (iii) services, it is possible that export of service may take place even when all the relevant activities take place in India so long as the benefits of these services accrue outside India. In view of the above, the CBEC has clarified that service like:

1. Call centres engaged by foreign companies who attend to calls from customers or prospective customers from all around the world including from India;
2. Medical transcription where the case history of a patient as dictated by the doctor abroad is typed out in India and forwarded back to him;
3. Indian agents who undertake marketing in India of goods of a foreign seller. In this case, the agent undertakes all activities within India and receives commission for his services from foreign seller in convertible foreign exchange; and
4. Foreign financial institution desiring transfer of remittances to India, engaging an Indian organisation to dispatch such remittances to the receiver in India. For this, the foreign financial institution pays commission to the Indian organization in foreign exchange for the entire activity being undertaken in India would be the treated as export because the benefit of promotion of business of a foreign company is accruing outside India.

The CBDT has clarified that the benefit of the Section 80-O of the IT Act would be available as long as the technical and professional services are rendered from India and are received by a foreign Government or enterprise outside India, even if the foreign recipient of the services utilises the benefit of such services in India.

Judicial Interpretation under Service Tax

Commission Agent: The appellant rendered taxable services to the foreign principals by booking orders in India for their goods and received commission in the FOREX. The CESTAT held that the services rendered have been exported in terms of the Rule 3(2) of the Export Rules. In another case involving similar facts, the revenue argued that the service has been rendered in India and it is also used in India, therefore such services cannot be considered as export. The Tribunal held that it cannot be said that booking of the order indicate service being rendered in India and that because of the booking of the orders, the foreign company gets business, the services is also utilized abroad.

Product Support/Repair Service: Presently, the Tribunal is seized with the cases as to whether repair and maintenance service provided by the Appellant to the local customers in India on behalf of foreign manufacturers is taxable or not.

Judicial Interpretation under Income Tax

Manpower Consultants: The assessee was engaged in collection of information, particulars and/or bio-data of prospective candidates or employees and selection and recruitment of candidates in India for the foreign clients. Sometimes, the representative of the foreign employer also came to India to recruit the candidates on the basis of information provided by the assessee. The Bombay High Court found that entire service rendered by the assessee commences and stands completed in India itself and no part thereof extends outside the country. The court further held that the fact that the selected candidate goes abroad and works outside India has nothing to do with the assessee's work within India.

However, in another case, the assessee was engaged in executive search of top-level professionals in India for the foreign clients. The assessee provided evaluation report of various prospective candidates based on extensive research. The client relied on and used the advice and opinion of the assessee in making the final selection of the candidate. The assessee didn't at any stage, act as an agent of the client to carry out the client's bidding. The fee charged by the assessee from its client was not dependant on the finalisation of the recruitment. It was payable irrespective of the shortlisted candidate being recruited/not being recruited by the client. In this case, relying on a judgment of Delhi High Court, the ITAT held that such services are eligible for benefit of the Section 80-C. ITAT distinguished Eastman case (supra) on the ground that in that case, the assessee himself was, most of the time, recruiting people for the foreign clients.

Manpower Training: The assessee was training Nigerian personnel in India for deployment at Nigeria. The single judge of Karnataka High Court found that the Nigerian personnel were trained in India and, once they go out of the country, it is their skill that is used outside and it is not the skill of the assessee. Thus, single judge held that training of foreign personnel in India is not eligible for benefit under the Section 80-O. However, on appeal, the Division bench held that the imparting of training to the Nigerian personnel by the assessee would seem to more appropriately to be the imparting to them of information concerning industrial knowledge and skill. The information that is conveyed by the assessee to the Nigerian personnel is so conveyed for use in Nigeria in the manufacture and sale of products. Therefore, the division bench extended the benefit of the Section 80-O to the assessee.

“The appellant rendered taxable services to the foreign principals by booking orders in India for their goods and received commission in the FOREX. The CESTAT held that the services rendered have been exported in terms of the Rule 3(2) of the Export Rules. In another case involving similar facts, the revenue argued that the service has been rendered in India and it is also used in India, therefore such services cannot be considered as export.”

Commission Agent: The assessee company was providing buying services from India to various foreign principals and claimed benefit of the Section 80-O on such commissions. The assessee argued that the services rendered to the foreign principal no doubt originate in India but terminate outside India only when the foreign client is communicated the contents and factum of rendition of services and that even if the benefit of the services was utilized by the foreign principals to further their business interest in India, the services rendered by the assessee were to be regarded as rendered from India for use outside India. The Delhi High Court agreed with the assessee and extended the benefit of the Section 80-O. In another case, the assessee entered into an agreement with foreign client for providing consultancy services for the development of master facility and productivity study of the operations located in India. The court in this case also extended the benefit.

In another case, the assessee earned agency commission for promoting and concluding sales contracts in the territory of India in respect of machinery and equipments

“A shipping agent earned commission from the shipping line for providing information about the availability of export cargo to enable the foreign shipping line to program the ships travel touching the Indian coasts. The shipping agent also booked the cargo, collected payment from the shipper and after meeting the charges, other incidental expenses such as insurance and after deduction of the commission, the balance amount was sent to the ship owners in foreign exchange.”

for the leather industry manufactured by an Italian company. The assessee argued that he is under an obligation to send to the foreign enterprise a periodical report on the market situation, the state of competition and on customers whom the assessee undertakes to visit frequently and he used to provide the said foreign enterprise information concerning the commercial activities and for such information, he was paid the commission. In this case, the assessee failed to produce any materials to show that what was passed on to the foreign enterprise was the information concerning with commercial or technical or scientific aid, the Madras High Court declined to extend the benefit of the Section 80-O to the assessee.

Shipping Agent: A shipping agent earned commission from the shipping line for providing information about the availability of export cargo to enable the foreign shipping line to program the ships travel touching the Indian coasts. The shipping agent also booked the cargo, collected payment from the shipper and after meeting the charges, other incidental expenses such as insurance and after deduction of the commission, the balance amount was sent to the ship owners in foreign exchange. In such circumstances, the Chennai High Court held that the shipping agent was eligible for the deduction under the Section 80-O of the IT Act.

Legal Services: A legal practitioners specializing in cases involving intellectual property rights and disputes relating to patents, trademarks, copyrights and designs earned fee for filing and arguing cases on behalf of foreign clients in courts within the country. The assessee argued that if the beneficiary of any such services was located outside the country, the said services must necessarily be deemed to have been rendered outside India, no matter the provider of such service was doing so from India and in relation to proceedings pending in Indian Courts. The court held that the assessee was not eligible for the deduction.

Effect of the Circular

Law and procedure on the service tax are still evolving and the Export Rules are very recent, hence, there are not enough judicial precedents on the export of services. The CBEC circular has dealt with four specific services namely call centres, medical transcription, commission agents and services of transfer of remittances to India through an Indian agent. In the case of medical transcription, deliverables of the service provider is typed transcription which is sent to the doctor abroad. Call centre responds to foreign customers of the foreign clients. In this case, the services are used outside India to satisfy foreign client. The commission agent performs various tasks including market survey and identification of potential buyers, and negotiation and booking of indent/orders. The essence of service is information which is communicated to the foreign clients. In absence of such communication, the fruits of service can not be enjoyed. The foreign client uses the services outside India to plan export of goods to India, thus enjoying the fruits of service. The courts have also taken similar stand in the service tax as well as the Section 80-O as per various judicial interpretation cited above.

On the other hand, circular also extend benefit to call centres answering Indian customers of the foreign clients. In the case of services of transfer of remittances to India, the Indian agent is employed to deliver the money inside India. After delivery of money, the agent is required to send a proof of delivery (PoD) to the foreign principal. The essence of service in this case is delivery of money and sending PoD to the foreign client is a mere ancillary activity. In both cases, services have been used by the foreign clients inside India. Situation is akin to repair and maintenance service undertaken in India on behalf of foreign suppliers for goods sold in India, wherein the Samsung and Microsoft cases (supra) are already under litigation. In Microsoft, CESTAT observed: *“prima facie it appears that interpretation of law by the CBEC in its circulars dated 24-2-2009 runs counter to the ratio laid down by Apex Court in All India Fedn. of Tax Practitioners.* The Tribunal further observed that *“the circulars hold that location of service receiver is relevant factor to decide export of service under Rule 3(1)(iii) of Export of Services Rules, 2005. This does not rule out that when ultimate outcome of service is consumed in India, the service exhausts or extinct thereat without being capable of exported, losing its utility. Performance of service being decisive for taxation and to decide taxable event and incidence of tax, export of service pleaded by the* *appellant is inconceivable".*

Binding nature of circular: In view of the above observation, it becomes relevant to examine whether revenue can ignore the circular or initiate demand contrary to the clarifications. The Apex Court has laid down the following guideline:

1. *Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise a contention that it is contrary to a binding circular by the Board. When a circular remains in operation, the revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statue.*
2. *Despite the decision of this Court, the department cannot be permitted to take a stand contrary to the instructions issued by the Board.*

Hence, it appears that even Board circulars can be challenged by the Revenue. A closer scrutiny of the judgment reveals that circulars are binding on the revenue authorities, however, law declared by the Supreme Court is supreme law of the land under the Article 141 of the Constitution of India, 1950 and therefore, circulars cannot be given primacy over the decisions.

3. *A show cause notice or demands contrary to the existing circulars of the Board are ab initio bad.*
4. *It is not open to the revenue to advance argument or file an appeal contrary to the circulars.*

Recently, in the case of Ratan Melting, a four member bench of the Apex Court while explaining the judgment in Dhiren Chemical rendered by a five member bench held that to lay content with the circular would mean that the valuable right of challenge would be denied to the Revenue Authority. Hence, it appears that even Board circulars can be challenged by the Revenue. A closer scrutiny of the judgment reveals that circulars are binding on the revenue authorities, however, law declared by the Supreme Court is supreme law of the land under Article 141 of the Constitution of India, 1950 and therefore, circulars cannot be given primacy over the decisions.

In the case of Dhiren Chemicals, the Apex Court held: *"we need to make it clear that regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue."* In view of the above observation, Ratan Melting contended that once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular. The Court relying on the judgment of Kalyani Packaging 30 reiterated that in cases where benefits of exemption notification had already been granted, the Revenue would remain bound. However, in cases where the Revenue/ Department had already contended that the benefit of an exemption notification was not available, and the matter was sub judice before a court or a tribunal, the court or tribunal would not be bound to give effect to circulars of the Board in preference to a decision of the Constitution Bench of the Apex Court.

A harmonious reading of the above will lead to a conclusion that cases disputed prior to issue of the circulars will be decided by the Courts on merit even if subsequently circulars are issued by the Board. Further, revenue may deny a particular benefit on the plea that circular is not applicable in the given facts and in such cases, court will be deciding the matters on merit. Thus judicial precedents set under service tax as well as the IT Act are relevant for the purpose of export of service as the purpose of the Section 80-O and conditions precedent thereto are akin to the Export Rules.

Conclusion

In all the cases cited above, wherever there has been a flow of information, advice, reports, etc., to the foreign clients, indisputably, same has been held as export. A foreign client once deputed Indian consultants to study their plant located in India for the development of master facility and productivity study of the operations located in India. The consultants submitted their report to their client. Performance of service in India or subsequent use of such service was not considered as an impediment and service was deemed to be consumed once the foreign client decided to act thereon. In cases, where the service provide stepped in the shoes of the foreign client like recruiting personnel for the foreign client or defending the client in Indian courts, such services being executory in nature were, generally, held to be used in India. Hence, eligibility for export of the Category (iii) services performed in India will depend on facts of the each case and location of the service recipient will not be the sole criteria. ■

Limited Liability Partnership Act and Some Tax Issues

Section 20 of the Civil Procedure Limited Liability Partnership Act, 2008 (LLP Act) was passed by Parliament in December, 2008. Some of the sections of the LLP Act were made effective on 31.3.2009. Sections relating to conversion of existing partnership firms and private as well as public unlisted companies into LLP have been brought into force on 31.5.2009. LLP Rules, 2009, have also been made and they have now come into force. The Finance (No.2) Act, 2009, now recognises that LLP will be taxed in the same manner as a Partnership firm. The Finance Act, 2010 now grants certain exemptions to small unlisted companies converted into LLP. This article examines some of the important provisions of LLP Act and provisions of the Income-tax Act, 1961 relating to LLP.

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Formation of LLP

Any two or more persons can form a LLP for the purpose of carrying on any business, trade, profession, service or occupation. Even a limited company, a foreign company, a LLP, a foreign LLP or a non-resident can be a partner in LLP. Although there is no specific mention, a HUF represented by its Karta can be a partner of LLP. A Co-operative Society or a corporation sole cannot be a partner of LLP. It may be noted that at least one of the partners in LLP should be a resident in India. Every LLP shall have at least two designated partners who are individuals. At least one of such designated partners should be a resident individual. The restriction of 20 partners, which is applicable to a partnership firm, at present, shall not apply to LLP. In other words, LLP with unlimited number of partners can be formed for carrying on any business or profession.

The proposed partners of LLP will have to select a name and apply to Registrar of Companies (RoC) in Form No.1 with prescribed fees for approval of such name. The RoC will approve the name only if it is not the same or similar to the name of a limited company, a LLP or a firm. After getting the approval for a name, the partners will have to file the following Forms with RoC with the prescribed fees and follow the following procedure for incorporation of LLP.

(i) Form No. 2 - Form of Incorporation Document to be signed by all partners who have to join LLP as partners. Fees of Rs. 500/- to be paid if contribution of partners is Rs.1 lac or less.

(ii) Form No. 3 - Form for filing LLP Agreement. For this purpose LLP agreement will have to be executed. Fees to be paid is Rs.50/- (if contribution less than Rs.1 lac).

(iii) Form No. 4 - Notice of Appointment and cessation of Partners, Designated Partners, consent of partners / designated partners or any changes in their particulars to be filed by LLP with RoC in Form No. 4.

(iv) Form No. 6 - Particulars of Names and addresses of Partners or changes therein to be intimated by partners to LLP in Form No. 6.

(v) Form No. 7 – Application for allotment of Designated Partner Identification Number (DPIN).

(vi) Form No. 9 - Consent to act as Designated Partner to be filed by the partner with LLP in Form No. 9.

(vii) When the above forms are submitted to ROC, he will give certificate of Incorporation in Form No. 16. The LLP will be deemed to have been incorporated on that day. It can start its business or profession from that date.

Relationship of Partners

Upon Registration of LLP, the partners will have to enter into a partnership agreement in writing. This agreement will determine the mutual rights and duties of the partners and their rights and duties in relation to the LLP. Persons who have signed the Incorporation Document as Partners along with other persons can execute this Partnership Agreement. The information of this partnership agreement is required to be filed with RoC as stated above. Whenever there are changes in the terms and conditions of the partnership, LLP has to file the details of the change in Form No. 3 with RoC and pay the prescribed fees for the same. If the partnership agreement is executed before registration of LLP, the partners will have to ratify this agreement after incorporation of LLP and file the details in Form No. 3 with RoC.

If the partners do not execute the partnership agreement, the relationship between the partners will be governed by the First Schedule to the LLP Act. This schedule provides that mutual rights and duties of partners of LLP shall be determined as stated in this schedule in the absence of a written agreement. Even if there is a written agreement, but there is no specific mention about any of the following matters, such matters will be governed by the provisions of First Schedule to the LLP Act. Some of the provisions in this schedule are as under.

(i) All the partners of LLP are entitled to share equally in the capital, profits and losses of the LLP.

(ii) Every partner may take part in the management of the LLP.

(iii) No partner shall be entitled to remuneration for acting in the business or management of the LLP.

(iv) If a partner, without the consent of the LLP, carries on any business of the same nature as and competing with the LLP, he must account for and pay over to the LLP all profits made by him in that business.

(v) All disputes between the partners which cannot be resolved in terms of the LLP agreement shall be referred to Arbitration under the provisions of Arbitration and Conciliation Act, 1996.

Any person may join the LLP as a partner if all partners agree to admit him as a partner. Similarly, a partner will cease to be a partner on his death, retirement or on winding up of the company or LLP which is a partner. For this purpose, the partners will have to execute a fresh partnership agreement recording the terms and conditions of the partnership with revised constitution. Intimation about admission of new partners or retirement of a partner will have to be given to the RoC in Form No. 3 and Form No. 4 within 30 days.

The rights of a partner to share profits or losses of LLP are transferable either in whole or in part. Such transfer will not mean that the partner has ceased to be a partner or that the LLP is wound up. Such a transfer will not entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP. Similarly, the transferee will not get right to any information relating to the transactions of LLP.

The partnership agreement may provide for payment of interest on amount contributed by partner in the LLP or remuneration payable to the partners. Further, the agreement will have to provide the share of each partner in profits or losses of LLP. The partnership agreement should also provide for the voting rights of each partner. The conditions relating to payment of interest, remuneration or share in profits or losses can be changed by amendments in the partnership agreement. It may be noted that under the Income Tax Act,

"If the partners do not execute the partnership agreement, the relationship between the partners will be governed by the First Schedule to the LLP Act. This schedule provides that mutual rights and duties of partners of LLP shall be determined as stated in this schedule in the absence of a written agreement."

1961 the interest paid to a partner is allowable as deduction from business or professional income of LLP if it does not exceed 12 per cent p.a. of the contribution made by him. Similarly, the remuneration to working partners is also allowable if this does not exceed the following limits as provided in section 40 (b).

(i) On First Rs. 3,00,000 of the book profit or in the case of loss -	Rs. 1,50,000 or 90 per cent of Book profit whichever is more
(ii) On balance of book profit	60 per cent of book profit.

The above provisions of section 40 (b) of the Income-tax Act, 9161 are applicable to a LLP since its status under the Income tax Act is that of a 'Firm'.

Limited Liability of Partners

A partner of LLP is not personally liable, directly or indirectly, for any debts or obligations of LLP. However, a partner will be personally liable for any liability arising from his own wrongful act or omission. If such liability arises due to wrongful act or omission of any partner, the other partners will not be personally liable for the same. Each partner of LLP will have to contribute such amount for the business of the LLP as may be determined by the partnership agreement. The liability of each partner will be limited to the extent of the amount as specified in the partnership agreement.

Designated Partners

As stated earlier, at least two partners (Individuals) have to be appointed as Designated Partners. It is also necessary that at least one of the designated partner is a resident of India. Appointment of such partners will be governed by the partnership agreement. In the event of any vacancy due to death, retirement, or otherwise, LLP has to appoint another partner as a designated partner within 30 days. Particulars of designated partners or changes therein have to be filed with ROC in Form No.4. If LLP does not appoint at least two designated partners or if the number of designated partners fall below two, all partners shall be considered as designated partners. It may be noted that the designated partner has to give consent in writing to the LLP in the prescribed Form No.9 of his appointment. LLP has to file this consent letter with RoC in Form No.4 within 30 days of his appointment.

The following will be the obligations of Designated Partners.

(i) They are responsible, on behalf of LLP, for compliance of the provisions of LLP Act and Rules, including filing of any document, return, statement, etc as required by the Act and the Rules.

(ii) They are liable for all penalties imposed on the LLP for any contravention of LLP Act and the Rules.

(iii) Every Designated Partner will have to sign the annual financial statements and annual solvency statement.

(iv) Each Designated Partner will have to obtain a "Designated Partner Identification Number" (DPIN) in the same manner as a Director of a Company has to obtain Director Identification Number (DIN) under section 266 A to 266 G of the Companies Act, 1956.

"A partner of LLP is not personally liable, directly or indirectly, for any debts or obligations of LLP. However, a partner will be personally liable for any liability arising from his own wrongful act or omission. If such liability arises due to wrongful act or omission of any partner, the other partners will not be personally liable for the same. Each partner of LLP will have to contribute such amount for the business of the LLP as may be determined by the partnership agreement."

Accounts and Audit

LLP has to maintain such books of accounts as prescribed in Rule 24 of LLP Rules. These books should be retained for eight years. Such books may be maintained either on cash basis or accrual basis of accounting. It may be noted that the accounting year of each LLP will have to end on 31st March LLP cannot choose accounting year ending on any other date. The LLP has to prepare a Statement of Accounts and a Solvency Statement on or before 30th September each year. These statements have to be signed by the Designated Partners of LLP. The accounts of LLP have to be audited by a Chartered Accountant in accordance with Rule 24 of LLP Rules. Under this Rule, such audit is compulsory if the turnover of LLP exceeds Rs. 40 lacs or contribution of partners in LLP exceeds Rs. 25 lacs. Rule 24 provides for procedure for appointment, removal, resignation, remuneration, disqualification, change of auditors, etc. There is no specific form of Audit Report which is required to be given. ICAI will have to issue guidance in this respect. The particulars of statement of Accounts and Solvency Statement have to be filed with RoC in Form No. 8 on or before 30th October each year with the prescribed fees. LLP has to file an annual return with RoC on or before 30th May each year in Form No. 11 with the prescribed fees.

Conversion of Partnership Firm into LLP

Section 55 of the LLP Act provides that an existing Partnership Firm (Firm) can be converted into LLP by following the procedure laid down in the Second

Schedule. Briefly stated, this procedure is as under.

(i) A firm may apply to convert into a LLP if and only if the partners of the LLP to which the firm is to be converted, comprise all the partners of the firm and no one else.

(ii) The firm will have to comply with the provisions of the Second Schedule to the Act.

(iii) The firm will have to follow the procedure for getting the name of LLP approved and procedure for incorporation of LLP as stated above.

(iv) Further, the firm has to apply for conversion into LLP to RoC in Form No. 17 with prescribed fees. The firm has to attach documents listed in that Form.

(v) The RoC will then give certificate of conversion into LLP in Form No. 19.

(vi) Thereafter, the LLP will have to inform the Registrar of Firms about conversion of firm into LLP in Form No. 14. The Registrar of Firms will then remove the name of the firm from his records.

Conversion of a Limited Company into LLP

Section 56 of the LLP Act provides that an existing private limited company registered under the Companies Act can convert itself into LLP. For this purpose, it has to follow the procedure stated in the Third Schedule.

Section 57 of the LLP Act provides that an existing unlisted public company registered under the Companies Act, 1956 can convert itself into LLP. For this purpose, it has to follow the procedure stated in the Fourth Schedule.

Briefly stated, this procedure is as under.

(i) A company may apply for conversion into a LLP only if (a) there is no security interest in its assets subsisting or in force at the time of application and (b) all the shareholders of the company and no one else are going to be the partners of the LLP.

(ii) The company will have to comply with the provisions of the Third or Fourth Schedule to LLP Act as may be applicable.

(iii) The company will have to follow the procedure for getting the name of LLP approved and other procedure for incorporation of LLP as stated above.

(iv) The company has to apply for such conversion to RoC in Form No. 18, with prescribed fees. The company has to attach documents listed in that Form.

(v) The RoC will then give certificate of conversion of company into LLP in Form No. 19.

(vi) Thereafter, the LLP will have to inform the RoC about conversion of the company into LLP in Form No. 14. The RoC shall then remove the name of the company from his records.

Effect of conversion of Firm or Company into LLP

If an existing partnership firm or a company is converted into a LLP and registered as such, as stated above, under sections 55 to 57 of LLP Act, the effect of such registration shall be as under. This is provided in Second, Third and Fourth Schedules.

(i) On and from the date of registration specified in the certificate of registration -

(a) all tangible and intangible properties vested in the firm/company, all assets, interests, rights, privileges, liabilities, obligations, relating to the firm/company and the whole of the undertaking of the firm/company shall be transferred and shall vest in the LLP without further assurance, act or deed, and

> **"LLP has to maintain such books of accounts as prescribed in Rule 24 of LLP Rules. These books should be retained for eight years. Such books may be maintained either on cash basis or accrual basis of accounting. It may be noted that the accounting year of each LLP will have to end on 31st March. LLP cannot choose accounting year ending on any other date."**

(b) the firm/company shall be deemed to be dissolved and removed from the records of the Registrar of Firms/Registrar of Companies.

(ii) If any of the above properties is registered with any authority, the LLP shall, as soon as practicable, after the date of registration, take all necessary steps as required by the relevant authority to notify the authority of the conversion and of the particulars of the LLP in such medium and form as the authority may specify.

(iii) All proceedings by or against the firm/company which are pending in any court, tribunal or any authority on the date of registration shall be continued, completed and enforced by or against the LLP.

(iv) Any conviction, ruling, order or judgement of any court, tribunal or other authority in favour of or against the firm/company shall be enforced by or against the LLP.

(v) All deeds, contracts, schemes, bonds, agreements, applications, instruments and arrangements subsisting, immediately before the date of registration of LLP, relating to the firm/company or to which the firm/company is a party, shall continue to be in force on or after that date as if they relate to

> **The Finance (No. 2) Act, 2009, provides for taxation of LLP. In the definition of the term "Firm" and "Partnership" in section 2 (23) of the Income-tax Act, it is stated that the term "Firm" or "Partnership" will include any LLP w.e.f. 1.4.2009. Further, the definition of a "Partner" will include a partner of LLP. Therefore, all the provisions for taxation of "Firm" will apply to LLP. The tax will be payable by the LLP at 30 per cent plus Education Cess.**

the LLP and shall be enforceable by or against the LLP as if the LLP was named therein or was a party thereto instead of the firm/ company.

(vi) The amount of paid-up share capital of the company can be credited to the capital account of each partner in proportion to his/her shareholding in the company on the date of conversion into LLP.

(vii) The credit balances of General Reserve and other reserves can be retained by LLP or transferred to the Credit of capital or current account of each equity shareholder in the proportion of his/her shareholding. However, if the company is claiming benefit of section 47 (xiiib) of the Income-tax Act, 1961, these reserves will have to be retained by the LLP for at least 3 years from the date of such conversion. Thereafter, it will be possible for the LLP to transfer the same to the accounts of the partners.

From the above discussion, it will be noticed that a partnership firm, with unlimited liability of partners, can now be converted into limited liability partnership (LLP) by following the above procedure. Similarly, a private limited company or a closely held unlisted public company can also be converted into a LLP by following the procedure stated above. Such partnership firms and companies, after such conversion, will not be required to comply with the provisions of the Partnership Act or the Companies Act.

Taxation of LLP

The Finance (No. 2) Act, 2009, provides for taxation of LLP. In the definition of the term "Firm" and "Partnership" in section 2 (23) of the Income-tax Act, it is stated that the term "Firm" or "Partnership" will include any LLP w.e.f. 1.4.2009. Further, the definition of a "Partner" will include a partner of LLP. Therefore, all the provisions for taxation of "Firm" will apply to LLP. The tax will be payable by the LLP at 30 per cent plus Education Cess. No surcharge will be payable by the LLP from A.Y. 2010 - 11. In view of this provision, no Minimum Alternate Tax (MAT) will be payable by the LLP. Similarly, no dividend distribution tax will be payable by the LLP. As discussed above, the remuneration paid to working partners and interest to partners, subject to the limits prescribed in section 40 (b) will be allowed in computing taxable income of the LLP.

The return of income of LLP will have to be signed by a designated partner of LLP. If for some reason he is not able to sign the return, any partner can sign. New section 167 C is added to provide that each partner of LLP is jointly and severally liable to pay tax due from the LLP if it cannot be recovered from the LLP. If such partner proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP, he will not be liable to discharge this liability. Similar provision exists in section 188 A which applies to partners of a "Firm". It may be noted that to this extent liability of partners of LLP is unlimited.

Taxation on Conversion of Firm into LLP

The Explanatory Memorandum attached to the Finance (No. 2), Bill, 2009, stated that since a partnership firm and LLP is being treated as equivalent, the conversion from partnership to LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 will apply and capital gains tax will be payable. It may be noted that there is no specific provision made in the Income-tax Act, 1961 for granting exemption when conversion of a partnership firm is made into LLP and all assets and liabilities of the firm are transferred to LLP. Section 47 provides for exemption from capital gains when a proprietary concern or firm is converted into limited company if certain conditions are complied with. No similar exemption is provided on conversion of firm into LLP.

Limited Exemption on Conversion of a Company into LLP

The Finance Act, 2010, has inserted a new Clause (xiiib) in section 47 of the Income-tax Act, 1961 and amended certain other sections granting limited exemption from taxation on conversion of a private or unlisted public company. These provisions are as under.

(i) New Section 47 (xiiib)

New section 47 (xiiib) has been inserted w.e.f. A.Y. 2011 – 12 which provides that when a private or public unlisted company is converted into LLP, exemption from capital gain on such conversion will be granted. Similarly, exemption from capital gain will also be granted to a shareholder when his capital account is credited on cancellation of shares held by him on conversion of the company into LLP. There are, however, certain conditions for grant of such exemption. These conditions are as under.

(a) All the assets and liabilities of the company should be transferred to LLP.

(b) All the shareholders of the company should become partners of the LLP and their contribution as well as profit sharing ratio in the LLP should be in the same proportion in which they held shares in the company.

(c) Shareholders of the company should not receive any consideration or benefit other than by way of share of profit and capital contribution in LLP.

(d) The aggregate profit sharing ratio to the extent of 50 per cent or more of the shareholders of the company should continue in LLP for a period of 5 years.

(e) The total sales, turnover or gross receipts in the business of the company in any of the three preceeding years should not exceed Rs. 60 lacs.

(f) The partners of LLP should not withdraw the accumulated profits (including Reserves) of the company for a period of 3 years after the conversion.

New section 47 (xiiib) has been inserted w.e.f. A.Y. 2011 – 12 which provides that when a private or public unlisted company is converted into LLP, exemption from capital gain on such conversion will be granted. Similarly, exemption from capital gain will also be granted to a shareholder when his capital account is credited on cancellation of shares held by him on conversion of the company into LLP.

(ii) Section 47 A : This section is amended w.e.f. A.Y. 2011 - 12 to provide that, if any of the above conditions of section 47 (xiiib) are violated during the specified period of 3 years or 5 years (as may be applicable), the tax on capital gain exempted u/s 47 (xiiib) will be payable in the year in which any of the conditions are violated. This tax will be as under.

(a) In the case of transfer of assets and liabilities of the company to LLP, the tax on capital gain will be payable by the LLP, and

(b) In the case of conversion of shares held in the company to capital account of partners in the LLP, the tax on capital gain will be payable by the shareholder.

(iii) Section 32 : This section is amended to provide that the aggregate depreciation allowable to the converted company and the LLP shall not exceed the total depreciation allowable in the year of conversion. Such depreciation shall be apportioned between the two entities in the ratio of number of days for which the assets are used by them.

(iv) Section 35 DDA : The benefit of amortization for VRS payments u/s 35 DDA will be available to LLP for the unexpired period.

(v) Section 43 : It is now provided in section 43 (6) that, if the company is having depreciable assets and such a company is converted into LLP, the WDV of Block of Assets in the case of LLP will be the same as in the case of the company. Further, actual cost of the capital asset u/s 43 (1) in the hands of LLP shall be taken as 'Nil' in case deduction of the entire cost is allowed to the converted company u/s 35 AD.

(vi) Section 49 : Under section 42 of the LLP Act, share of a partner of LLP is a transferable right i.e. capital asset. It is now provided u/s 49 (2AAA) that the cost of such right of the partner in the LLP shall be the same as the cost of acquisition to him of the shares of the converted company.

(vii) Section 72 A : On conversion of a company into LLP, the accumulated losses and unabsorbed depreciation in the case of the company will be allowed to be carried forwarded in the hands of the LLP and will be set off against its income. However, if any of the conditions of section 47 (xiiib) are violated in any year, the benefit allowed by way of carry forward and set off of losses and unabsorbed depreciation will be deemed to have been wrongly allowed and will become taxable in that year.

(viii) Section 115 JAA : In the case of the company, if it has paid tax on book profits u/s 115 JA / 115 JB and the company is entitled to the benefit of carry forward of MAT Credit u/s 115 JAA, it is now provided that this MAT Credit will not be available to the LLP on such conversion of the company into LLP.

(ix) From reading the above conditions, it is evident that the condition No.(e) in (i) above is very harsh in as much as the benefit of conversion of a company will not be available to all private companies and unlisted public companies. The benefit of the section can be enjoyed only by small companies. When the LLP Act was passed this was never the intention of Parliament that a company having turnover or gross receipt exceeding Rs. 60 lacs will be made liable to pay tax under the Income-tax Act, 1961 if it is converted into LLP. Sections 56 and 57 read with Schedules 3 and 4 of the LLP Act already provide that if such companies have taken secured loans, they cannot be converted into LLP. This ensures that large sized companies are not converted into LLP. By introducing a cap on the sales, turnover or gross receipts, the purpose of the LLP Act to encourage conversion of existing companies into LLP will be defeated.

Conclusion

The concept of LLP is being recognised in our country after a long debate over the past some years. Apart from formation of new LLP, the LLP Act also provides for conversion of existing partnership firms, private and public unlisted companies into LLP. We should welcome it. LLP structure will enable small and medium size organisations and family partnerships to expand as they will be able to admit outsiders with capital or skill as partners. Since the financial liability will be limited, there will be no danger of promoter partners being saddled with the personal liability of outside partners. Further, there will be no danger of stoppage of business due to non-co-operative attitude of outside partners as LLP is a legal entity with common seal and perpetual succession. One advantage of this structure, in preference to a limited company, is that the partners will have flexibility in the matter of internal working and at the same time their liability will be limited and they will not have to comply with the complicated provisions of Companies Act, 1956. Any outsider cannot attach the personal property of the partners for debts due by LLP. He can only proceed against the LLP and recover his dues from the assets of LLP.

It appears that the Government has only made a half hearted attempt while granting limited tax exemption on conversion of a company into LLP. It has not given due consideration to the following issues.

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(i) Exemption on conversion of a partnership firm into LLP is not specifically provided.

(ii) By putting a cap of Rs. 60 lacs on total sales, turnover or gross receipts, the benefit of such conversion is restricted to very tiny companies.

(iii) The benefit of exemption/ deduction available to the company u/s 10 A, 10 AA, 10 B, 10 C, 35 A, 35 AB, 35 D, 35 DD, 80 IA, 80 IB, 80 IC, 80 ID, 80 IE etc. for the unexpired period has not been granted to the LLP on conversion.

(iv) Section 56(2)(viia) of the Income-tax Act, 1961 provides that if a firm or a closely held Company receives shares of another closely held Company, the difference between the fair market value of such shares and the cost in the hands of the recipient firm or Company, will be deemed to be income from other sources of the recipient. Provision is made to exempt certain transfers under a scheme of amalgamation or demerger u/s 47(via), (vic), (vicb), (vid) or (vii) from the provisions of this section. No exemption is granted to transfer of shares at book value in closely held Company held by the transferor when a Company is converted into LLP u/s 47 (xiiib), or a firm is converted into LLP or a firm or proprietary concern is converted into a Company u/s 47(xiii) and (xiv), or a holding Company transfers to 100 per cent subsidiary or vice a versa u/s 47(iv) or (v) or on transfer in amalgamation or in demerger u/s 47 (vi) and (vib).

The question of levy of stamp duty on transfer of assets of the company to the LLP has also not been considered. This is an issue which will have to be considered by the State Governments. This is possible only if specific recommendation is made by the Central Government for grant of exemption from stamp duty.

Unless these and several other related issues are amicably resolved, the new provisions for LLP will not become popular. Therefore, a comprehensive study about the various issues arising from conversion of a firm or company into LLP should be made by the Central Government as well as by the State Governments if they really want the alternate business model of LLP to become more popular. ■

Of Opting Court Jurisdiction

Section 20 of the Civil Procedure Code 1908 deals with the place of instituting suits or other actions. Ordinarily a suit or legal proceeding shall be filed where defendant resides or carries on business or where the cause of action wholly or in part arises. However, an exception is carved out when there are two competent courts and the jurisdiction is to be invested in a particular court. This could be done by means of a contract. This concept of vesting and divesting of court's jurisdiction has been the subject matter of this article.

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Section 20 of the Civil Procedure Code 1908 deals with the place of instituting suits or other actions. Ordinarily a suit or legal proceeding shall be filed where defendant resides or carries on business or where the cause of action wholly or in part arises. However, an exception is carved out when there are two competent courts and the jurisdiction is to be invested in a particular court. This could be done by means of a contract. However, absolute exclusion would be void, but where more than one court has jurisdiction, agreement to submit to one, to the exclusion of the other is valid. It follows that where there may be two or more competent courts which can entertain a suit consequent upon part of the cause of action having arisen, then in that event if the parties to the contract agreed to vest jurisdiction in one such court, this arrangement would be valid and this can not be construed as parties contracting against the statute. It looks the judiciary in the instant matter adopted operational flexibility in construing the provision with a view to moderating it in tune with the spirit of the times.

In mercantile law and practice, corporates and the like do make contracts agreements, memorandum of understandings and other instruments to transact their day today business and similarly disputes do arise touching the interpretation of some clauses in such documents more particularly the jurisdictional tangle for prosecuting legal remedies. Very often we come across bills receipts, etc. wherein it is written and mentioned "subject to the jurisdiction of a particular place."

Section 20 of the Civil Procedure Code stipulates the places where the suits, etc., are to be instituted. Besides the residence of defendants, the suit is to be instituted in a court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. This provision is the basic legal tenet on the place of filing the legal proceedings.

Then, Section 28 of the Contract Act speaks of those agreements and contracts which would be void if the same restricts or extinguishes the rights of a particular party. Within the parameters of these two provisions I shall now examine the ticklish position about vesting or divesting the jurisdiction of a particular forum vis-à-vis the contracts and agreements referred to herein above.

As we all know our Supreme Court has the rare reputation of giving verdicts which display a unique jurisprudential vision when the vexed question becomes the subject matter of such a verdict. In such situations our Apex Court allows uncomplainingly precious time to unfold the real import of the knotty question. It has so done in deciding the ouster of court jurisdiction in the event of disputes and difference about the interpretation of various clauses of agreement or contract as involved. The poser is definitely a complex one but it has been made easy in the enumerated situations.

The obvious legal position is that so long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under law, it cannot be said that the parties have by their contract ousted the jurisdiction of the court. Where there may be two or more competent courts which could entertain a suit or other action consequent upon a part of the cause of action having arisen there-within. In such situation if the parties to the contract agreed to vest jurisdiction in one such court to try the dispute which might arise as between themselves, the agreement would be valid. However, it is to be noted that such contract/ agreement is clear, unambiguous and explicit. It would, therefore, follow that vesting jurisdiction in one of the two concurrent courts would not be hit by Sections 23 and 28 of the Contract Act and it would not be termed as contracting against the statute. This has been the initial enunciation of the law as per *A.B.C. Laminart Pvt. Ltd. & another vs. A.P. Agencies, Salem* (1989) 2 SCC 163, of the case of Supreme Court and very lately in the case of *Balaji Coke Industry Private Ltd. vs. MAA Bagwati Coke Gujrat Pvt. Ltd.* (2009) 9 SCC 403 this line of argument has been confirmed and endorsed. This line of reasoning has been followed henceforth. However, it has been cautioned that exclusionary words like "exclusive", "alone" or "only" should only be made use of when contingencies so warrant.

The enunciated position now boils down to this that where there might be two or more competent courts which could entertain a suit consequent upon a part of cause of action having arisen therein and if the parties to the contract agreed to vest jurisdiction in one of such courts to try any dispute which might arise between themselves, the agreement would be valid. However, in spite of this position there might arise a problem when vesting jurisdiction in one of such courts and ousting jurisdiction of the other without prefixes like "alone" "only" and "exclusive" would be that ousted courts shall have concurrent jurisdiction on the logic of a part of cause of action having arisen in that courts jurisdiction. So notwithstanding the mutual agreement could there be two jurisdictions since the arising of the part of jurisdiction factum. This aspect of question has often confused the courts because of one view being that the parties to the agreement had agreed to a particular forum they could no longer resile from the said position and contend that other courts where part of cause of action may have arisen, would also have jurisdiction to entertain a suit or other proceedings. The other view has been that if by the said agreement the rightful jurisdiction of a court was sought to be ousted and the court was vested with the jurisdiction to entertain a suit, which it did not have, the same would be contrary to the provisions of Section 28 of the Contract Act, 1872 being contrary to the Public Policy. However, the position has been elaborately dealt with in the case of *ABC Laminort (P) Ltd. vs., AP Agency and, therefore, nothing is to be added or substracted as on day.*

However, this article would be incomplete if some light is not thrown on the "endorsement" theory. This matter came up in *R.S.D.V. Finance Co. Pvt. Ltd. vs. Shree Vallabh Glass Works Ltd.* (1993) 2 SCC 130 where an endorsement subject to "Anand Gujrat jurisdiction" was relied upon to contend that only the courts in Anand would have the jurisdiction to entertain any dispute relating to such jurisdiction and the suit filed in Bombay on the ground that part of the course of action arose in Bombay was not maintainable. In this case it was held that since apart from the endorsement on the deposit receipt, there was no formal agreement between the parties, the same endorsement would not divest the courts in Bombay of their jurisdiction to entertain the suit.

"On divesting and vesting of jurisdiction in a particular court when two courts could have such jurisdiction, has been a long legal journey and to me, it appears that still things have not reached final shape and courts could still conceive certain eventualities which have not been finally defused. However, as on today parties are free to agree to vest jurisdiction in one court to the exclusion of the other when such jurisdiction is available to that court also and to be on safer side there won't be any harm if such jurisdiction is qualified by the word "alone", "only" and "exclusive"."

On divesting and vesting of jurisdiction in a particular court when two courts could have such jurisdiction, has been a long legal journey and to me, it appears that still things have not reached final shape and courts could still conceive certain eventualities which have not been finally defused. However, as on today parties are free to agree to vest jurisdiction in one court to the exclusion of the other when such jurisdiction is available to that court also and to be on safer side there won't be any harm if such jurisdiction is qualified by the word "alone", "only" and "exclusive". It is also advised that such an agreement should have some legal craftsmanship to be an infallible document. The law refuses to be static and it marches with the time still once upon crystallised position should be accepted and acted upon.■

Setting up a Website For a CA Firm

Visibility is important in any profession. When this feature can be provided through virtual presence the reach extends beyond the geographical location of the firm. Depending on the area of focus, prospective clients looking for services of a specific kind or in a specific geographical location, find it easier to get to the service provider straight away. Like in all other aspects of the profession of Chartered Accountancy, providing this visibility to clients through the Internet is based on a set of guidelines provided by the Institute of Chartered Accountants of India (ICAI). A website that is set up for a chartered accountancy firm must be developed within this framework.

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Why Internet Presence?

Online presence assumes significance in a global environment where service seekers be they corporate or individual, could be browsing the net for help from anywhere. For instance, an Indian software engineer working on a project in Seattle "googles" to check for professional advice when he wants to buy or sell a property in his home town. He could search by typing "CA firm in Pune Capital Gains". He tries to contact the few that come up in the search results. When his online pursuits do not produce satisfactory results, he switches to other channels like going through a known network which might invariably offer fewer choices. Other cases may include prospective clients looking for professional advice regarding a new or existing business in India, or a foreign professional firm looking for a tie up with a local firm. Gauging the level of professionalism of a firm becomes easier when the first online encounter with the firm enables the web site visitor to do some homework about the firm's areas of specialisation.

From an operational point of view, chartered accountant firms could consider a website as a medium of communication with clients. Putting out announcements through virtual bulletin boards, reminding clients about important dates and educating them through relevant articles helps the firm save immense time. The absence of such a medium would mean individual meetings or calls to each client and repeating the message as many times as the number of clients.

Significance of Online Presence

Many chartered accountants from rural areas and small towns are forced to migrate to cities as the opportunities in their place of origin are limited. Women are sometimes forced to be on the move with their spouses on global assignments, causing a break in their careers. In other situations, they are unable to move out of their homes due to family responsibilities although they do find a few hours to spare in pursuit of their profession. Part-time jobs are yet to catch up in India like in the rest of the world. As the current members of the profession grow older, they are less likely to find time for a full-time profession and be mobile.

For all professionals caught up is such a situation, the Internet offers special and hitherto unheard of career options. A website can enable them to reach out to existing clients and develop new ones with some careful planning.

Institute Guidelines on Website

The Institute has provided guidelines regarding posting of particulars on a website by Chartered Accountants (added in year 2001 and revised subsequently in the years 2003 and 2004) under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. As per this clause members are prohibited from soliciting clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means. This applies to information placed on a website as well. The details in the Website should be so designed that it does not amount to soliciting clients or professional work or advertisement of professional attainments or services. In case any content or technical feature of the website is against the professional Code of Conduct and Ethics as well as the restrictions contained in the schedules to the Chartered Accountants Act, 1949 or against the guidelines or directions issued by ICAI from time to time, appropriate action will be initiated by the ICAI in terms of its disciplinary mechanism either suo-moto or on a complaint received by it. Given below is the gist of these guidelines.

A. Website permitted by the Guideline

1. Chartered Accountants and Chartered Accountants' Firms would be free to create their own Website subject to the overall guidelines laid down by the Council.

2. There is no restriction on the layout of the website or usage of colors therein.

3. Individual members are also permitted to have their web pages with their trade name or individual name.

4. The website address can be different from that of the trade name of the firm or individual, but must be very close to the same. It should not amount to solicitation of work. For example, a website address such as www.bestindiantaxadvisor.com/ is not acceptable. In case of difficulty, the same will be addressed by the ICAI.

5. Individuals and firms must ensure their website is based on "pull" model. This means that if a visitor wishes to contact the firm or individual after visiting the website, he is able to do so based on a specific information "pull" request.

6. The link to the website may be used on the professional stationery of the individual or firm that has put up the website.

7. Secrecy and confidentiality of client information must be maintained while exchanging information through the website.

8. For communication with website visitors, the following features may be used

a. Bulletin board
b. Chat room to communicate with clients provided confidentiality protocol is observed
c. Email to respond to client requests

B. Website not permitted by the Guideline

1. The web content cannot be circulated by either e-mail or any other technique except on the basis of a specific "pull" request.

2. No advertisement, material, information or solicitation of any type through any medium is allowed to be circulated in any form to lead visitors to the website.

3. Individuals and firms must ensure their website does not run on a "push" model.

4. Names of clients and fee charged cannot be displayed on the website.

5. A custom-designed logo may not be used on the website.

6. No banners or advertisements may be placed on the website.

"The Institute has provided guidelines regarding posting of particulars on a website by Chartered Accountants (added in year 2001 and revised subsequently in the years 2003 and 2004) under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949. As per this clause members are prohibited from soliciting clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means. This applies to information placed on a website as well. The details in the Website should be so designed that it does not amount to soliciting clients or professional work or advertisement of professional attainments or services."

C. Website Content as per the Guideline

1. The presentation of the website and its content should be befitting the profession of a Chartered Accountant. Content that is unbecoming of a Chartered Accountant should not be put up.

2. Contact details of the individual members/firms that may be published on their website:

- Member/Trade/Firm name.
- Year of establishment.
- Member/Firm's Address (both Head Office and Branches)
- Tel. No(s)
- Fax No(s)
- E-mail ID(s)

3. Display of passport size photograph of a partner on the web pages is allowed

4. Details about the firm

a. Partners

Partner's Name	Year of Qualification	Other Qualification(s)	Contact Details	Area of Direct Experience
Office- Direct Residence- Mobile Email				

b. Employees

Employee's Name	Designation	Professional Qualification/ Other	Area of Direct Experience

c. Job vacancies for the Chartered Accountant/firm of Chartered Accountants (including articleship)

d. Information that may be displayed only on a specific "pull" request by the website visitor:

i. Direct area of experience of individual/partners
ii. Direct area of experience of employees
iii. No. of articled clerks
iv. Nature of services rendered
v. Nature of assignments handled

5. Online advice may be provided to clients whether for free or on payment basis

6. Links: The website may provide links to the following:

a. Websites of ICAI and/or the websites of the regional, branch or chapter offices of ICAI or to those of the professional bodies within India or overseas, with which ICAI is associated
b. Websites of governments, government departments and bodies and regulatory authorities
c. Professional bodies related to the profession

7. Updating website information- The website must display the date up to which the information therein has been updated. The information must not be at material variance from that maintained in the records of the Institute.

8. Conditional permission for promoting the website on the Internet

1. Listing the site on a search engine is permitted
2. The search terms must be restricted to the following: "Chartered Accountants" or "CA" or "Indian CA", "Indian CPA", "Indian Chartered Accountant" or any permutation or combination related thereto.

Search terms are included in "meta" tags (terms used by the website to describe its content in a manner that can be uniformly interpreted by search engines) in each web page of a website. For instance the website of the Institute has "ICAI" as the content against the "meta" tags named "title", "keywords" and "description" as shown below:

<meta name="title" content="ICAI">
<meta name="keywords" content="ICAI">
<meta name="description" content="ICAI">

D. Other activities relating to information published on the Internet

1. Members are allowed to get their names/ names of their firms listed on databases set up chartered accountants, chambers of commerce or such other professional bodies, whether with or without payment.

2. There are several websites set up by non-CA firms that offer financial advisory services and information. Chartered accountants are requested to offer consultation or expert opinions on such websites. The guideline requires CAs to observe the following protocol while offering these services to such websites:

a. The fact that the person offering the service to the website is a Chartered Accountant may be mentioned.
b. The contact details of the CA(s) must not be published on such website.
c. The achievements and professional status of the CA(s) must not be published.
d. The name of the Chartered Accountants' firm with the suffix "Chartered Accountants" is not permitted.

Setting Up a Website - Broad Overview

Based on the above discussion regarding the Institute guideline, we look into the general approach to the task of setting up a website. To begin with, the firm must be clear about the objective with which the website is to be set up. The objective decides the nature of information that finds place on the site and the expectations of the target audience receiving this information.

1. Web Content

- *Preparing the content- Search Engine Optimisation*

There are millions of websites in the world today. They are developed with the intention of getting their message across to the target audience. At the other end are the seekers of this information. Search engines like "Google" and "Yahoo" have become the key channels through which the information is sought by the seeker and flows from the provider. When a website visitor is looking for specific information he uses search terms related to the information called "keywords". The search engine searches through the page title, meta tags of a website and webpage content to find suitable matches. When the match is successful, the link to the website is displayed. Hence it is essential to develop the web content in a manner that it abides by the rules of the Institute, provides correct technical information and uses language that is search engine optimised.

- *What should the content be?*

The best policy for a firm to follow is to talk about itself and its areas of work rather than presenting a general view about the profession and everything related to it. A firm that engages mainly in management consultancy in the area of mergers and acquisitions could be having articles about implications of mergers, links to latest laws relating to such mergers or sharing details of workshops that provide insight into this area. The target audience for its website could include CFOs, industry experts and companies considering a merger or acquisition. On the other hand, a firm that engages in service tax related matters might consider placing on its website a list of services that attract service tax, relevant forms, reminders on the bulletin board with respect to compliance dates

"The best policy for a firm to follow is to talk about itself and its areas of work rather than presenting a general view about the profession and everything related to it. A firm that engages mainly in management consultancy in the area of mergers and acquisitions could be having articles about implications of mergers, links to latest laws relating to such mergers or sharing details of workshops that provide insight into this area. The target audience for its website could include CFOs, industry experts and companies considering a merger or acquisition."

and case laws regarding commonly misinterpreted sections of the Act. The target audience in this case could be accounts and taxation managers of companies, domain experts and those aspiring to make a career in this area.

Thus, talking about an area that one has handled for years becomes very easy. Since the firm knows the pulse of the client, it knows what the client would ask for and how he would frame his questions when he comes in for advice and is able to convert this knowledge into search engine optimised content. Another aspect to be borne in mind is that the tone of this content must be formal and professional.

2. Considerations for design and development

The firm must provide some basic information in terms of guidelines to the website designer and developer. This is a combination of the personal preferences regarding content and guidelines provided by the Institute as outlined above.

- *General presentation of the content*

  Any web content can be broadly divided into three main categories: 1. Home page (Bird's eye view of what the site is about), 2. Product/Service/Information (Main purpose of the website) and 3. The people running the website and their contact details

- *Presentation of the content is achieved by:*

  1. A well thought thorough lay out to make navigation and information search easy
  2. Type and size of font
  3. Choice of colors
  4. Relevant use of images
  5. Choice of multimedia if and where required

It is important to note that to a large extent, a professional website has limited options to choose from, in terms of colours, images and multi-media since it toes a formal line of presentation. From a technical point of view, limited use of images and multimedia objects is advised since it makes a webpage slow to load. Research shows that an average website visitor is not willing to wait for more than 8 seconds for a page to load. Design considerations require information to be laid out in a manner that they satisfy the 3-click rule implying that any information must be reachable from the initial point of entry into a website within 3 clicks. Some experts, however, opine that visitors are more frustrated with not getting the required information, than with the navigation.

- *Nature of web content – Technical point of view*

A website could be built on the lines of a brochure. The information therein remains static for a relatively long period of time. There could be other types of content that would change on a constant basis. When the firm has prepared its basic content, it is in a position to discriminate between the content that would remain more or less unchanged over a period of time (About Us, Contact details, Areas of Specialization, etc.) and content that would require constant updating.

Once the website is ready, it needs to be hosted on a server that is connected to the Internet. Since it is not feasible for a small firm to host a server that is accessible 24 hours a day with robust security features, it is better to opt for the services of a web hosting company. The web host can be located anywhere in the world. For instance, a Chartered Accountant practicing in Bahrain may get a website developed by a software company in Mumbai and get the site hosted with a web hosting company in US.

Content that requires constant updating could includes case laws, latest articles, important announcements, changes in rates and tariffs and so on. This demarcation of the content provides an indication whether the facility to edit the website content is required. It is normally advisable to get a front-end utility developed to edit the contents of the website. Content Management Systems have become popular these days to meet the requirement of the website owner to edit the contents on a constant basis without looking for external help.

3. Hosting the website

Once the website is ready, it needs to be hosted on a server that is connected to the Internet. Since it is not feasible for a small firm to host a server that is accessible 24 hours a day with robust security features, it is better to opt for the services of a web hosting company. The web host can be located anywhere in the world. For instance, a Chartered Accountant practicing in Bahrain may get a website developed by a software company in Mumbai and get the site hosted with a web hosting company in US.

The steps for hosting the web site are:

1. Researching the web host
2. Selecting the web hosting company
3. Registering the domain name
4. Subscribing for a suitable hosting package

There are several good hosting companies to choose from and it is sometimes cheaper to host with large web hosting companies that host hundreds of thousands of websites. They have state of the art technology in data centers, better security features than those offered by small players in this field and a strong database back-up procedure in place. Owing to their economies of scale, they are able to offer all these services at reasonable rates.

Researching and selecting a web hosting company- Criteria to look for:

1. Services offered - Those offering domain registration services as well as web hosting packages are preferable.
2. Number of existing clients including top clients
3. Certifications and memberships if any
4. Features of data center- uptime, back-up frequency, server security
5. Security features offered on the desired web hosting package such as virus protection, scanning on incoming and outgoing e-mail
6. Package – platform, disk space offered, bandwidth offered, tools offered for site management, communication tools such as chat room facility, guest book, bulletin board, and the number of free email accounts offered. Opting for a good web hosting company that offers a range of essential tools and services as part of the package can reduce the cost payable to the website development company for the development and maintenance of these tools.
7. Costs - domain registration cost per annum, web hosting cost per month, set-up costs if any, cost of transferring existing site from another web hosting company if required, extra costs for extra security features being requested, extra costs for exceeding disk space or allotted bandwidth, hidden costs(Normally these are not shown with the main package details but would be included under respective line items, such as cost of termination, or cost of changing domain name, etc)
8. Number of months of pre-payment (many companies offer good prices for payments made in one shot for a two or three year period)
9. Legal - minimum commitment term with company if any, termination clause and costs involved, if any.
10. Support – Normally 24 x 7 support is offered by well established web hosting companies. The mode of support is also to be determined.

To conclude, the internet allows equal opportunity to all to be seen and read about irrespective of size, location and standing in the industry through the medium of a website. However, the potential of a website may be leveraged only when it is backed up high quality professional services that are in sync with the information it showcases to the world.

A comparison of four or five web hosting companies, including foreign companies may be made on an Excel spreadsheet for making the task of selection an easy and data-based decision.

A domain name is the unique identification address for the website on the internet. It is normally offered free of cost by several large web hosting companies, if one opts for their web hosting package as well. Hence, it makes sense to shortlist a few domain names, check availability with the hosting company that one has selected and then opt to register domain name at the time of subscribing for the hosting package.

4. Costs

A site with “brochure-like content” is easy to build and costs very less. Although one can build it for free if the terms of the web hosting company are agreed to, it is not advisable for a CA firm to go in for such an arrangement since the terms invariably require the site name to be annexed to the name

of the free space provider's site name (say http://www.freewebs_xyzassociates.com/ instead of http://www.xyzassociates.com/), or require forced banners/advertisements to be placed on the site which would violate the Institute guidelines. Costs depend on the type of package and web hosting company selected. Given below is a very rough estimate of the costs, keeping in mind the website requirements of a CA firm.

- *Cost of Web Design and Development*

The initial development cost for a simple site could be in the range of Rs. 1000 to Rs. 3500 per page. If the site requires the maintenance of a database, or forms and tools for exchange of information with the website visitor, the development costs could be significantly higher. A complex website can even cost upward of Rs. 50,000/- depending on the nature of features required. The requirements of a CA firm are normally not as complex as those of a site running an e-commerce business. Therefore, clarity in requirements and keeping the website in line with the actual scale of operations of the firm will keep the costs at an optimum level. Maintenance can become expensive if the terms are not clear at the outset. Moreover, in the absence of a front-end utility for updating the contents of a website, the developer or website maintenance company will require a payment each time it is requested to change the web content, which can work out expensive in the long run.

- *Cost of Hosting*

Domain registration

- Can vary between Rs. 150 to Rs. 500 per year.
- If domain name is registered with the web hosting company, it may be included free in the package.

Web Hosting

- Can vary between Rs. 1500 to Rs. 5000 per year
- Care should be taken to read package details and look for possible extra monthly charges such as charges for exceeding bandwidth utilization. These costs can be avoided by choosing the package appropriately.

5. Making the website effective

Making a decision to set up a website implies that the owner is agreeable to engaging in an ongoing set of activities. A website can be made effective by:

- Having a single point of contact for managing the website
- Keeping the content up-to-date, accurate, useful and consistent across the website
- Responding to requests or enquiries originating from the website in a timely and professional manner
- Analyzing the nature of queries received at regular intervals to understand the needs of the clients and gaps if any, in meeting those needs. This helps the individual/firm to improve upon the quality or range of services offered.

To conclude, the Internet allows equal opportunity to all to be seen and read about irrespective of size, location and standing in the industry through the medium of a website. However, the potential of a website may be leveraged only when it is backed up high quality professional services that are in sync with the information it showcases to the world. ■

Value Enhancement of Corporate Financial Statements

Good corporate governance leads to good performance and it also creates an open and transparent system. Long-term performance always requires effective corporate governance. Most companies which have grown in the recent past have an effective governance structure of treating all stakeholders fairly. Nowadays, when corporate governance principles and practices command a considerable degree of value to the accompanying financial statements of a business enterprise, investors and stakeholders are all so increasingly looking at the quality of members. To meet these expectations, companies adopt practices which add to the value of financial statements. The author, in this article, discusses some of the concepts including Economic Value Added (EVA), Market Value Added (MVA) and Total Shareholder Return (TSR) that may be used in value addition in corporate financial communications.

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

Today, when corporate governance principles and practices, e.g. transparency and disclosures and information sharing with stakeholders, command a considerable degree of value to the accompanying financial statements of any corporate or business enterprise, investors and stakeholders are all so increasingly looking at the quality of members rather than quantity. To meet such expectations, good governed companies do adopt practices which add to enhance the value of financial statements and value to its readers.

Few of these concepts have been discussed below:

Economic Value Added (EVA)

It is the quantum of economic value generated by a company in excess of its cost of capital. The key to the successful implementation of the EVA lies in integrating it into the company's incentive plant. Nowadays, the true measure of corporate performance is economic value added (EVA), not sales, profit, or, the return on capital employed. It is not just a measure but an integrated management philosophy. The last few years have seen the EVA become the most accurate measure of shareholder value creation around the world.

EVA: What does it signify

Concept of EVA is said to be based on the article 'Dividend Policy Growth and the Valuation of Shares' by Franco Modigliani and Merton H. Miller published in *Journal of Business* in 1961. The ideas of free cash flow and the evaluation of business on a cash basis developed by them were extended into the concept of the EVA by Bennet Stewart and Joel Stern.

EVA = RC – COC

(Where RC = Return on Capital, and, COC = Cost of Capital)

Alternatively,

*EVA = Net Operating Profit after Taxes (NOPAT) – Cost of Capital Employed (COCE) (Where NOPAT is profit after depreciation and taxes but before interest costs, and COCE is weighted average cost of capital (WACC) multiplied by the average capital employed. NOPAT, thus, represents the total pool of profits available on an ungeared basis to provide a return to lenders and shareholders.)

*Cost of equity is the return expected by the investors to compensate them for the variability in returns caused by fluctuating earnings and share prices.

EVA is similar to conventional accounting measures of profit but with following two differences:

1. EVA considers the cost of all capital.
2. EVA is not constrained by generally accepted accounting principles (GAAP).

The net income figures reported in the statements of income consider only the visible type of capital cost, i.e. interest while ignoring the cost of equity finance. No doubt, the estimation of cost of equity is a highly subjective exercise. The proponents of EVA argue that the overlooking of these costs will render it difficult to ascertain how successful a company has been in creating value for its owners.

EVA is a measurement tool that provides a clear picture of whether a business is creating or destroying shareholder's wealth. It measures the ability of a company to earn more than the true cost of capital. It combines the concept of residual income with the idea that all capital has a cost. In other words, EVA represents what remains after charging the required cost of capital.

EVA is defined as net operating profit after taxes and after the cost of capital, i.e. excess of operating profits over cost of capital. Thus,

EVA = Net Operating Profit – Taxes – Cost of Capital Or,

EVA = After Tax Operating Profit - [Cost of Capital per cent] x Total capital employed.

Some companies use weighted average cost of capital.

What is EVA all about?

Traditional approaches to measuring 'Shareholders' value creation' have used parameters such as earnings capitalisation, market capitalisation and present value of estimated future cash flows. Extensive equity research has now established that it is not earnings *per se*, but value which is important. A new measure called Economic Value Added (EVA) is increasingly being applied to understand and evaluate financial performance.

What does EVA show?

EVA is a residual income after charging the company for the cost of capital provided by lenders and shareholders. It represents the value added to the shareholders by generating operating profits in excess of the cost of capital employed in the business.

EVA Growth

EVA will increase if:

1. Operating profits can be made to grow without employing more capital, i.e. greater efficiency.
2. Additional capital is invested in projects that return more than the cost of obtaining new capital, i.e. profitable growth.
3. Capital is curtailed in activities that do not cover the cost of capital, i.e, liquidate unproductive capital.

EVA tells whether the company's management generates returns that cover the opportunity cost of scarce capital.

"Concept of EVA is said to be based on the article, Dividend Policy Growth and the Valuation of Shares by Franco Modigliani and Merton H. Miller published in Journal of Business in 1961. The ideas of free cash flow and the evaluation of business on a cash basis developed by them were extended into the concept of the EVA by Bennet Stewart and Joel Stern."

EVA improves if:

1. Operating profits grow without employing more capital implying greater efficiencies
2. Additional capital is invested in projects that returns more than the cost of capital
3. Capital is curtailed in activities that do not cover its costs – minimising or eliminating unproductive capital.

The management cannot manipulate EVA. If the performance of the companies is measured by the earnings per share, for example, then some companies go to the extent of manipulating the earnings to show a better figure. Such manipulations create an information asymmetry between the management and the providers of capital to the company. Other things remaining constant, an increase in cost of capital reduces the EVA of the company.

EVA is unique and innovative

EVA is innovative in the following ways:

1. It is not bound by GAAP. Its users are willing to make whatever adjustments are needed to produce more economically valid numbers.
2. It need not be confined to higher levels. It should be used at successively lower levels of the organisation on the assumption

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that the overriding goal of all employees including senior managers, should be to create shareholder value.

3. It offers something that no other financial measurement system has been able to provide. It provides a means of measuring and communicating performance. It can be used to make capital investment appraisal in the capital market as well as for evaluation and compensation of managerial performance.
4. While earlier, companies used measures like EPS for the capital markets, NPV for capital budgeting and a target return on net assets for managers, they can now use EVA for all such purposes.
5. It has an edge over conventional accounting measures in determination of bonus. It aligns the interests of managers and shareholders and thereby helps overcome the dilemma of corporate governance: the agency problem, when managers are paid in accordance with EVA they think and act like owners. Their own wealth gets inextricably linked with that of the shareholders.
6. Use of EVA for compensation is also advantageous it reduces manager's incentive to manipulate accounting profits. The more EVA the managers produce results in greater wealth creation for the shareholders. There ceases to be any limit on the bonus. As a consequence, managers are less inclined to manipulate accounts but are enthused to focus their attention on enhancing EVA.
7. It is both a measure of value and measure of performance. The value of business depends on investors' expectations of future profits of the enterprise. Stock prices track EVA far more closely than they track earnings per share (EPS) or ROE. A sustained increase in EVA normally results in an increase in the market value of the company. As a performance measure, EVA compels the organization to make creation of shareholder value the main property. EVA focused companies concentrate on improving the net cash return on invested capital.
8. It provides restraints on profligate use of capital. Tate and Lyle, a global giant in sweetness and starches (London) have used EVA to lighten the use of working capital and to shed operations that showed up negative EVA.
9. Adaptability of EVA is another virtue. It can be used as a measurement system for a company as a whole as well as for its divisions or even a product line. For example, Centura Bank (North Carolina) worked out EVA not only for every product line but also for all its customers, which enabled it to concentrate on the most profitable ones.

Why is EVA popular

The notions of value additions were not common until recently. Following could be considered reasons for the popularity of this concept:

1. Deregulation of capital markets.
2. Removal of capital controls.
3. Advances in information technology.
4. Growing importance of institutional investors.
5. Reaching global investors
6. Appreciating quality of financial performance, not merely numbers.

EVA vis-à-vis EPS

EVA is certainly an improvement over earning for share (EPS). Although EPS calculation is simple, yet it is susceptible to manipulations. EPS ignores cost of capital, encourages over leverage and earnings management. EPS is a multiple of price earnings (PE), but PE is itself prone to changes. EPS can enhance company's reputation in short term but may not enable its growth in long run.

In case of Enron, this is best explained. Enron placed high reliance on EPS and practice of convention rule of 'take the money and run the incentive system'. It led Enron to indulge in overspending of capital, using huge debts, overplaying the earnings management game and taking risky bets. Enron did not finance through issue of stock for fear of diluting EPS. When the climbing down started, little equity cushion was available with the company. To dress up its EPS, Enron resorted to play with the accounting records, and what happened to Enron was a total collapse.

EVA therefore, emphasizes the quality of earnings and not just the quantity. A positive EVA indicates that the business has generated wealth in excess of what is expected by the shareholders. A negative EVA, on the other hand, indicates that the company is a destroyer of value.

Disclosures of EVA

Several companies in India are publishing their full EVA calculations in their annual reports on a voluntary basis. Some of the companies also show the distribution of EVA among various claimants as a voluntary and healthy disclosure practice. The goal of sustainable long-term value creation for shareholders is well understood by all business groups. Measures to evaluate business performance and to set targets take into account this concept of value creation.

Market Value Added (MVA)

Market Value Added is a modified version of EVA as the value is more related to market. To understand the mechanics of MVA, it is essential to understand the related concept of MVA. MVA is the difference between the total value of the company and the total capital (including equity and debt) contributed in the company:

MVA = Total value – Total capital, or

MVA = Current market value of debt and equity – Economic book value

(Where economic book value = Share capital + Free Reserves + Debt)

The aim of a company's managers is to maximize value in order to do value creation. The aim is not to maximize the value of a company, which can be easily accomplished by contributing additional inputs of capital. MVA increases when the invested capital earns a rate of return greater than the cost of capital. When newly raised capital is invested in value creating projects, i.e. those with positive net present value, MVA increases. MVA is a fairly reliable measure of the management's efforts at adding value. It is a determinant of the premium the market is willing to place on the company's value in recognition of its future earnings potential. The aim of the management is to maximize the amount by which the company's market value exceeds the capital supplied by the investors.

Relationship between EVA and MVA

MVA is the present value of the firm's expected future EVAs. It is a static measure. It represents the sum total of company's value creation from the beginning to the date, the MVA is calculated. It is less practical than EVA and can be calculated only for companies that are publicly traded on the stock exchanges. It is a dynamic measure, which can be used to measure performance annually. Moreover, it can be used to measure performance at any level of a business enterprise.

"Although EPS calculation is simple, yet it is susceptible to manipulations. EPS ignores cost of capital, encourages over leverage and earnings management. EPS is a multiple of price earnings (PE), but PE is itself prone to changes. EPS can enhance company's reputation in short term but may not enable its growth in long run."

There are many advantages in using EVA and MVA in measuring the performance of companies. They are much superior to the traditional accounting-based performance measures like the growth in net profit or net sales. There is direct and positive link between EVA/MVA and the stock prices. Hence, usage of EVA and MVA as measurement tools is perfectly consistent with the objective of shareholders' wealth maximization. The other advantage of EVA and MVA is that the management cannot manipulate them. In fact, companies which manipulate the accounting earnings get penalized by the market in the form of a higher cost of capital and hence lower EVA.

A poorly-performing company may manipulate the earnings. It may show a high profit. But it will report poor EVA and MVA. Market will increase the cost of capital. This will decrease the EVA. MVA cannot be manipulated and hence should be used to measure the performance of the companies.

EVA and the MVA have been popular as the two right measures of corporate performance measurement. They do not suffer from any of the limitations that the accounting-based measures suffer from. Looking at the earnings per share without looking at the spread between return on equity and cost of equity gives us an incomplete picture. EVA, however, is a complete measure of success. A company is adopting the policy of profit and hence in earnings per share. However, it will not be able to increase the EVA. Any wrong decision made by a company gets reflected in the form of reduced EVA.

As a performance measurement tool, EVA is widely-accepted corporate objective now to maximize the shareholders' wealth. EVA is directly linked to the shareholders' wealth. EVA is a quantitative measure of the wealth the management has generated for the providers of fund to a company in a particular year. One can prove that the present value of all the expected EVA is the MVA. Hence, higher the EVA that a company generates in a year, higher will be the MVA and hence higher will be the stock prices. Companies which reward their investors the most are inevitably the ones, which generate the maximum EVA and MVA.

Investors can divide the companies based on certain corporate governance practices into different categories and then estimate the EVA/MVA for each category of companies. This will give some indication as to what performance measure can be used to discourage corporate ill-governance.

Value Added Statement

Value Added (VA) is the wealth a company has been able to create through the collective effort of capital, management and employees. In economic terms, value added is

> **Value reporting is a comprehensive set of financial and non-financial performance measures and process, tailored to a company, that provide both historical and predictive indicators of shareholder value. Value reporting also provides a methodology for improving transparency and providing the capital markets with the information needed to accurately assess future value.**

the market price of the output of an enterprise less the price of the goods and services acquired by transfer VA can provide a useful measure in gauging performance and activity of the company.

Robert Eccles, Robert Herz, Mary Keegan and David Phillips, in their book *The Value Reporting Revolution: Moving beyond the Earnings Game* (2001), indicate the increasing importance of non-financial data and reporting beyond the constraints posed by generally accepted accounting principles (GAAP). They highlight the increasing necessity of providing stakeholders with qualitative information enabling them to make informed investment decisions.

Value reporting is a comprehensive set of financial and non-financial performance measures and process, tailored to a company, that provide both historical and predictive indicators of shareholder value. Value reporting also provides a methodology for improving transparency and providing the capital markets with the information needed to accurately assess future value.

Financial statements indicate historic performance along uniform financial parameters, and may not always fully reflect the performance of the company in relation to matters that are critical for creating shareholder value in the long term. In order to enhance the ability of the stakeholder to measure our performance, a description of recommended value reporting disclosures as per the Value Reporting Disclosure model is:

External market overview	Internal value strategy	Managing for value	Value platform
• Competitive environment	• Goals	• Financial performance	• Innovation
• Regulatory environment	• Objectives	• Financial position	• Brands
• Macro economic environment	• Governance	• Risk management	• Customers
	• Organization	• Segment performance	• Supply chain
			• People
			• Social reputation

Well-governed companies seek to bridge the gap between the information available to the management and the information available to the stakeholders by providing the non-financial and intangible performance measures to its stakeholders which may include:

1. Intangible asset scorecard
2. Human resource accounting and value added statement
3. Brand valuation
4. Balance sheet including intangible assets
5. Economic value added statement.
6. Current cost adjusted financial statement.

Companies also adopt similar measures for internal measurement of business performance. Moreover, employee performance measurement for evaluating performance also considers performance indicators that go beyond the financials, and seek to balance the financial and non-financial measures at the individual and enterprise level. This ensures that the measures we perform internally truly reflect the measures by which our corporate performance is judged by the stakeholders.

Total Shareholder Return (TSR)

Total shareholder return reflects the gain delivered to shareholders by the company directly and indirectly, directly in the form of the dividend received by them and indirectly in the form of capital appreciation registered by the stock during the financial year under review. TSR is calculated by deducting the opening market capitalization from the closing market capitalization, and adding the dividend paid. It is the gain expressed as a percentage of the opening market capitalization.

Enterprise Value

The market value of shares, as on the date of Balance Sheet together with the debt outstanding as on that date, is the enterprise value.

Enterprise value attempts to ascertain the value of the company as on a particular date. This is done by adding the market value of the company's equity to the net debt to the market value of the equity stakes owned by the company. EV tends to be used most commonly in calculating the EV/EBITDA (Earnings before interest tax depreciation and amortisation) multiple. The EV/EBITDA multiple overcomes the accounting differences across countries and in many respects provides a clearer valuation argument. This multiple is another valuation alternative to P/E. Just as in calculating the P/E, one must determine an industry/sector average or benchmark and measure a company's EV/EBITDA multiple against it. If it is higher, it is trading at a premium, and if it is lower, it is trading at a discount. ■

Financial Inclusion in India

Financial inclusion is the process of access to financial services and timely and adequate credit needed by the vulnerable groups such as weaker sections and low-income groups at an affordable cost. The layman needs access to financial services for contingency planning and risk mitigation, long-term savings, savings for old age, purchasing insurance products for insurable contingencies. The combination of financial inclusion and social security provision may entirely change the economic system for good. Government has launched many initiatives for financial inclusion and banks are supporting the move, but a lot is yet to be done.

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"Put not your trust in money, but put your money in trust"

-O. W. Holmes

Banking has been witnessing radical changes all over the globe in this digital era. As banks thrive on public trust, depositors' interest, accountability, strategic objectives, managerial oversight, audit role, risk management, and the like concerns are predominant. Policy compliance and regulation bound conduct are essential preconditions. Economic reforms brought in their wake, a plethora of norms for income recognition, asset classification, appropriate provision which are to be meticulously complied with other overbearing concerns being freed interest rate structure, consolidation and overseeing financial conglomerate finding synergies and so on. Banks are playing a vital role in the economy. After globalisation, privatisation and liberalisation drive, the entire economic scenario has been changed. A rapid development in information technology enables the banking sector to perform its duties with machines that are more sophisticated. Cost reduction and cost control is the mantra of present banking sector. Now every thing will be done through a click of mouse. Internet has changed the life style of layman. Commercial banks are reducing their operational cost by establishing ATMs, mobile banking, internet banking, internet trading and online financial transactions.

The Rangarajan committee defines financial inclusion as "the process of access to financial services and timely and adequate credit needed by the vulnerable groups such as weaker sections and low-income groups at an affordable cost." It identifies the existing system like the District Level Consultative Committee and the State Level Bankers committee for implementation of the state rural financial inclusion plan and the national rural financial inclusion plan. It suggests constitution of national mission on financial inclusion. The committee does not throw any light on non-fulfilling of credit to weaker sections.

A committee was appointed under the leadership of Raghuram G Rajan to look after the reforms. The committee stated the financial inclusion "the most important financial services for the poor are vulnerability reducing instruments. These include savings, remittances, insurances and pension needs". The layman needs access to financial services for contingency planning and risk mitigation, long-term savings, savings for old age, purchasing insurance products for insurable contingencies. The layman is worrying about his old age situation. Therefore, the government also should think about social security. The combination of financial inclusion and social security provision may entirely change the economic system. The committee observed that the households typically need access to credit for livelihood creation as well as consumption and emergencies. It finally stated, "An exclusive focus on credit can lead

"An exclusive focus on credit can lead to undesirable consequences such as over-indebtedness and inefficient allocation of scarce resources and stressed the mandated branching in rural areas. It stated that the financial sector does not ignore the poor because of biases but because of a high transaction cost. The committee is correct to comment that the interest rate ceiling reduces banker's desire to service the truly excluded: higher fixed cost and higher perceived credit risk imply a higher not lower interest rate."

to undesirable consequences such as over-indebtedness and inefficient allocation of scarce resources" and stressed the mandated branching in rural areas. It stated that the financial sector does not ignore the poor because of biases but because of a high transaction cost. The committee is correct to comment that the interest rate ceiling reduces banker's desire to service the truly excluded: higher fixed cost and higher perceived credit risk imply a higher not lower interest rate. According to the report (a) a difference from the market rate is often charged through hidden fees and bribe, the very poor who have the least ability to pay these charges get excluded, a plethora of bureaucratic norms and paper work is imposed to check corruption, which reduces the flexibility and attractiveness of credit. Therefore, the committee envisions a new structure for financial inclusion, which is efficient, innovative and cost effective and considers financial services to the poor as a business opportunity rather than charity.

Several researchers have defined the financial inclusion in several ways.

1. Anderloni and Carluccio: "services that do not have an impact on the household's budget, but represent at the same time essential elements for the individual's life, subsistence, security and participation to the economic and social life"
2. Molyneux "in ability of some societal groups to access the formal financial system"
3. Sinclair: "the inability to access necessary financial services in an appropriate form"

Anderloni observed that the following are the main causes for financial exclusion

(a) geographical exclusion (non existence of branches)
(b) Access exclusion (restricted access due to banks risks)
(c) Condition exclusion (condition related to products failing to meet needs)
(d) Price exclusion (charges are very high)
(e) Marketing exclusion (strategetic exclusion)
(f) Self exclusion (some people refuse to approach banks assuming that loans will not be given)

Financial inclusion means the process of access to financial services, timely, adequately credit needed by weaker sections low-income groups at an affordable cost. Even the developed nation's populations do not have access to financial services for e.g. in Italy 22 per cent Australia 14 per cent U.K 11 per cent and European Union 9 per cent According to the committee 73 per cent of Indian households do not have access to bank account. Marginal farmers, agricultural labourers, artisans, members of the schedule tribes are the worst victims. As per the RBI identification, 256 districts in India fail to provide the credit facility to the population.

Monetary policy occupies an important role in overall development of the Indian economy. It deals with

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the management of interest rates, supply and demand side of capital, consumption, and spending patterns. It involves in setting bank reserves or short-term policy to obtain desired objectives. It is involved in price stability and ensures adequate flow of credit to the productive sector to growth

4. Bhattacharya and Ray (2007) attempted to empirically examine "The impact of monetary policy shocks on prices and output using a measure of the monetary policy stance derived from the detailed reading of policy announcements during the period 1973 to 1998".
5. Mohan (2005) indicated, "Some incoherent association between growth in monetary aggregates and inflation outcomes from cross country experience. The role of interest rates as a prosy for monetary policy stance has also several limitations".
6. Ma and Mc Cauley (2007) observed "that there is some kind of international arbitrage; nominal interest rates in one country will be linked to world interest rates, expectations of devaluations and risk premium".
7. Arizonan (2008) found that, "exchange rate stability, financial integration and monetary independence, have converged for developing countries. These countries have converged towards managed exchange rate flexibility buffered by sizeable international reserves holdings, enabling the retention of monetary autonomy even as financial integration proceeded".
8. Clements and Herman (2009) observe that, "the bulk of the empirical evidence on the efficiency of capital controls shows that the area where capital controls have been most successful is in providing more autonomy for monetary politics and altering the composition of capital inflows, while success on reducing the volume of inflows and reducing exchange rate pressures has been mixed".
9. Arun Muhammad (2009) found that, "the *grameen* bank's micro credit programme has been recognised internationally as a successful model. It has been become an integral part of development thinking and has earned global attention as a new form of banking. It created a good opportunity for expanding the market for finance capital, there by ensuring its spectacular success. However, it failed as a tool for poverty alleviation and empowerment of women".
10. The tripartite meeting on micro finance in Lyon, France, UNCTAD pointed out that, "The micro credit phenomenon has revealed the existence of a huge potential market, profitable yet. Largely untapped an estimated 500 million micro entrepreneurs and their families, until now largely excluded from a financial system. These 500 million micro enterprises represent a potential credit market of 100 billion and even larger market for savings and insurance institutions such as Bancosol in Bolivia and K-Rep in Kenya boast better profitability rates than some of the world's biggest and best banks. A movement initiated about 20 years ago, microfinance is becoming an industry making its way into the mainstreams financial system".
11. Harford pointed out that, "Micro finance institutions transformed from charities to profitable companies through hugely successful initial public offerings".
12. World Bank stated, "integrate NGO's with commercial finance market by (a) developing an appropriate regulatory framework for the financial operations of the NGO sector. (b) Encouraging large NGO to establish themselves as banks. (c) Encouraging whole saving of credit to established NGO's and (d) using smaller NGO's as brokers to mobilise self help savings groups".
13. Hague noted that, "the number of borrowers member were 20.26 million at the end of 2004, of which 14.30 were active out of which 70.36 per cent of total borrowers in end of 85.66 per cent of active borrowers were with the big before GB,BRAC association for social advancement (ASA) and proshika. And there are only 10 NGO's who have been more than 50,000 borrowers, 40 more have between 10,000 and 50,000, the rest, the over while majority of the NGO-MFIS are small having less than 10,000 members".
14. Yunus stated that, "I believe that, government: as we know it today, should pull out of most things except for law enforcements and justice, national defence and foreign policy and let the private sector, a *grameenaised* private

sector, a social consciousness driven private sector, take over their other functions".

15. Bateman found that, "the foreign owned commercial banks since 2001 have massively discovered micro finance. From almost zero in 2001, the commercial banks now channel 22 per cent of their total loan portfolio through highly profitable micro finance programmers amounting to almost 12 per cent of gross domestic product. Therefore, the country in now check full of traders, kiosks, shops, street traders and subsistence farms. The base of the economy is quite simply being destroyed".
16. Muhammad Younus stated, "As a thumb rule I would say that an MCB should try to keep the interest rate within 5 to 10 per cent points above the commercial rate. If it goes above this limit, it would be entering the money lender's world, leaving the micro credit world behind".

Challenge of Financial Inclusion in India

Our economic success and the boom in banking notwithstanding, one of the contemporary critical challenges to India is *financial inclusion* of its population, especially that of underprivileged sections, who remain cut off from not only formal sources of finance but also from basic banking services. Despite persistent policy initiatives and endeavours of the Reserve Bank of India since 2004, and despite *financial inclusion* being a buzzword for almost four years, *financial inclusion* appears far away from reality for us. This is strange especially in the wake of the fact that one of the major goals of the 11th Five Year Plan is attaining financial inclusion of the most and extending the reach of microfinance to meet credit needs of approximately 80 per cent of the population not directly covered by banks.

> **"Our economic success and the boom in banking notwithstanding, one of the contemporary critical challenges to India is *financial inclusion* of its population, especially that of underprivileged sections, who remain cut off from not only formal sources of finance but also from basic banking services. Despite persistent policy initiatives and endeavours of the Reserve Bank of India since 2004, and despite *financial inclusion* being a buzzword for almost four years, *financial inclusion* appears far away from reality for us."**

44.9 per cent Indian earners had bank account in 2007. Of this, only 38 per cent of paid workers in villages had accounts compared to 62 per cent of those in urban space in 2007. India has been ranked poorly, i.e. 50th, below the African countries like Kenya and Morocco, in first-ever index of financial inclusion prepared by Indian Council for Research on International Economic Relations. The number of branches of a bank per one lakh adults in India is just 9.4, as compared to 14.6 in Malaysia. While domestic deposit as share in the GDP is just 54.9 per cent in India compared to 123.9 per cent in Malaysia. This indicates further scope of expansion of banking services in the country.

Although a special committee on *financial Inclusion* headed by C. Rangarajan, the Chairman of Prime Minister's Economic Advisory Council, is already in place, the present calls for more sustained and sincere efforts on part of our Government as well as our bankers. Irrespective of the fact that about 120 million farming families have been brought into the financial system by providing low-interest credits, debt-relief packages and a host of subsidies, banks still have to play an active role in agriculture sector. Indian bankers need to overcome the challenge of finding a low-cost approach to *financial inclusion* sooner than later. A larger spread of the "business correspondent" model of forging linkages with local communities and a shift from class to mass banking is required for the penetration of the financial services in the rural areas. Particular attention has be paid to certain under-banked states like Bihar, Orissa, Rajasthan, Uttar Pradesh, Chattisgarh, Jharkhand, West Bengal and North-Eastern states in the spirit of new branch authorization policy of Reserve Bank of India.

The Chartered Accountants, micro-finance institutions, self-help groups and NGOs can play a pivotal role. Prime Minister Dr. Manmohan Singh and Finance Minister P. Chidambaram pointed out at the Diamond Jubilee celebrations of the ICAI recently that CAs of the country can promote *financial inclusion* by creating awareness about microfinance, financial products, money management and other initiatives of the Government like NABARD, and encouraging public to join formal financial systems. Technology can be a tool in providing access to banking products in remote areas.

The focus of *financial inclusion* presently is confined to ensuring a bare minimum access to a savings bank account without frills, to all. But a current or savings account can not be regarded as an indicator of *financial inclusion.* In UK access to banking, affordable credits and free face-to-face money advice has been identified as priority. We can have comparable wider perspectives. *Financial inclusion,* accepted globally as an explicit strategy for fostering economic growth, is a compulsion rather than a need. ■

Indian Primary Market — Myth & Realities

A developed primary market is crucial for resource mobilisation by corporate India to meet its growth and expansion plans. It is that part of capital market, where securities are sold for the first time. Thus, the primary market performs the crucial function of facilitating capital formation in the economy which is necessary for its growth. Indian primary market is moving towards its maturity and effectiveness. During the last five years, 2004 - 05 to 2008 - 09 it has witnessed several ups and downs. However, despite the progress, some issues are yet to be addressed in totality, which include excessive pricing of public issues and corporate governance. Read on to know more.

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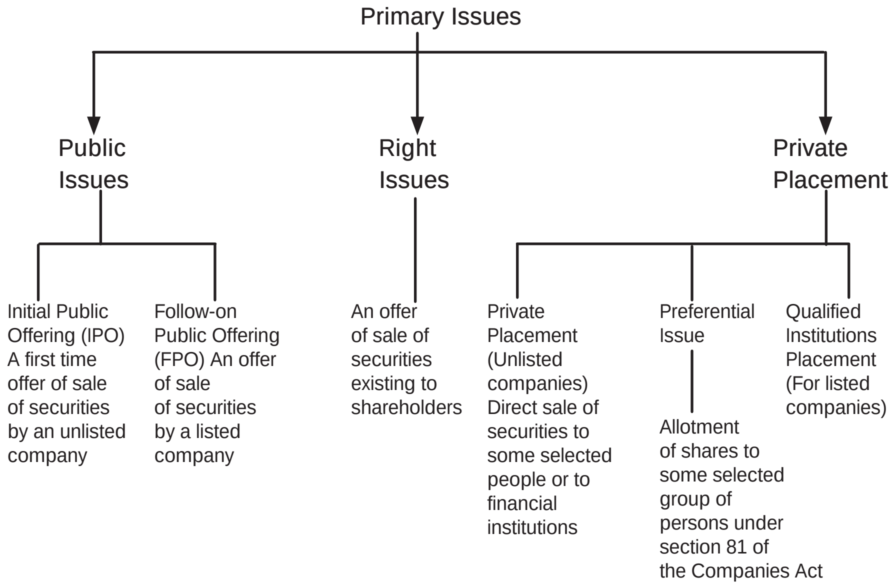
Economic development is a function of savings, investment and employment. To accelerate the process of economic development, savings are to be effectively channelised in different sectors of economy. Accelerated pace of investment and employment largely depends on availability of incentives and conducive investment climate prevailing in the country. Political stability is also necessary for maintaining continuity in formulation and implementation of different policies and programmes. In the international scenario, country specific as an investment destination decides the level of resource mobilisation programme. Flexible regulatory framework for capital market helps in resource allocation programme of the country. Timely compliance, disclosure and adequate transparency actually motivate the potential investors to take decisions and minimise risk in proper perspective. In this context, primary market has been assigned to play an important role. A developed primary market is crucial for resource mobilisation by a corporate to meet their growth and expansion plans. It is that part of capital market, where securities are sold for the first time. Therefore, it is also called as the New Issue Market (NIM). Thus, it deals with those securities which are issued by the company directly to investors. In this process, company receives the money and issues new security certificates to the investors. Primary issues are used by companies for the purpose of setting up new business or for expanding or modernising the existing business. Thus, the primary market performs the crucial function of facilitating capital formation in the economy which is necessary for its growth. Sometimes, issuers in the new issue market also raise capital for converting private capital into public capital; this is known as "going public". There are basically three methods of issuing securities in the primary market. "These are: Initial public offering; Rights issue (for existing shareholders); and Private Placement."

Private Sector and Public Sector Companies can obtain their funds through the sale of new shares or bond issues. This is typically done through a syndicate of securities dealers. The process of selling new issues to investors is based on underwriting. The new stock issue is an initial public offering (IPO). The corporates who are interested to raise their capital from the primary market seek guaranteed subscriptions from the potential investors. Underwriters generally underwrite the issues for guaranteed subscriptions from the potential investors. Besides, other intermediaries like merchant bankers, registrars to the issues, credit rating agencies are also playing important role in primary market operations. The primary market in India is a unique market where regulatory framework is quite effective with few exceptions. Investors' protection is the main theme of the primary market.

Structural Framework

Network of primary market is quite strong having wider implications. The sheer size and scope of the primary market is enormous and the large scale direct participation in the primary market by millions of retail investors is unlike that in any other country of the world. Structure of primary issues in India is given below:

PRIMARY ISSUES



Analytical Framework

Indian primary market is moving towards its maturity and effectiveness. During the last five years, 2004 - 05 to 2008 - 09 it has witnessed several ups and downs. Stability with volatility in certain range in secondary market is always beneficial to different stakeholders in the primary market. It creates more wealth for investors. If we study the behaviour of Indian primary market we find that the primary segment of the capital market was characterised by heightened activities in 2004 - 05. Strong fundamentals of the economy, encouraging corporate results, buoyant secondary market, revival of structural reforms by the government and an investor friendly regulatory framework provided by SEBI attracted the investors to the primary market during 2004 - 05. Several mega issues apart, a number of small issues entered the market and got the success. "There has been overwhelming response to most of the public issues from FIIs, other institutional investors and the retail investors. Large number of the issues was over-subscribed indicating the quality of issues and the appetite for public issues by the investors. The post-listing performance of most of the IPOs was also encouraging." Unlike the 2003 - 04, the private sector dominated the primary market during 2004 - 05 and mobilised sizeable amount of resources through public and rights issues.

"The total amount of capital raised during 2004 - 05 through public and rights issues (including offer for sale) stood at Rs. 28,256 crore as compared to Rs. 23,272 crore in 2003 - 04, an increase of Rs. 4,984 crore or 21.42 per cent over 2003 - 04 (Exhibit:1). It was the revival of investors' interest in the primary market. During 2004 - 05, resource mobilisation through rights issues was Rs.3,616 crore which was three and half times higher than that of Rs.1,007 crore in 2003 - 04." As there was an exponential growth in

It is mandatory to obtain grading from at least one credit rating agency. The grading would be disclosed in the prospectus, abridged prospectus and in every advertisement for IPOs. Earlier it was mandatory only for debt investment. However, in 2007 - 08 grading for equity was also made mandatory by the SEBI.

the amount mobilised through rights issues, their share in the total amount mobilised jumped from 4.3 per cent in 2003 - 04 to 12.8 per cent in 2004 - 05.

"While the number of issues in 2005 - 06 was more than twice of that in 2004 - 05, the amount mobilised was marginally lower. 139 companies accessed the primary market through public and rights issues and mobilised Rs. 27,382 crore in 2005 - 06. The amount raised during 2005 - 06 stood at Rs. 27,104 crore against the amount of Rs. 25,056 crore mobilised in 2004 - 05. It excludes the amount received through offer for sale. There were 103 public issues in 2005 - 06, of which 79 were initial public offerings (IPOs) and 24 were further public offerings (FPOs). The number of rights issues during 2005 - 06 was higher at 36 than that of 26 in 2004 - 05. The resources mobilised through IPOs and FPOs during 2005 - 06 were Rs. 10,936 crore and Rs. 12,358 crore respectively in comparison to Rs. 12,382 crore in and Rs. 12,258 crore in 2004 - 05." The net changes in IPO and FPO comes to -11.67 per cent and +0.81 per cent respectively. The amount mobilised through rights issues was also higher at Rs. 4,088 crore in 2005 - 06. Thus, the revival seen in 2003 - 04 gathered momentum in 2004 - 05 and further heightened in 2005 - 06." Regulatory reforms such as introduction of proportionate allotment and margin requirement for the Qualified Institutional Buyers (QIBs) and special allocation to mutual funds within the QIB category also contributed to brisk activities in the primary market. "124 companies have raised Rs. 33,508 crore through public and rights issues in 2006 - 07. Of the 85 public issues, 77 were Initial Public Offerings (IPOs) and 8 in the form of Further Public Offerings (FPOs). The average size of the public issues was decreased from Rs. 728 crore in 2004 - 05 to Rs. 351 crore in 2006 - 07. The similar trend was also reported in IPO, the average size of IPOs was decreased from Rs. 538 crore in 2004 - 05 to Rs. 370 crore during 2006 - 07. It was not a positive development. The number of right issues was 39 in 2006 - 07 as compared to 26 in 2004 - 05. The amount of right issues in 2006 - 07 was Rs. 3,711crore as compared to Rs.3,616 crore in 2004 - 05. Due to introduction of QIP in 2006 - 07, the resources raised through FPO route declined from 43.38 per cent in 2004 - 05 to 3.9 per cent in 2006 - 07." It was another important development of the primary market.

The Indian securities market witnessed significant uptrend and volatility. The equity market registered gains and the benchmark indices breached historic highs on several occasions in 2007 - 08. However, since mid-January 2008, stock markets witnessed sharp correc-tions in tandem with the global equity markets. Resources raised by the corporates from the primary market were substantially higher indicating the continuation of investment boom in India. Mutual funds too mobilised large amount of resources during 2007 - 08. "During October 2008, public sector mutual funds and private sector mutual funds had redeemed Rs. 5,710 crore and Rs. 41,083 crore respectively. There was an aggregate redemption of Rs. 46,793 crore from the mutual funds in October 2008."

Exhibit: 1

Resource Mobilisation through Public and Rights Issues (Amount Rs. in crore)

Year	1. Public Issues (i) + (ii)				Total (i) +(ii)	2.Right Issues	Total (1 + 2)	Memo Item	Offer for sale
	(a) IPOs	(b) FPO	(i) Public Issues (a)+b)	(ii) Public Issues (Bond/ NCD)				April 1, 2013	
2004-05									
No.	23	11	34	-	34	26	60		3
Amount	12,382(R)	12,258(R)	24,640	-	24,640	3,616	28,256		3,200
Per cent share in total amount	43.82	43.38	87.20	-	87.20	12.80	100.00		11.32

2005-06									
No.	79	24	103	-	103	36	139		3
Amount	10,936	12,358	23,294	-	23,294	4,088	27,382		296
Per cent share in total amount	39.94	45.13	85.07	-	85.07	14.93	100.00		1.08
Per cent Increase or Decrease	-11.67	+0.81	-5.46	-	-5.46	+13.05	-3.09		-90.75
2006-07									
No.	77	8	85	-	85	39	124		6
Amount	28,504	1,293	29,797	-	29,797	3,711	33,508		587
Per cent share in total amount	85.07	3.86	88.93	-		11.07	100.00		1.75
Per cent Increase or Decrease	+130.20	- 89.45	+20.92	-	+20.92	+ 2.62	+18.58		- 81.65
2007-08									
No.	85	07	92	0	92	32	124		7*
Amount	42,595	11,916	54,511	0.00	54,511	32,518	87,029		2,152
Per cent share in total amount	48.94	13.69	62.63	0.00	62.63	37.37	100.00		2.47
Per cent Increase or Decrease	+244.00	- 2.79	+121.22	-	+121.22	+799.28	+ 208.00		-32.75
2008-09									
No.	21	0	21	1	22	25	47		3*
Amount	2,082	0	2,082	1,500	3,582	12,637	16,220		48
Per cent share in total amount	12.84	0.00	12.84	9.25	22.08	77.91	100.00		0.30
Per cent Increase or Decrease	- 83.18		- 91.55	-	-85.46	+ 249.47	- 42.59		-98.5

Source: SEBI Annual Reports from 2004 - 05 to 2008 - 09

* *All offers for sale are initial public offers, hence are already counted under IPOs.(R) Revised*

Positive environment encouraged the corporates for further continuing in their fund raising programme. "It was a quantum jump in amount during 2007 - 08 when 124 companies raised Rs. 87,029 crore through 92 public and 32 rights issues as against 60 companies which raised Rs. 28,256 crore in comparison to 2004 - 05." Of the total 92 public issues in 2007 - 08, 85 were initial public offerings (IPOs) (Rs. 42,595 crore) and 7 were follow-on public offerings (FPOs) (Rs. 11,916 crore) as compared to Rs. 12,382 crore and Rs. 12,258 crore in 2004 - 05. The number of issues remained the same in 2006 - 07 and 2007 - 08 but the amount mobilised was more than twice in 2007 - 08 as compared to 2006 - 07. The number of rights issues increased from 26 to 32 and the amount raised through these issues was more than eight times from Rs. 3,616 in 2004 - 05 to Rs. 32,518 in 2007 - 08. The share of rights issues in the total resource mobilisation went up to 37.4 per cent in 2007 - 08 as compared to 12.80 per cent in 2004 - 05. The share of public issues in the total resource mobilisation declined from 87.2 per cent in 2004 - 05 to 62.6 per cent in 2007 - 08.

However, a weak trend was reported in 2008 - 09. The volatility in stocks markets, slowdown in economic growth, slackening of expansion plans by corporate and poor investor response led to sharp fall in the number of issues and amount raised through the primary market in 2008 - 09. The total amount raised from primary market during 2008 - 09 was just Rs. 16,220 crore by 47 companies. It composed of 22 public and 25 rights issues as against 124 companies which raised Rs. 87,029 crore in 2007 - 08. All the public issues in equity instruments were initial public offerings (IPOs). There were only 21 IPOs during 2008 - 09 indicating a depressed environment again for IPO market. The amount raised through IPOs during 2008-09 was quite lower at Rs. 2,082 crore compared to Rs. 42,595 in 2007 - 08. The share of public issues in the total resource mobilisation was only 22.1 per cent in 2008 - 09. Owing to the subprime mortgage crisis in the United States of America, economies around the globe became sluggish and there were fears of recurring recession in the US. The primary markets of other parts of the world were already affected long ago. In fact the Indian primary market has been impacted rather late. In spite of that, some public and right issues of leading companies were deferred or withdrawn from the market due to depressed conditions on secondary market in India. General perception of the market at that time was that this delay may be attributed to the "decoupling theory" followed in India. There was a public issue of nonconvertible debenture with a size of Rs. 1,500 crore in 2008 - 09 after a long gap. During 2008 - 09, the share of rights issues was Rs. 12,637 crore (77.9) in the total resource mobilisation. The highest amount was mobilised in September 2008 (Rs. 9,715 crore), followed by January 2009 (Rs. 1,500 crore) and December 2008 (Rs. 1,370).

The main reason generally put forth for the downfall of primary market especially in IPOs segment was the aggressive IPO pricing and poor post-listing performances that have made retail investors extremely cautious in 2009. Retail investors have taken out over Rs. 14,000 crore from the secondary market in the second part of 2008 - 09 and have left the half the initial public offerings undersubscribed. These investors have also accorded a tepid response to equity schemes of mutual funds. When the market was at its peak in January 2008, retail investors were the big buyers. But as the market dipped due to the economic slowdown and corporate earnings' worries, retail investors played it safe by depositing their money in banks and post offices."

But the second half of 2009 - 10 was quite encouraging for primary market investors as secondary market has also shown a revival note. The sentiment in some recently-listed shares has turned positive. The bounce back in equity market has ensured that 60 per cent shares listed in the 2008 - 09 are trading above their issue prices. The investor's response got a boost after the recent success of the Cox and King IPO and DB Corp. during December 2009 and Jan. 2010."

Qualified Institutional Placement (QIP) is another important segment of resource mobilisation programme. It has emerged as a new fund raising investment for listed companies in India. Through a QIP issue, funds can be raised from foreign as well as domestic institutional investors without getting listed on a foreign exchange.

Exhibit-2
Resource mobilisation through Qualified Institutions Placement

Year	Listed Companies*	
	At BSE	At NSE
2006-07		
No.	25	21
Amount (Rs.crore)	4,963	4,530
2007-08		
No.	36	34
Amount (Rs.crore)	25525	24679
2008-09	10,936	12,358
No.	1	2
Amount (Rs.crore)	75	189

Source: NSE, BSE

**Same companies may be listed at both NSE and BSE.*

> In order to mitigate market risks faced by issuers and investors and also to enable the listed companies to raise funds from its shareholders timelines in rights issues are already reduced. Starting from the notice period for calling a board meeting to the period stipulated for completion of allotment and listing. Time would be reduced from 16 weeks to just about 6 weeks.

In order to facilitate quicker resource mobilisation by companies from institutional investors, Qualified Institutions' Placement (QIP) was introduced in 2006. Due to introduction of QIP in 2006 - 07, the resources raised through FPO route declined in 2006 - 07. During 2007 - 08, 36 listed companies raised Rs. 25,525 crore through QIP as compared to 25 companies which raised Rs. 4,963 crore through QIPs in 2006 - 07. However, QIP as a mode of resource mopping also declined in 2008 - 09 reflecting the general subdued trend in the primary markets. During 2008 - 09, only two companies resorted to QIP and garnered Rs. 189 crore as compared to 36 listed companies which had raised Rs. 25,525 crore during 2007 - 08.

Major Policy Initiatives

The SEBI and Ministry of Corporate Affairs are continuously trying to strengthen the primary market. Some of the policy initiatives are as follows:

(i) It is mandatory to obtain grading from at least one credit rating agency. The grading would be disclosed in the prospectus, abridged prospectus and in every advertisement for IPOs. Earlier it was mandatory only for debt investment. However, in 2007 - 08 grading for equity was also made mandatory by the SEBI.

(ii) To facilitate the investors from unnecessary blocking of fund as application money Applications Supported by Blocked Amount (ASBA) system was introduced in 2008 - 09. It is a new mode of payment for public issues through book building wherein the application money remains blocked in the bank account of the applicant till allotment is finalised. It is a supplementary system to the existing process of applying in public issues through cheque/ draft.

(iii) It is now mandated for the companies to disclose the disclosure of the floor price or price band in their initial public offer through the book building process

(iv) Now the upfront amount is increased from 10 per cent to 25 per cent of the price fixed.Earlier warrants could be allotted on preferential basis, subject to the allottees paying upfront amount equivalent to at least 10 per cent of the price fixed.

(v) The validity period of the observations letter issued by the SEBI on draft offer documents filed for public/rights issues is also increased from three months to a period of twelve months. This measure would give sufficient flexibility to issuer to plan for launching an issue.

(vi) In order to mitigate market risks faced by issuers and investors and also to enable the listed companies to raise funds from its shareholders timelines in rights issues are already reduced. Starting from the notice period for calling a board meeting to the period stipulated for completion of allotment and listing. Time would be reduced from 16 weeks to just about 6 weeks.

(vii) Necessary amendments have already been made in the Issue of Capital and Disclosure Requirements (ICDR) Regulations, or Listing Agreement, to allow pure auctions for qualified institutional investors (QIPs) in FPOs. To start with, FPOs are floated by companies who are already listed on bourses but want to raise funds by issuing some more equity shares." Recently, this method was implemented in NTPC for QIPs allotment.

(viii) Fast track issue mechanism is introduced to enable the compliant listed companies for getting access in Indian primary market through follow-on public offerings and rights issues. Currently, the SEBI has also relaxed Fast Track Issues (FTI) requirement like reducing the average market capitalisation of public shareholding of the issuer from Rs. 10,000 crore to Rs. 5,000 crore, while pegging the annualised trading turnover to free float for companies whose public shareholding is less than 15 per cent of the issued capital.

Challenges Before Indian Primary Market

The Indian Primary Market has undergone structural transformation over the past decade. The market has acquired strength, efficiency and stability through the combined effect of competition, regulatory measures, and policy environment. The Primary Market in India has become efficient and modern over the years. It has also become much safer. However, some of the issues would need to be addressed in an effective way. These include

(i) Excessive pricing of public issues is also adversely affecting the sentiments of the investors.

(ii) Corporate governance needs to be strengthened.

(iii) The private corporate debt market continues to lag behind the equity segment.

(iv) Investors protection should be

the main focus of SEBI policy and programmes.

(v) Inappropriate allotment of shares, cornering of shares, possibility of IPO scam, etc are also affecting the mood and risk appetite of the potential investors.

(vi) During 2008 - 09 a new problem came into existence when a large number of IPOs were withdrawn. Withdrawal of IPO are right issues due to uncertainty in the secondary market indicates that Registrars to the issue, Merchant bankers, Advisors to the issues and other intermediaries involved in the price fixing process or issuing process are not doing their homework properly.

(vii) Uncertainty in secondary market affects heavily the primary market. The incidents occurring in the primary market are also reflections of what is actually happening in the secondary market. Ensuring an effective monitoring process by regulatory authorities is necessary to maintain proper coordination between primary market and secondary market operations. Thus, regulatory mechanism should be effective to protect the potential investors interest.

The Wadhwa Committee constituted by the SEBI to look after the problems of Initial Public Offerings scam has already suggested that “preference should be given to those retail applicants who did not get any share because of the cornering of shares by the scamsters, who created fictitious demat accounts.” Investors who got few shares should also be eligible for compensation. For the purpose of payment to the deprived retail applicants, the committee has suggested that the amount which is the difference of closing price of shares on the first day of listing at the NSE and the IPO issue price will be considered. In this context, steps are required to reallocate shares to persons who had lost out on allocation of shares on account of IPO scam. There are instances when the grey markets usually have high premia, which collapse as soon as the issues are listed. It also indicates that for vested interests, manipulation in the markets is rampant.

Suggestive Framework

Necessary steps are required on the part of the SEBI to overcome these challenges. These steps are as follows:

(i) The common practice of part payment of shares may be removed.

(ii) The process of application should be uniform among different categories of investors

(iii) Company’s entry into the primary market should be restricted at least for a span of 12 months if that company had withdrawn shares from the market.

(iv) The entire system, from application to allotment and refund orders and share credits should be made only after finalisation of the basis of allotment and its publication. It needs effective strengthening and rationalisation.

(v) Every error should not be deemed as a fraud. The responsibility for this failure should not be attributed only to the Registrar to the issues but to the entire system.

(vi) Efficient and transparent guidelines with a greater attention to details are also required so that parties concerned should be in position to take a viable decision.

(vii) There should be only one source of communication to the press and to the external world and that should be the regulator - SEBI.

(viii) Book building process should be more effective and transparent

(ix) The primary market infrastructure should be improved as huge number of investors complaints owing to poor processing of IPO applications.

To improve the procedural efficiency in the primary market the SEBI set up a multi- disciplinary committee called the Securities Market Infrastructure Leverage Expert Task Force (SMILE) in 2004 - s05. The committee’s recommendations were as follows:

(a) The IPO process should be automated wherein the investor has to provide his name and depository number or the unique identification number (UIN) while subscribing to an IPO.

(b) The book running lead manager (BLRM) should be made more accountable and should be empowered to pick up his team and assume fiduciary responsibility for the entire IPO process with proper contractual arrangements with other intermediaries.

(c) To increase retail participation in public issues and to maintain the retail character of the primary market, there must be direct retailing of primary issues and allotment incentives for early bid investors.

(d) Issue expenses should be reduced by way of issuing electronic prospectus rather than application forms.

(e) Certified brokers should be used for even non-online applications. By combining individual applications and applying on behalf of a large number of investors, these stock brokers would mimic QIBs.”

The SEBI is quite active and doing a commendable job with regard to investors awareness programe and investors protection mechanism. However, there is need to strengthen the support system of SEBI so that it can win the confidence of investors specially retail investors. These steps are to be implemented in proper way. Then we can hope a better tomorrow for Indian Primary Market. ■

Report on Special Placement Programme – June 2010 for experienced and fresh Chartered Accountants
22nd - 26th June, 2010[1]

As a measure to develop employment opportunities for Chartered Accountants, the Committee for Members in Industry (CMII) of ICAI has been successfully organising placement programmes twice a year for Newly Qualified Chartered Accountants, wherein prospective employers and new members interact and explore the possibility of taking up employment careers in various organisations.

The Special Placement Programme aimed at providing the experienced Chartered Accountants with a platform to assess their potential and refinement in work, which they have acquired during their working tenure and also to provide a unique opportunity to Chartered Accountants who have no or less than one year experience as fresh Chartered Accountant to participate in the programme.

For the first time CMII has taken an initiative to organise a separate Special Placement Programme of this nature for Chartered Accountants simultaneously at eight centres.

The Special Placement programme was conducted as per the below mentioned schedule:

Centre	Dates
Jaipur and Pune	22nd June, 2010
Bangalore, Chennai, Kolkata and Hyderabad	23rd - 24th June, 2010
Mumbai and New Delhi,	25th - 26th June, 2010

Executive Summary of the Special Placement Programme

1. Highest salary offered for international posting in the Special Placement Programme is more than Rs. 21 lacs per annum.

2. Highest salary offered for domestic posting in the Special Placement Programme is Rs. 12 lacs per annum.

3. The Minimum Salary paid is Rs. 5 lacs per annum to fresh Chartered Accountants and Rs. 6 lacs to experienced Chartered Accountants.

4. Around 198 jobs were offered to the candidates who participated in Special Placement Programme.

Centre	Total Number of candidates attended	Interview Panels	Number of job offers accepted by candidates
Bangalore	186	8	44
Kolkata	158	9	24
Chennai	127	10	11
Hyderabad	64	5	11
Jaipur	42	3	3
Mumbai	232	12	24
New Delhi	270	13	50
Pune	69	5	17
Total	1148	65	184

5. 184 jobs were accepted by the candidates who participated in Special Placement Programme.

6. The average salary offered to the candidates is about Rs. 7 lacs per annum.

7. 39 reputed organisations have participated during this Programme which was spread in 65 Interview Panels.

In all more than 1100 chartered accountants who had appeared in the interviews availed this service. The bio-data of these professionals were classified centre-wise and they were given an opportunity to interact with 65 interview boards of 39 organisations at eight centres.

The recruiting entities represented wide range of industries and sectors both from public and private. ICAI has once again proved itself as a formidable force in providing experienced finance, audit and compliance professionals.

The following table shows the statistical information of the special placement at a glance:

Consolidated:

Number of Candidates Reported	1148
Number of Interview Teams	65
Number of Organisations	39
Number of Jobs Offered	198
Number of Jobs Accepted	184
Percentage of jobs accepted vis a vis attended candidates	16.03%

[1]Report is prepared by CMII Secretariat as on 1st July 2010.

ITAT Ruling: UK's Linklaters Liable to Pay Rs. 23 Crore Tax

UK based law firm Linklaters has recently ended a 15-year-old case at the Mumbai Income Tax Appellate Tribunal or ITAT. The Mumbai ITAT's verdict says that Linklaters is liable to pay tax of over 3.3 million pounds, or over Rs. 23 crore on its India-related services. But this is not just about Linklaters. The ruling lays down important principles for all foreign professional service providers in India, reports Media.

Why was such a substantial tax liability imposed upon Linklaters? Two key points were being debated before the tribunal. The first one was whether Linklaters is or isn't a tax resident of the United Kingdom and therefore is it eligible for the benefits of the Indo-UK double tax avoidance agreement or DTAA. On this point the Mumbai income tax tribunal ruled that although Linklaters as an entity is not liable to tax in the UK, its partners are liable to tax. Although there is no juridical double taxation involved, there is economic double taxation and hence Linklaters is a tax resident of the United Kingdom, meaning it can be eligible for treaty benefits. This is one aspect of the ruling which is good news for foreign professional service providers operating in India. However the second part of the ruling could be more problematic. The second issue before the ITAT was whether Linklaters has its service as a Permanent Establishment or PE in India and if it does how much income is attributable to that permanent establishment. Under the Indo-UK double tax agreement if someone spends more than 90 days in India, they are thought to have a service PE in India and therefore taxed on the services rendered in India during that period of time. This tax ruling has taken that further and said that all India related services whether or not delivered in these 90 days spent in India, will be liable to tax in India. This may be very bad news for foreign consulting firms, foreign law firms even who do a substantial part of their work in India. For taxpayers who spend more than 90 days in India, they will have to be careful because then what will happen is the income for work done in India as well as outside India will become taxable in their hands in India. They may have to take recourse to tax credit provisions in their home countries to get relief from double taxation. The big question is what really will be counted as an India related service. Services rendered to Indian companies even when the firm is abroad may be counted as India related services. Services rendered to foreign firms for India related projects may be also counted. It is likely however that this ruling will open up a whole lot of debate and litigation on what really counts as India related service.

(Source: http://www.cainindia.org/)

Rules for Mauritius Investors Get Tougher

Taxpayers who claim exemption from capital gains tax by furnishing a residency certificate of Mauritius had better watch out. Now, income tax (I-T) authorities can ask for evidence from the Mauritius government to examine the authenticity of a taxpayer who claims exemption on capital gains tax provided under the Indo-Mauritius Double Taxation Avoidance Agreement (DTAA). This is a departure from the practice of furnishing a tax residency certificate from Mauritius for claiming exemption from capital gains tax. According to an Income-Tax Appellate Tribunal (ITAT) Delhi order on March 26, more documents will be needed from the Mauritius government to support the claim of the taxpayer, as in the case of SMR Investments. The ITAT order was released recently. If the order is not rejected by the high court, it will have bearing on similar cases. Nearly five years ago, SMR Investments, a company registered in Mauritius, had sold shares of HCL Technologies and BFL Software and generated over Rs. 9 crore as capital gains. The taxpayer claimed exemption from capital gains tax under Article 13 of India-Mauritius tax treaty. The taxpayer further claimed that it did not have a permanent establishment in India, a prerequisite for being liable to pay tax in India, and, therefore, is eligible for exemption from capital gains tax under the India-Mauritius tax treaty. But the assessing officer (AO) disagreed. The AO claimed that it is the actual location of the effective management and not the location in which the company ought to be managed decides the residency of the company. The company was set up in 1995-96, during which period its founder Suresh Rajpal was working in India. Mr. Rajpal was a resident of India when the taxpayer purchased the shares in 1996-97. Therefore, for all practical purposes, the taxpayer is not a resident of Mauritius, the AO said.

(Source: http://beta.profit.ndtv.com/news)

Finance Ministry May Cut DTC Corporate Tax Rates in Phases

A sharp cut in corporate tax rate proposed in the direct taxes code is likely to be done in stages to ensure that tax collections do no plummet, derailing the government's attempts to bring the fiscal situation under control. The direct taxes code, or DTC, has proposed a cut in corporate tax rate to 25 per cent from the current 30 per cent, but will withdraw most tax exemptions available to companies. The government is likely to lower the tax rate to 27.5 per cent, or a reduction of 2.5 percentage points, when the code comes into effect, likely from April 2011. "The general view is that the corporate tax rate be brought down to 25 per cent in a phased manner in the DTC regime," said a government official familiar with the manner. A sharp reduction in the statutory tax rate could dent the tax revenues particularly when the code has also proposed to widen the tax slabs for individuals as well with the highest 30 per cent rate indicatively pegged at incomes in excess of Rs. 25 lakh against the current Rs. 10 lakh. Though the statutory corporate tax rate is 30 per cent, the effective overall tax rate is about 22 per cent because of the various exemptions available. The government has

laid out a roadmap to reduce fiscal deficit from the current unsustainable levels. A bonanza from the auction of 3G spectrum will help it cut deficit to the budgeted 5.5 per cent of the GDP in the current year. But going down from thereon to 4.8 per cent will be difficult if the government lowers the tax rates sharply. A special task force under the central board of direct taxes (CBDT), the apex direct taxes body, is working on a legislation for the new code, which is expected to be introduced in the monsoon session of Parliament.
(Source: http://www.thehindubusinessline.com/)

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India Capable of 10 per cent Growth

India can deliver a 10 per cent growth provided the farm output touches four per cent annually and industry and services grow in double digits, top bureaucrats said in New Delhi recently at a meeting with industry captains. "Sustained double digit gross domestic product (GDP) growth is largely contingent on the farm sector achieving sustained four per cent GDP growth over the coming years," said Cabinet Secretary KM Chandrasekhar. He laid emphasis on creating and meeting the rural demand to achieve sustained and inclusive growth. "During the economic slowdown when the exports markets had shrunk, it were the rural markets that industry had turned to for sustained growth," Chandrasekhar said during a closed-door deliberation with secretaries of various ministries and top business leaders on whether India can achieve a sustainable growth rate of 10 per cent by 2014. Echoing Chandrasekhar, Finance Secretary Ashok Chawla said that to achieve double-digit growth, agriculture will have to grow at four per cent, industry at 12 per cent and services at 10.5 per cent. "Investments should rise to 40 per cent of GDP, for which savings rate will need to increase from 35 per cent to 37-38 per cent. The remaining 2-3 per cent will come from external sources," said Chawla. Revenue secretary Sunil Mitra pointed out that the challenge is to broaden the tax base, moderate the rates, and simplify the norms. "The Direct Tax Code (DTC) is a major step toward simplification of tax provisions. Direct tax reforms have resulted in direct tax rising from 2.9 per cent of GDP in 2000 to 6.36 per cent in 2009," said Mitra.
(Source: http://www.financialexpress.com/)

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India, the Third Fastest Growing Investor in the US

Indians are the third fastest growing foreign investors in the United States, a top Obama Administration official has said, acknowledging the positive contribution of India in the US economy at the time of recession. "India is the third fastest growing foreign investor in the US," said Holly Vineyard, Deputy Assistant Secretary of Commerce for Africa, the Middle East and South Asia, recently. Vineyard said Indian investment in 2008 was $4.5 billion but the investments in 2009 grew 60 per cent higher than investments in the previous year. He was quoting from a yet to be published report by India US World Affairs Institute and the University of Maryland. The Joint study has found 372 acquisitions by Indian companies in the US between 2004 and 2009 worth $21 billion. This has created an estimated 40,000 employments in the US.
(Source: http://www.business-standard.com)

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Indirect Taxes Mopped up Rs. 2.46 Lakh Cr. in FY'10

The Centre mopped up Rs. 2.46 lakh crore from indirect taxes in the last fiscal, as much as Rs. 2,000 crore more than the revised target, despite stimulus packages. But it collected Rs. 3.80 lakh crore from direct taxes against the revised estimate of Rs. 3.87 lakh crore, Union Revenue Secretary Sunil Mitra said. Estimates of indirect tax collections were revised down to Rs. 2.44 lakh crore last fiscal, from the Rs. 2.69 lakh crore estimated at the time of the Budget.
(Source: http://www.business-standard.com/)

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Government to Permit Unit Migration across SEZs

The government has "in principle" decided to allow migration of units from one Special Economic Zone to another on a case-to-case basis, provided they get the approval of an inter-ministerial official panel. Units seeking to shift from one tax-free enclave to other would have to approach the Board of Approval (BoA), which deals with SEZ proposals.

The decision will help unit owners tide over business difficulties and cost considerations. With the consolidation of SEZs, shifting of units may become more frequent, industry sources said.
(Source: http://economictimes.indiatimes.com)

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India, China May See Largest Rise in PE Investments in 2 years

India and China are expected to see the highest-ever rise in private equity investments from new and existing investors over the next two years, a survey by global PE firm Coller Capital said. As per the bi-annual survey of trends in private equity, investors — mainly from Europe — plan to boost their exposure to the Asia-Pacific region over the next three years. The survey revealed that 44 per cent of the global PE investors surveyed want to either expand or invest in India, while 53 per cent plan to do the same in China. Just 20 per cent of the investors preferred Australia, even though most seemed to view it as the most attractive destination for buyout investments in the Asia-Pacific region.
(Source: http://www.business-standard.com)

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IFAC to G20: Governments Should Practice What They Preach

In a letter, the International Federation of Accountants (IFAC) called for broad and swift action by the G-20 leaders to greatly improve government transparency and accountability as a means toward global fiscal sustainability. "Governments require that private sector companies report high-quality financial information to their investors and stakeholders. It's time for the public sector to practice what it preaches," said Ian Ball, CEO of IFAC. The IFAC recommended that G-20 should encourage governments to adopt accrual-based accounting. It asked them to improve transparency and accountability of stimulus programs and bailouts, and adopt international standards to improve the quality of financial information. The letter with the full recommendations has been posted on the IFAC website.

Source: http://press.ifac.org/news

IFAC SMP Committee Releases Practice Management Guide

The Small and Medium Practices (SMP) Committee of the IFAC has issued the Guide to Practice Management for Small- and Medium-sized Practices, which provides guidance on how this sector can better manage their practices and ultimately operate in a safe, profitable, and professional manner. The publication includes practice management principles and best practices on a comprehensive range of topics, including strategic planning, managing staff, client relationship management, and succession planning. It features case studies to illustrate the concepts, checklists and forms, a list of further readings, and modules that may be used for training and education. The PDF print version of the guide can be downloaded free of charge from the IFAC website.

Source: http://press.ifac.org/news

IAASB Proposes Enhanced Standard on Using the Work of Internal Auditors

Recognising developments in the internal auditing environment and the evolving relationship between internal and external auditors, the International Auditing and Assurance Standards Board (IAASB) has recently released an exposure draft on a proposed revised standard that addresses the external auditor's responsibilities relating to using internal auditors' work during an audit. The proposed International Standard on Auditing (ISA) 610 (Revised), Using the Work of Internal Auditors, aims to enhance the external auditor's performance by providing a stronger framework for evaluating and using the work and assistance of an entity's internal auditors. Related enhancements to the external auditor's required considerations of the internal audit function are also proposed in ISA 315 (Revised), Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment. The IAASB invites all stakeholders to comment on its proposals. The exposure draft can be accessed through the IAASB's website. Comments on the exposure draft are requested by November 15, 2010.

Source: http://press.ifac.org/news

IASB and FASB Propose a New Joint Standard for Revenue Recognition

The International Accounting Standards Board (IASB) and the US Financial Accounting Standards Board (FASB) have recently published for public comment a draft standard to improve and align the financial reporting of revenue from contracts with customers and related costs. If adopted, the proposal would create a single revenue recognition standard for International Financial Reporting Standards (IFRSs) and US-GAAP that would be applied across various industries and capital markets. The publication of this joint proposal represents a significant step forward toward global convergence in one of the most important and pervasive areas in financial reporting. The proposed standard would replace IAS 18 Revenue, IAS 11 Construction Contracts and related interpretations. The exposure draft is open for comment until 22 October 2010 and can be accessed through the IASB website.

Source: http://www.ifrs.org/News/

IASB Proposes Improvements for Level 3 Fair Value Measurements

The International Accounting Standards Board (IASB) has recently published for public comment further enhancements to a disclosure proposal on Level 3 Fair Value Measurements that formed part of the IASB's exposure draft Fair Value Measurement published in May 2009. In that exposure draft, the IASB proposed a three-level fair value hierarchy that categorises observable and non-observable market data used as inputs for fair value measurements. According to that hierarchy, Level 3 inputs are 'unobservable inputs' used for the fair value measurement of assets or liabilities for which market data are not available. IASB proposes to enhance its original proposal by requiring the measurement uncertainty analysis disclosure to reflect the interdependencies between unobservable inputs used to measure fair value in Level 3. The exposure draft Measurement Uncertainty Analysis Disclosure for Fair Value Measurements is open for comment until 7 September 2010. The FASB is publishing the proposals in the exposure draft Amendments for Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs. The IASB and FASB exposure draft can be

accessed on IASB and FASB websites respectively.
Source: http://www.ifrs.org/News/

IASC Foundation Becomes IFRS Foundation

On July 1, 2010 the IASC Foundation formally changed its name to the IFRS Foundation. The change represents the next step in a process to simplify the names in use across the organisation announced following the conclusion of the Constitutional Review in 2010. The International Financial Reporting Interpretations Committee (IFRIC) and the Standards Advisory Council (SAC) have already been renamed as the IFRS Interpretations Committee and the IFRS Advisory Council, respectively. The name of the International Accounting Standards Board (IASB) will remain unchanged. Beyond the change in name, there are no other changes affecting the legal status of the Foundation, its structure or its operating terms and conditions.
Source: http://www.ifrs.org/News/

IASB, FASB Embark on Additional Outreach Activities on Financial Statement Presentation Project

The IASB and FASB have started their programme of extended outreach to stakeholders on the joint project on financial statement presentation by posting a staff draft of proposed standards on their respective websites. The draft reflects the cumulative tentative decisions made by the boards concluding with their joint meeting in April 2010. In the recently issued Progress Report on Commitment to Convergence of Accounting Standards and a Single Set of High Quality Global Accounting Standards, the FASB and IASB committed themselves to engaging in a focused and targeted outreach programme on the financial statement presentation project before finalising and publishing an exposure draft. The boards decided that a draft of the proposed standards would be an effective way of facilitating their outreach activities that it plans to complete towards the end of 2010. They will review the tentative decisions reached to date - as reflected in the staff draft-in early 2011. Inputs from interested parties are welcome by FASB and IASB, though comments are not being formally invited. More information about the project and contact information is available on the boards' websites.
Source: http://www.ifrs.org/News/

Fair Value Measurement Comprehensive Project Summary Published

A comprehensive project summary on the fair value measurement project, prepared by the International Accounting Standards Board (IASB) staff, has been published. The project summary provides the background to the IASB's fair value measurement project and explains how the IASB plans to finalise an IFRS on fair value measurement.

This project summary also compares the tentative decisions reached so far in the project with:

- the proposals in the IASB's May 2009 exposure draft Fair Value Measurement (ED/2009/5); and
- the proposals in the US Financial Accounting Standards Board's (FASB) exposure draft of a proposed Accounting Standards Update (ASU) Amendments for Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs, which proposes amendments to Topic 820 Fair Value Measurements and Disclosures in the FASB Accounting Standards CodificationTM which codified FASB Statement of Financial Accounting Standards No. 157 Fair Value Measurements (SFAS 157).

Source: http://www.ifrs.org/News/

Podcasts on Hedge Accounting and Leasing Models

IASB has posted several short podcasts on the leasing project and the hedging phase of the project to replace IAS 39 Financial Instruments: Recognition and Measurement. These podcasts are the first in a series about the models being developed by the IASB.

The first hedge accounting podcasts provide an overview of the approach to phase III of the IAS 39 replacement project, the eligibility of derivatives as hedged items and background information on net positions in a hedging relationship. The first two lease podcasts provide an overview of the proposed approach to accounting for leases, and additional detail on the proposed lessee accounting. The podcasts are available free of charge by registering on the IASB financial reporting channel on iTunes or via RSS feed. You can also listen to the podcasts on the IASB webpage.
Source: http://www.ifrs.org/News/

Webcasts on IFRS for SMEs Available Online

The World Bank has published on their website a two-part webcast presentation by IASB member Paul Pacter entitled 'An Overview of the IFRS for SMEs'. The presentation is based on the first of the 20 training modules used in the IASB's 'Train the trainer' workshops for the IFRS for Small and Medium-sized Entities (IFRS for SMEs).

The first module reviews the requirements in each of the 35 sections of the IFRS for SMEs and highlights differences with full IFRSs. Each part of the webcast is approximately one hour long.
Source: http://www.ifrs.org/News/

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during June - July 2010 for the reference of Faculty/Students and Members of the Institute.

1. ACCOUNTING

Accounting Standards: Fair Value or Fear Value? by Dolphy D'Souza. BCAJ, June 2010, pp.129-131.

Bridging the Gap Between Accounting & Finance by Peter F. Pope. The British Accounting Review, Vol.42, 2010, pp.88-102.

Comments on the proposed SEC's 2010-2015 Draft Strategic Plan by Robert Bloomfield etc. Accounting Horizons, Vol.24/1, 2010, pp.109-115.

Contemporary Public Sector Accounting Research – An International Comparison of Journal Papers by Andrew Goddard. The British Accounting Review, Vol.42, 2010, pp. 75-87.

Does Mandatory Adoption of International Financial Reporting Standards in the European Union Reduce the Cost of Equity Capital? by Siqi Li. The Accounting Review, Vol.85/2, 2010, pp.607-636.

Effect of Governance on Credit Decisions & Perceptions of Reporting Reliability by Lori Holder-Webb & Divesh S. Sharma. Behavioral Research in Accounting, Vol.22/1, 2010, pp.1-20.

Effects of a Hypertext Learning Aid & Cognitive Style on Performance in Advanced Financial Accounting by Stuart H. Jones & Michael E. Wright. Issues in Accounting Education, Vol.25/1, 2010, pp.35-58.

Impairment of Financial Assets in the Era of IFRS by P.V. Antony & Ragesh M. The Management Accountant, June 2010, pp.466-469.

2. AUDITING

Auditor Independence in a Private Firm & Law Litigation Risk Setting by Ole-Kristian Hope & J.C. Langle. The Accounting Review, Vol.85/2, 2010, pp.573-605.

Do Complexity, Governance, & Auditor Independence Influence Whether Firms Retain Their Auditors for Tax services? by Dennis R. Lassila. JATA, Spring 2010, pp.1-23.

Field Experiment Comparing the Outcomes of Three Fraud Brainstorming Procedures: Nominal Group, Round Robin, & Open Discussion by J.E. Hunton & Anna Gold. The Accounting Review, Vol.85/3, 2010, pp.911- 935.

Influence of Documentation Specificity & Priming on Auditors' Fraud Risk Assessments & Evidence Evaluation Decisions by J.S. Hammersley etc. The Accounting Review, Vol.85/2, 2010, pp.547-571.

Information Content of Insider Trades Before & After the Sarbanes-Oxley Act by Francois Brochet. The Accounting Review, Vol.85/2, 2010, pp.419 - 446.

Risk Model to Opine on Internal Control by Abraham D. Akresh, Accounting Horizons, Vol.24/1, 2010, pp.65-78.

Reporting Bias With an Audit Committee by Judson Caskey etc. The Accounting Review, Vol.85/2, 2010, pp.447 - 481.

3. ECONOMICS

Global Imbalances & the Dollar's Future by C.P. Chandrasekhar. Eco. & Pol. Weekly, June 5, 2010, pp.47-58.

Volatility in Capital Flows: Some Perspectives by Duvvuri Subbarao. RBI Bulletin, June 2010, pp.1287-1293.

4. INVESTMENT

Whether Amalgamation/Merger Can Only be of Companies Carrying on Similar Business? by T.N. Pandey. Company Law Journal, Vol.2, 2010, pp.109-112.

Which Performance Measures do Investors Around the World Value the Most – And Why? by Jan Barton etc. The Accounting Review, Vol.85/3, 2010, pp.753-789.

5. MANAGEMENT

Challenges in Implementing Operational Risk Management by T.R. Anand. The Management Accountant, June 2010, pp.479-483.

Commercialisation of Microfinance in India: A Discussion of the Emperor's Apparel by M.S. Sriram. Eco. & Pol Weekly, June 12, 2010, pp.65-73.

Maverick CEO Explains How he Persuaded his Team to Leap into the Future by Vineet Nayar. Harvard Business Review, June 2010, pp.110-113.

6. TAXATION & FINANCE

Abolition of Double Taxation in the Treaty of Lisbon by Martti Nieminen. Bulletin for International Taxation, June 2010, pp.330-335.

Intervention – A Problematic New Concept in EU VAT Law by Peter Schilling & Deirdre Hogan. International VAT Monitor, May/June 2010, pp. 187-193.

The Institute of Chartered Accountants of India duly acknowledges the following members for making generous contributions to the Chartered Accountants Benevolent Fund (CABF):

CA. T.V. Mohandas Pai

CA. Anil Chandra Gupta

CA. Naveen N.D. Gupta

CA. S.C. Bapna

S.No.	M.No.	NAME OF FIRMS/ MEMBERS	AMOUNT (Rs.)
1	022314	CA. T.V.Mohandas Pai	1000000.00
2	008538	CA. Anil Chandra Gupta	110000.00
3	093777	CA. Naveen N.D.Gupta	100000.00
4	071765	CA. Subhash Chand Bapna	100000.00
5	034025	CA. Kamlesh Vikamsey	25000.00
6	037665	CA. Nilesh Vikamsey	25000.00
7	032523	CA. Shriniwas Yeshwant Joshi	25000.00
8	030823	CA. S.V.Haribhakti	25000.00
9	044075	CA. Durgesh Kumar Kabra	15000.00
10	002242	CA. Shivji Vikamsey	12500.00
11	044000	CA. Ketan Vikamsey	12500.00
12	071213	CA. P.P.Pareek	11000.00
13	080996	CA. Manu Chadha	11000.00
14	083642	CA. Sumant Chadha	11000.00
15	012796	CA. Arjan Dev Gandhi	11000.00
16	089245	CA. Juagannath Prakash	11000.00
17	044713	CA. Sunil Goyal	11000.00
18	037606	CA. Vipul K Choksi	10000.00
19	122626	CA. Neel Pankaj Majithia	10000.00
20	045481	CA. Mangesh P Kinare	10000.00
21	045489	CA. Sunil Patodia	10000.00
22	010830	CA. N.S.Govardanan	7000.00
23	008702	CA. Ashish Kumar Thakur	7000.00
24	088053	CA. Neeraj Jain	6100.00
25	501293	CA. Rohit Bector	5200.00
26	094986	CA. Pankaj Kumar	5100.00
27	087915	CA. Ajay Katyal	5100.00
28	070547	CA. Ajay Mittal	5100.00
29	092867	CA. Bhupinder Singh	5100.00
30	092355	CA. Deepak Batra	5100.00
31	501510	CA. Gaurav Gandhi	5100.00
32	083643	CA. Hardesh Kant Jindal	5100.00
33	091597	CA. Kewal Krishan Goyal	5100.00
34	503793	CA. Lovnish Gupta	5100.00
35	092376	CA. Mukesh Jain	5100.00
36	080772	CA. Naresh Kumar Mittal	5100.00
37	085882	CA. Om Prakash Mongia	5100.00
38	017288	CA. Pawan Kumar Aggarwal	5100.00
39	081823	CA. Raj Kumar Bhola	5100.00
40	093109	CA. Rajesh Dhiman	5100.00
41	091697	CA. Rajiv Garg	5100.00
42	089669	CA. Rajiv Goel	5100.00
43	086507	CA. Rajnish K. Dutta	5100.00
44	084946	CA. Raman Duggal	5100.00
45	091756	CA. Rohit Goel	5100.00
46	089856	CA. Sanjay Laul	5100.00
47	081299	CA. Satpal Goyal	5100.00
48	088041	CA. Shiv Singla	5100.00
49	087000	CA. Subhash Goel	5100.00
50	508437	CA. Sunil Kumar Rana	5100.00
51	091453	CA. Sunit Gupta	5100.00
52	083281	CA. Vijay Gupta	5100.00
53	033494	CA. Hasmukh Dedhia	5000.00
54	031083	CA. Rajnikant Chaniyari	5000.00
55	117348	CA. Gautam Shah	5000.00
56	115914	CA. Dharini Shah	5000.00
57	036870	CA. Hiren Dand	5000.00
58	103441	CA. Lalit Arvind Bansal	5000.00
59	044008	CA. Dinesh Gandhi	5000.00
60	074435	CA. Chandra Shekhar	5000.00
61	002017	CA. V.B.Haribhakti	5000.00
62	034624	CA. Dilip Moreshwar Apte	5000.00
63	J.P.Nagar Study Circle of W.I.R.C. of I.C.A.I		26150.00

EXAMINATION DEPARTMENT
Important Announcement - Online Examination Application Form

For the attention of the Candidates who aspire to appear in various Chartered Accountancy (CA) Examinations scheduled during November, 2010.

In order to reduce the time taken in processing the OMR application forms and also to ensure accuracy in the data pertaining to Name, Registration No., Group/ Centre/Medium opted, it has been decided to make the filling of Examination Application Forms Online at the url http://icaiexam.icai.org/ as the only mode of application for various CA examinations with effect from May, 2011. The OMR format of exam application form will be discontinued effective from May, 2011 examinations. In other words from May, 2011 onwards application forms are required to be filled compulsorily and online. However for November, 2010 CA examinations submission of hard copies of the examination application forms will continue to be an option.

As an incentive for the candidates filling the Online CA examination application forms, the cost of application form of Rs. 100 will be waived off (which is used to be recovered from the candidates submitting the online application forms).

We request the students of the CA Course to utilise this incentive and submit their examination application forms for November, 2010 only through Online mode at the url http://icaiexam.icai.org/. However, if it is not at all possible for them to submit the application forms online, they can continue to utilise the paper-pencil mode of application form (this option is available only for the November, 2010).

(G. Somasekhar)
Addl. Secretary (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
A - 94/4, Sector 58,
Noida – 201301

Transfer/Termination of Articleship [Regulation 56(1)]

In partial modification of the announcement dated 30th June 2009 regarding transfer/termination of articles the Council in its recent meeting has decided that the transfer/ termination of articleship in terms of Regulation 56(1) of the Chartered Accountants Regulations, 1988 shall be permissible on the grounds as stated below: -

I. Transfer/termination of articles is permitted without any restriction during the first year of articles.

II. During rest of the articleship period on satisfying any one or more of the conditions as stated below: -

1. Medical grounds requiring discontinuance of articles for a minimum period of three months (on production of a Medical Certificate issued by a Government Hospital).
2. Transfer of parent(s) to another city.
3. Misconduct involving moral turpitude.
4. Other justifiable circumstances/reasons: -

Invitation to Participate in Research Projects of the Internal Audit Standards Board of ICAI

The Internal Audit Standards Board of the Institute of Chartered Accountants of India is working relentlessly to bring out high quality technical literature in the form of Standards on Internal Audit (SIAs) and Technical Guides/ Studies/Manuals, which constitute an important tool in helping the internal auditors to provide effective and efficient internal audit services to the clients and/ or employers.

In this process, the Internal Audit Standards Board invites application for the research projects in the field of internal audit and other allied areas like, risk management, fraud, corporate governance, internal control, etc. Some emerging topics are:

- Audit Committee Reporting: Guide to Internal Auditors
- Auditing Human Resources
- Guide on Monitoring Controls
- Role in Achieving Basel II Compliance
- Internal Audit of Specific Industries – Entertainment, Textile, Advertising, Food Processing, Agriculture & Agro Products

The Eligibility Criteria

(a) The applicant must be a member of the Institute of Chartered Accountants of India with a research aptitude having experience either in the practice of the profession or as an employee with a reputed manufacturing/service organisation; or

(b) The applicant must be holding a post-graduate degree from a recognised University or an institute of national repute and must have experience in research.

The Evaluation Criteria

Only those research proposals will be accepted that result in formulation of guidance material in the form of Standard, Technical Guide and Studies for the members of the Institute in internal audit and allied areas, such as the following:

- the issues on which no Standards on Internal Audit (SIAs) are available or
- the internal audit issues that may arise in the industry-specific situations.

Duration

The duration of research project should not exceed 3 months from the date of the approval of the research proposal unless a longer period is otherwise justified.

Documents to be Submitted with the Application

The application should be accompanied by:

- A complete bio-data including experience in the relevant field.
- A synopsis of the project wherein you wish to contribute highlighting core aspects proposed to be covered.

The application should also indicate the expectations as to the honorarium. Reimbursement of the incidental/ out of pocket expenses would be made as per the rules of the Institute in this regard.

The application, complete in all respects, should be sent at the earliest at the following address:

The Secretary, Internal Audit Standards Board
The Institute of Chartered Accountants of India,
ICAI Bhawan, A-94/4, Sector 58,
Noida- 201301.
E-mail ID : cia@icai.in; cia@icai.org

Applications are Invited for Visiting Faculty to impart 100 Hours Information Technology Training at ICAI – ITT Centres

The Institute of Chartered Accountants of India through its Board of Studies imparts compulsory 100 Hours Information Technology Training (ITT) to its students as a part of their education and training for the Chartered Accountancy Course at its 150 ITT Centres established at its Regional/ Branch Offices all over the country. This Course aims to provide practical hands-on training for typical Financial, Accounting and Auditing analysis and reporting requirements of professional accountants in practice as well as in industry. Complete details about this Course including syllabus and details of ITT Centres are available at :http://www.icai.org/post.html?post_id=283&c_id=107.

The Board of Studies is currently in the process of forming a Panel of Visiting Faculty to provide excellent faculty support at one or more ITT Centres. Accordingly, applications are invited from Chartered Accountants and Computer Professionals [MCA/ M. Tech. (Computer Science), M.Sc. (Computer Science)] through On-line form available at http://www.icai.org/ittvisiting_faculty.html

The applicant must mention in the application about his/her choice of ITT Centre(s) at which he/she wishes to provide faculty support. Commensurate with their qualification(s) and experience, an honorarium on hourly basis including reimbursement of conveyance expenses would be paid to the invited faculty.

Hard copy of the application superscribing on the sealed envelope "Application for ITT Visiting Faculty" may also be sent to the Additional Director (ITT), Board of Studies, The Institute of Chartered Accountants of India, 'ICAI Bhawan', A-94/4, Sector – 58, Noida 201301 (U.P.) .

Director of Studies

(ii) Grounds already permissible in the Chartered Accountants Regulations, 1988 (on submission of requisite proof of the act warranting transfer/ termination of articleship): -
   a. Industrial Training (Regulation 51)
   b. Secondment of articles (Regulation 54)
   c. Conversion from PCC to IPCC (for termination of articles only. Re-registration of articles to be allowed only after passing Group-I of IPCC)
   d. Death of Principal [Regulation 57(1)(c)]
   e. Ceasing of practice by the Principal [Regulation 57(1)(a)]
   f. Removal of name of the Principal from the Register of Member due to any reason [Regulation 57(1)(b)]

(iii) Marriage basis (only if there is relocation to another city involving distance of 50 kms).

(iv) Irregular payment or non payment of stipend with reference to Regulation 67.

(v) Articled assistant desires to serve balance period of training outside India.

(vi) Shifting by the Principal to another city involving distance more than 50 kms.

The articled assistants are required to get the consent of the Institute before getting Form 109 signed by the Principal in their own interest.

The request, on any one or more of the aforesaid grounds, of an articled assistant on a plain paper alongwith the recommendation/ consent of the Principal for transfer/ termination of articleship accompanied by evidence/ proof (self-attested by the articled assistant) to the satisfaction of the Institute be made. Request for transfer not accompanied by consent of Principal shall not be accepted.

In case of dispute between principal and articled assistant, the matter be settled amicably among the articled assistant and the principal concerned and the Institute shall not interfere in such cases.

2nd July 2010 Secretary

SCHOOL OF DISTANCE EDUCATION
BU-ICAI JOINT EDUCATION PROGRAMME

BHARATHIAR UNIVERSITY
State University
Accredited with “A” Grade by NAAC
Coimbatore – 641 046
Web: www.b-u.ac.in

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
(Set up under an Act of Parliament)
New Delhi
Web: http://www.icai.org/

BHARATHIAR UNIVERSITY (BU) & THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI) have entered in to a Memorandum of Understanding to offer the following courses:

Under Graduate Course(U.G)		Post Graduate Course(P.G)	
B.B.A	B.Com.	M.Com	M.B.A

Under the distance education mode, the above courses are exclusively meant for qualified Chartered Accountants and for those who are undergoing Chartered Accountancy Course.

- For the purpose of award of the degree, the total marks secured both in CA programme and UG/PG programme chosen by the candidate under this arrangement will be counted together.
- Exemptions in appearing from certain subjects in UG/PG examinations will also be provided both to the qualified Chartered Accountants and for those who have completed their Intermediate/PE II/PCC /IPCC/Final programme.
- For eligibility, course fee and cost of application and prospectus you can visit Bharathiar University website www.b-u.ac.in. and/or ICAI website www.icai.org
- Admission for the programme will be made up to 31st August 2010. For those who are getting admission up to 31.08.2010, examination would be conducted during the last week of May 2011.
- The application form can also be downloaded from the University website www.b-u.ac.in and/or www.icai.org under the heading BU-ICAI joint education programme. While submitting the filled-in application, a Demand Draft/ Bank of India challan for Rs.100/- towards the cost of the application form in favour of The Director, School of Distance Education, Bharathiar University payable at Coimbatore should be enclosed.

Duly filled in application along with the enclosures can be sent to The Co-ordinator, BU-ICAI Joint Programme, Administrative Building 1st floor, Bharathiar University, Coimbatore – 641 046 superscribed on the envelop as “Application for BU-ICAI Programme”.

Coordinator, BU-ICAI Joint Programme, Bharathiar University, Coimbatore - 46
Phone: 0422 – 2428400, e-mail : bu.icai@yahoo.com

Branch Notification

(TO BE PUBLISHED IN PART III, SECTION 4 OF THE GAZETTE OF INDIA)

NOTIFICATION

No-1-CA(7)(137) 2010

July 19, 2010

In pursuance of Regulation 159(1) of the Chartered Accountants Regulations 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of a branch of Western India Regional Council at Latur with effect from July 1, 2010.

The Branch shall be known as Latur Branch of the western India Regional Council.

The Jurisdication of the branch shall, besides Latur City, include the following cities/towns falling within a radius of 50 kms from the Municipal limit of Latur.

1. Ambajogai
2. Osmanabad
3. parli Vaijnath
4. Udgir

As prescribed under Regulation 159(3), the Branch shall function subject to the control, supervision and directions of the council through the Western India Regional Council and shall carry out such directions as may, from time to time be issued by the Council.

(T Karthikeyan)
Secretary

Announcement of commencing the next batch of six week's Residential Programme

A Six Week's Residential Programme on professional skills and development has been initiated by Board of Studies, ICAI for the benefit of CA Students and newly qualified Chartered Accountants. This programme would focus on development of communication skills, leadership skills, personal traits as well as technical skills for effective functioning in business organisation and profession.

The programme is commencing from August 16, 2010 at Centre of Excellence, Hyderabad.

Students interested to pursue this programme may visit website of the institute for registration form.

Vijay Kapur
Director, Board of Studies

IMPORTANT ANNOUNCEMENT — Committee for Capacity Building of CA Firms and Small & Medium Practitioners

Audit Tool Kit & Document Management Software

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI has compiled ready-to-use illustrative checklists for various areas of professional needs such as Accounting Standards, Audit manual, CARO, Bank Branch Audit, Tax Audit and illustrative formats for day to day Income Tax correspondence etc. The same is launched on 1st July, 2010 in a tool kit containing softwares namely KDOC and eSecretary. The application of the software will help the members in efficient audit documentation and Knowledge & Contact Management. The CDs containing software are being sent in a tool kit free of cost to all the members and CA Firms. The details of use and benefits are given on ICAI website http://www.icai.org/ccbcf/kdoc-esecretary.html. Members may avail the benefits of this initiative.

Database for Transfer Pricing

The Committee in order to enable members to have access to qualitative database for doing comparative study for transfer pricing, has tied up with C-MOTS Internet Technologies Pvt. Ltd. for providing access to Capitaline TP Corporate Database (online version) at a special discounted price of Rs. 10,000/- plus taxes only. The database is complemented with powerful analytical software tools to enable extensive query and search. Members desirous of availing the benefit of this arrangement may visit http://www.capitaline.com/ICAI/register.asp.

NOTE: General information on audit tool kit software and transfer pricing database are available on ICAI's website www.icai.org under Committee page. Members may also contact the Committee for details of products by email on ccbcaf@icai.org.

CHARTERED ACCOUNTANTS EXAMINATIONS – NOVEMBER, 2010
To be Published in Part III Section 4 of the Gazette of India

NOTIFICATION

28th June, 2010

No. 13-CA (EXAM)/N/2010: - In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Professional Competence Course (PCC), Integrated Professional Competence Course (IPCC) and Final (Existing and New course) examinations will be held on the dates given below at the following centres provided that sufficient number of candidates offer themselves to appear from each centre.

Similarly Post Qualification Courses in Management Accountancy Course (MAC Part-I), Insurance and Risk Management (IRM) and International Trade Laws and World Trade Organisation (ITL&WTO) examinations will also be held on the dates given below at the following centres (centres in India only) in terms of provisions as contained in Schedule "C", "G" and "H" of the Chartered Accountants Regulations, 1988 respectively, provided that sufficient number of candidates offer themselves to appear from each centre.

PROFESSIONAL COMPETENCE EXAMINATION (PCE)

[As per syllabus contained in the scheme notified by the Council under Regulation 28 C (3) of the Chartered Accountants Regulations, 1988]

Group I: 9th, 11th and 13th November, 2010	Group II: 15th, 17th and 19th November, 2010

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION (IPCE)

[As per syllabus contained in the scheme notified by the Council under Regulation 28 E (3) of the Chartered Accountants Regulations, 1988]

Group I: 9th, 13th,15th and 17th November, 2010	Group II: 11th, 19th and 21st November, 2010

FINAL (EXISTING AND NEW COURSE) EXAMINATIONS:

[As per syllabus contained in the scheme notified by the Council under Regulation 31 (2) since revised as Regulation 31 (i) of the Chartered Accountants Regulations, 1988.]

Group I: 8th, 10th, 12th, 14th November, 2010	Group II: 16th, 18th, 20th & 22nd November, 2010

MANAGEMENT ACCOUNTANCY COURSE (MAC PART-I) EXAMINATION:

[As per provision contained in "Schedule C "of Chartered Accountants Regulations, 1988]

Group I: 16th & 18th November, 2010	Group II: 20th & 22nd November, 2010

INSURANCE AND RISK MANAGEMENT (IRM) COURSE EXAMINATION:

[As per provisions contained in "Schedule G" of Chartered Accountants Regulations, 1988]

Modules I to IV 16th, 18th, 20th & 22nd November, 2010

INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL&WTO) COURSE EXAMINATION:

[As per provisions contained in "Schedule H" of Chartered Accountants Regulations, 1988]

Group A: 9th,11th & 13th November, 2010	Group B: 15th , 17th & 19th November, 2010

EXAMINATION CENTRES: (FOR ALL EXAMINATIONS)

CENTRES IN INDIA:

1	AGRA	46	GUNTUR	91	PATNA
2	AHMEDABAD	47	GURGAON	92	PATIALA
3	AHMEDNAGAR	48	GUWAHATI	93	PIMPRI-CHINCHWAD
4	AJMER	49	GWALIOR	94	PONDICHERRY
5	AKOLA	50	HISAR	95	PUNE
6	ALAPPUZHA	51	HUBLI	96	RAIPUR
7	ALIGARH	52	HYDERABAD	97	RAJAMAHENDRAVARAM

8	ALLAHABAD	53	INDORE	98	RAJKOT
9	ALWAR	54	JABALPUR	99	RANCHI
10	AMBALA	55	JAIPUR	100	RATLAM
11	AMRAVATI	56	JALANDHAR	101	REWARI
12	AMRITSAR	57	JALGAON	102	ROHTAK
13	ANAND	58	JAMMU	103	ROURKELA
14	ASANSOL	59	JAMNAGAR	104	SAHARANPUR
15	AURANGABAD	60	JAMSHEDPUR	105	SALEM
16	BANGALORE	61	JODHPUR	106	SAMBALPUR
17	BAREILLY	62	KANPUR	107	SANGLI
18	BATHINDA	63	KARNAL	108	SATARA
19	BEAWAR	64	KOLLAM	109	SHIMLA
20	BELGAUM	65	KOLHAPUR	110	SIKAR
21	BELLARY	66	KOLKATA	111	SILIGURI
22	BERHAMPORE	67	KOTA	112	SIRSA
23	BHARAUCH	68	KOTTAYAM	113	SOLAPUR
24	BHAVNAGAR	69	KOZHIKODE	114	SONEPAT
25	BHILWARA	70	KUMBAKONAM	115	SRI GANGANAGAR
26	BHOPAL	71	LATUR	116	SURAT
27	BHUBANESWAR	72	LUCKNOW	117	THANE
28	BHUJ	73	LUDHIANA	118	THIRUVANANTHAPURAM
29	BIKANER	74	MADURAI	119	THRISSUR
30	BILASPUR	75	MANGALORE	120	TINSUKIA
31	CHANDIGARH	76	MATHURA	121	TIRUCHIRAPALLI
32	CHENNAI	77	MEERUT	122	TIRUPATI
33	COIMBATORE	78	MORADABAD	123	TIRUPUR
34	CUTTACK	79	MUMBAI	124	TUTICORIN
35	DEHRADUN	80	MUZAFFARNAGAR	125	UDAIPUR
36	DELHI/NEW DELHI	81	MYSORE	126	UDUPI
37	DHANBAD	82	NAGPUR	127	UJJAIN
38	DURG	83	NANDED	128	VADODARA
39	ERNAKULAM	84	NASHIK	129	VAPI
40	ERODE	85	NELLORE	130	VARANASI
41	FARIDABAD	86	NOIDA	131	VELLORE
42	GANDHIDHAM	87	PALGHAT	132	VIJAYAWADA
43	GHAZIABAD	88	PALI MARWAR	133	VISAKHAPATNAM
44	GOA	89	PANIPAT	134	YAMUNA NAGAR
45	GORAKHPUR	90	PANVEL		

OVERSEAS CENTRES: (FOR PROFESSIONAL COMPETENCE COURSE (PCE), INTEGRATED PROFESSIONAL COMPETENCE COURSE (IPCC) AND FINAL EXAMINATIONS ONLY)

1) ABU DHABI 2) DUBAI 3) KATHMANDU

Payment of fees for the examinations should be made by Demand Draft only. The Demand Drafts may be of any Scheduled Bank and should be drawn in favour of The Secretary, The Institute of Chartered Accountants of India, payable at New Delhi only.

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to these examinations are required to be made either online at http://icaiexam.icai.org free of cost (i.e., Rs.100/- for application form shall not be charged if applications are filled in online) or in the relevant prescribed form, copies of which may be obtained from the Additional Secretary (Examinations), The Institute of Chartered Accountants of India, ICAI BHAWAN, Indraprastha Marg, New Delhi – 110 002 on payment of Rs.100/- per application form in respect of Professional Competence Course, Integrated Professional Competence Course and Final Examinations. The cost of Examination application forms for Management Accountancy Course (MAC Part-I), Insurance and Risk Management (IRM) and International Trade Laws and World Trade Organisation (ITL&WTO) examinations is Rs. 100/- per application form. The forms shall also be made available in the Regional and Branch Offices of the Institute and can be obtained therefrom on cash payment on or from 5th AUGUST, 2010.

Applications together with the prescribed fee by Demand Draft of any Scheduled Bank may be sent so as to reach the Additional Secretary (Examinations) at New Delhi not later than 26th AUGUST, 2010. However, applications will also be received direct by Delhi Office after 26th AUGUST, 2010 and upto 3rd SEPTEMBER, 2010 with late fee of Rs. 500/-. Applications received after 3rd SEPTEMBER, 2010 shall not be entertained under any circumstances. Applications for the students' examinations only duly filled in will also be received by hand delivery at the office of Institute at New Delhi and at the Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Delhi, Ahmedabad, Bangalore, Hyderabad, Jaipur and Pune upto 3rd SEPTEMBER, 2010. Candidates residing in these cities are advised to take advantage of this facility. However, application forms duly completed for the Post Qualification Course examinations viz: Management Accountancy Course (MAC Part-I), Insurance and Risk Management (IRM) examinations and International Trade Laws and World Trade Organisation (ITL&WTO) examinations will be received only at the New Delhi office of the Institute.

The candidates who fill up the examination application form online at http://icaiexam.icai.org from 5th AUGUST, 2010 to 3rd SEPTEMBER, 2010 and remit the fee online by using credit card, either VISA or Master Card shall not be charged Rs. 100/- (i.e., cost of application form fee) in order to popularise filling-in of application form online.

The fees payable for the various examinations are as under: -

PROFESSIONAL COMPETENCE and INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION	
For Both the Groups / Unit - 9	Rs. 1600/-
For one of the Groups / Unit 1 to 8	Rs. 1000/-

FINAL (EXISTING & NEW COURSE) EXAMINATION	
For Both the Groups	Rs. 2250/-
For one of the Groups	Rs. 1250/-

MANAGEMENT ACCOUNTANCY COURSE (MAC PART-I) EXAMS	
For Both the Groups	Rs. 400/-
For one of the Groups	Rs. 200/-

INSURANCE & RISK MANAGEMENT (IRM) EXAMINATION:	Rs. 1000/-

INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL&WTO) EXAMINATION:	
For both the Groups	Rs. 2000/-
For one of the Groups	Rs. 1000/-

Candidates of Professional Competence Examination (PCE) / Integrated Professional Competence Examination(IPCE) and Final examinations opting for Dubai/Abu Dhabi Centre are required to remit, US$ 350 and US$ 400 respectively or its equivalent Indian Currency irrespective of whether the candidates appear in a group or in both the groups or in a unit .

Candidates of Professional Competence Examination (PCE) / Integrated Professional Competence Examination (IPCE) and Final Examinations opting for Kathmandu centre are required to remit Indian Rs. 2250/- and Indian Rs. 3000/- respectively or its equivalent relevant foreign currency irrespective of whether the candidates appear in a group or in both the groups or in a unit.

OPTION TO ANSWER PAPERS IN HINDI :

Candidates of Professional Competence Examination (PCE)/ Integrated Professional Competence Examination (IPCE) and Final Examinations will be allowed to opt for Hindi medium for answering papers. Detailed information will be found printed in the Information sheets attached to the relevant application form. However the medium of Examinations will be only English in respect of Management Accountancy Course (MAC Part-I), Insurance and Risk Management (IRM) and International Trade Laws and World Trade Organisation (ITL & WTO) Examinations.

(G. SOMASEKHAR)
ADDITIONAL SECRETARY (EXAMS)

Views solicited on SEBI Report - Takeover Regulations

The Securities and Exchange Board of India (SEBI) has constituted the Takeover Regulations Advisory Committee under the Chairmanship of Mr. C. Achutan with the mandate to examine and review the Takeover Regulations of 1997 and to suggest the suitable amendments as deemed fit. The Committee has submitted its report on July 19, 2010 and structured its report into three parts:

a. Part I contains the salient features of the Proposed Takeover Regulations;
b. Part II contains the Committee deliberations and key recommendations;
c. Part III contains the draft text of the Proposed Takeover Regulations.

SEBI has placed the Report on its Website for public comments. The same can be accessed from the link http://www.icai.org/resource_file/19927tracreport.pdf

The ICAI Committee on Financial Markets and Investors' Protection is in a process of considering the report and inviting members at large to provide their comments/ suggestions on the Report of the Takeover Regulations Advisory Committee for its consideration, compilation and submission.

We solicit your views/suggestions on the Report of the Committee in the following format:

Sr. No.	Draft Provision / Recommendation of the Committee	Comment	Rationale
1.	Insert reference to the draft provision / paragraph in the Committee's Report	Provide your comment here	Specify your reasons / rationale for the comment

We shall appreciate to receive the same by August 16, 2010 at cfmip@icai.org to enable us to forward the consolidated comments/ suggestions to SEBI.

The Institute of Chartered Accountants of India Invites Applications for Visiting Faculty for Live Virtual Classes to CA students

The Board of Studies of the Institute, in its constant endeavour to provide the best of education and learning facilities to students, is launching Live Virtual Classes (LVC) for the CPT, IPCC and Final Courses using VSAT on pan India basis with the objective of providing best professional guidance, support and educational facilities in an interactive classroom environment with the best available faculty. It is also proposed to provide local faculty support to assist students in better understanding the subjects, query solving and overall supervision. These local faculty members will also undertake tutorials and supervise/ evaluate case studies which are given from time to time. Complete details about subjects covered under the CA Course including syllabus thereof are available at Institute's website - www.icai.org. The exact URL to access these details is as follows: http://www.icai.org/post.html?post_id=5719&c_id=313

The pilot phase of this project proposes to have LVC Classrooms at Mumbai, Chennai, Kolkata, Kanpur, Jaipur, Ahmedabad, Bangalore, Hyderabad and New Delhi and LVC Studio at Delhi NCR. Thereafter, the LVC Classrooms would be established on pan India basis in a phased manner.

The Board of Studies is in the process of formulating a Panel of visiting faculties for the above purpose. An honorarium on hourly basis, conveyance, etc. would be paid to the visiting faculty members. Interested faculty members having Doctorate/ M.Phil degree in relevant subject, CA, CS, ICWA with at least 5 years of teaching experience at college/university level may apply latest by 20th August, 2010 through on-line form available at http://www.icai.org/LVCvisiting_faculty.html.

Hard copy of the application superscribing the sealed envelope with the title "Application for Visiting Faculty – Virtual Classes" may also be sent to the Additional Director (ITT), Board of Studies, The Institute of Chartered Accountants of India, 'ICAI Bhawan', A-29, Sector – 62, Noida 201301 (U.P.) latest by 25th August, 2010.

Director of Studies

Campus Placement Programme for Selection of Articled Assistants - August, 2010

Invitation to Eligible Students and the Firms of Chartered Accountants

The Board of Studies of the institute has introduced an optional Campus Placement Scheme for selection of Articled Assistants by CA Firms. The scheme has been evolved to provide an opportunity to the firms of Chartered Accountants having vacancies for Articled Assistants to interact with the candidates who have passed either Group-I or both Groups of the IPCC examination and are eligible for undergoing articled training for selection as articled assistants in the CA firms.

The first programme is being organised at Ahmedabad, Bangalore, Chandigarh, Chennai, Ernakulam, Hyderabad, Jaipur, Kanpur, Kolkatta, Mumbai, New Delhi and Pune in August, 2010. Both CA firms as well as candidates eligible for articled training who are willing to participate in the programme shall have to register themselves online through portal at http://bosapp.icai.org as per following schedule:

Activity	Opening Date (10.00 a.m.)	Closing Date (10.00 p.m.)
1. Registration of CA Firms	02-Aug-10	16-Aug-10
2. Registration of Candidates	07-Aug-10	13-Aug-10
3. Availability of Candidates' database to CA Firms	14-Aug-10	17-Aug-10
4. Last Date for short-listing of Candidates by CA firms	20-Aug-10	20-Aug-10
5. Consents to be received from candidates in order of preference	21 Aug-10	23-Aug-10
6. Availability of data of Candidates from where consents/ confirmations have been received for Interviews/ Interactions:	25-Aug-10	29-Aug-10
7. Interview Dates	27-Aug-10	29-Aug-10

Please refer the detailed guidelines available at institute's website www.icai.org under "Announcements".

In case of any clarification, please get in touch with Shri Rajesh Bhalla, Deputy Secretary, Programme Coordinator, Board of Studies, ICAI Bhawan, A-29, Sector-62, Noida-201301, Tel. No. 0120-3045930/31, Mobile No: 09312209533; eMail: bosapp@icai.org.

Director of Studies

ICAI is looking for Space and Infrastructure to run Teaching Classes

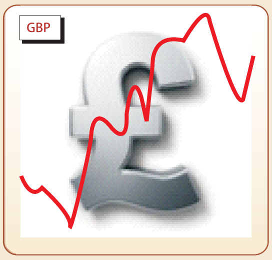
The Institute invites "Expression of Interest" from reputed Institutions (Colleges/ Schools)/ Chartered Accountants and others for Public – Private Partnership to provide furnished AC Classrooms, infrastructure and management resources including administrative staff, other facilities like reading rooms(s)/ Library and maintenance services for Live Virtual Classroom teaching to be organized by the Institute on pan India basis, with all modern facilities either on rental basis or per student fee sharing basis. Larger capacity hall-like theatres and auditoriums can also be considered. The academic input for the Classroom teaching will be provided by the Institute. The details of the requirements, etc. are available at the Institute's website www.icai.org under "Tenders".

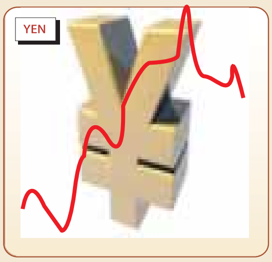
Those interested may send their "Expression of Interest for Teaching Classes" alongwith details of facilities available, within 15 days, to the undersigned at "The Institute of Chartered Accountants of India, 'ICAI Bhawan', A-29, Sector-62, Noida-201301."

Director, Board of Studies

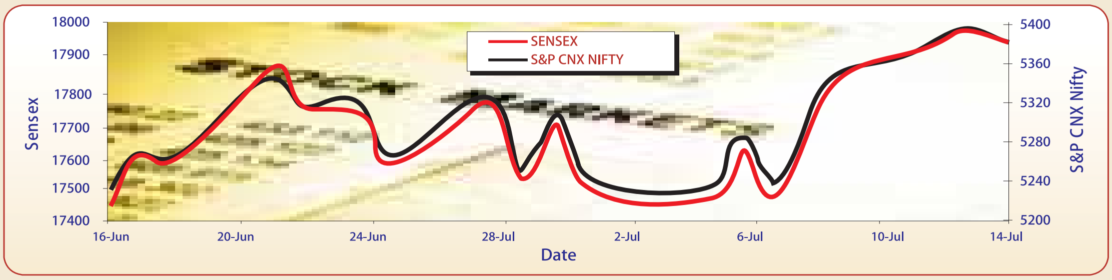
Economic Indicators

Indian Rupee vs. Major Foreign Currencies (June 16, 2010 to July 15, 2010)





Stock Markets



Selected Indicators

Item	Unit/Base	2009	2010					
		Jul. 3	May 28	Jun. 4	Jun. 11	Jun. 18	Jun. 25	Jul. 2
Cash Reserve Ratio(1)	Per cent	5.00	6.00	6.00	6.00	6.00	6.00	6.00
Bank Rate	Per cent per annum	6.00	6.00	6.00	6.00	6.00	6.00	6.00
Base Rate(2)	Per cent per annum	11.00-12.00	11.00-12.00	11.00-12.00	11.00-12.00	11.00-12.00	11.00-12.00	7.50-8.00
Deposit Rate(3)	Per cent per annum	6.50-8.00	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	1.00/3.35	2.50/5.00	2.50/5.40	2.85/5.55	2.85/5.40	2.85/5.50	2.00/6.50

Notes: (1) Cash Reserve Ratio relates to Scheduled Commercial Banks (excluding Regional Rural Banks).
(2) Base Rate relates to five major banks since July 1, 2010. Earlier figures relate to Benchmark Prime Lending Rate (BPLR).
(3) Deposit Rate relates to major banks for term deposits of more than one year maturity.

Readers are Invited to contribute write-ups or any relevant and interesting piece of information for this feature at eboard@icai.org.

CPE
12
Hours

Two-Day Conference on Auditing

Organised by: Auditing and Assurance Standards Board and Internal Audit Standards Board of ICAI
Hosted by: Western India Regional Council of ICAI

Theme:	**Excellence in Financial Reporting**
Date:	**August 28th & 29th, 2010**
Venue:	Hotel Sea Princess, Juhu, Mumbai
Topics include:	• Standards on Auditing – An Overview • Companies (Auditor's Report) Order, 2003 • Audit of Smaller Entities – Special Considerations • Audit of Public Sector Entities – Special Considerations • Audit Reporting – Best Practices • Issues in Tax Audit • Internal audit and risk management • Concurrent audit in banks • Codifying best practices in internal audit – Standards on Internal Audit
Conference Chairmen:	CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board ☎: 098310 59999 ✉: babhijit@deloitte.com CA. Rajkumar S. Adukia, Chairman, Internal Audit Standards Board ☎: 09323 061049 ✉: rakjumarfca@gmail.com
Conference Director:	CA. Atul Bheda, Member, Internal Audit Standards Board ☎: 093233 23667 ✉: bhedaac@gmail.com
Conference Coordinator:	CA. Sanjeev D Lalan, Chairman WIRC of ICAI ☎: 093235 25932 ✉: sdlalan@sgco.co.in
Fees:	Rs. 3500/- per delegate Cheques/ demand drafts should be made in favour of WIRC of ICAI payabe at Mumbai. Please also mention your name, membership number and contact details at the back of the cheque/ demand draft.

Request to Contribute in the Journal

Members and other experts are requested to contribute for various sections and features of The Chartered Accountant journal. The write-ups covering the topical issues and latest updates will be preferred.

Every article should be of about 3000 words and shall also have an executive summary of about 100 words and complete references/bibliography of the sources referred. Please note that a declaration about originality of the article, author's good quality passport size photograph, ICAI e-mail ID and complete contact details (postal address and contact numbers) should also accompany the article. As a token of appreciation, an honorarium of Rs.5000/- is payable for every article selected by the Editorial Board and published. Besides, for members of the Institute, a CPE credit of four hours is also granted.

The articles can be sent to us by e-mail at eboard@icai.org/ journal@icai.org or by post to The Editor, The Chartered Accountant, Journal Section, ICAI Bhawan, A-94/4, Sector -58, Noida - 201301.

CPE 12 Hours

Two Days Conference on Excellence in Audit and Financial Reporting

Date: August 21st and 22nd, 2010

Organised by: Auditing and Assurance Standards Board, ICAI
Hosted by: Ranchi Branch of CIRC of ICAI

Timing of Sessions	**Session Details**
Day 1	**August 21, 2010, Saturday**
9:00 a.m. – 9:30 a.m.	Registration
9:30 a.m. – 10:00 a.m.	Inaugural Session
	Address by CA. G Ramaswamy, Vice President, ICAI
	Special Address by CA. Amarjit Chopra, President, ICAI
Technical Session I	
10:00 a.m. to 12:00 noon	Common Discrepancies in Financial Statements including Audit Report *CA. Jaydeep N Shah, Nagpur*
12:00 noon to 01:30 p.m.	Best Practices in Audit Reporting *CA. Abhijit Bandyopadhyay, Kolkata*
Technical Session II	
2:15 p.m. to 4:15 p.m.	Interpretation of Law Deeds and Documents *CA. Ravindra Holani, Gwalior*
4:30 p.m. to 5:30 p.m.	Overview of Standards on Auditing *CA. Abhijit Bandyopadhyay, Kolkata*
Day 2	**August 22, 2010, Sunday**
Technical Session III	
10:00 a.m. to 11:00 a.m.	Certification Work - Key Issues *CA. Naveen ND Gupta, New Delhi*
11:00 a.m. to 12:00 noon	Special Consideration in Audit of Public Sector Enterprises and Government Departments *CA. Ravindra Raniwala, Jaipur*
12:00 noon to 1:00 p.m.	Key Issues in Concurrent Audit *CA. S.K. Bhargava, Lucknow*
Technical Session IV	
2:00 p.m. to 3:00 p.m.	Key Issues relating to Tax Audit *CA. R.C. Agarwal, Allahabad*
3:15 p.m. to 4:15 p.m.	Key Issues relating to CARO, 2003. *CA. Shashank Kaushik, Patna*
Conference Chairman	*CA. Ravindra Holani, Central Council Member* ☎: +91 09425109183, 09425307510 ✉: raviholani@rediffmail.com, raviholani@yahoo.co.in
Co-chairman	*CA. Rajiv Ranjan Mittal* ☎: +91 09431114501 ✉: mittalrr@gmail.com
Participation Fees	Rs. 1500/- for members
The cheques/ Demand Drafts should be drawn in favour of **Ranchi Branch of CIRC of ICAI** payable at **Ranchi**. The cheque should be sent to **ICAI Bhawan, Dr. Mukti Saran Lane, H. B. Road, Ranchi, 834001**. Please mention your name, membership no., contact number and place at the back of the cheque/ demand draft.	
Limited seats, registration on first come, first serve basis.	

CPE 12 Hours

Direct Taxes Committee and Committee on International Taxation

Two Days Programme on Direct Taxes Organised by the Direct Taxes Committee and Committee on International Taxation and hosted by EIRC of ICAI

Date	27th and 28th August, 2010
Venue	The Park Hotel, Kolkata
Discussion Sessions	• Recent issues relating to taxation of chatitable trust and institution • Survey, search and seizure • Recent Judicial Pronouncement • International Taxation • Tax deduction on remittances abroad (Section 195 and others) • Issues in Tax audit • Issues in Business Taxation • Mock Tribunal
Faculty	• CA. Mahesh P. Sarda • CA. Dhinal Shah • CA. N. K. Poddar • CA. (Dr.) Girish Ahuja
Fees	Rs. 2,500/- The cheque should be drawn in favour of `***The Institute of Chartered Accountants of India'*** payable at Kolkata and cheque should be sent to EIRC of ICAI, ICAI Bhawan, 7, Anandilal Poddar Sarani (Russell Street), Kolkata – 700 071. **Limited seats, registration on first come first serve basis.** **No spot registration, Advance confirmation of registration is required.**

Contact Persons

Programme Chairmen		**Programme Directors**	
CA. Jayant Gokhale Chairman Direct Taxes Committee of ICAI ☎ 93221 33027 ✉: jayant@gokhalesathe.in	CA. Mahesh P. Sarda Chairman Committee on International Taxation of ICAI ☎: 98250 76020 ✉: msarda@deloitte.com	CA. Sumantra Guha Council Member, ICAI ☎: 98310 15331 ✉: ca.sumantraguha@ gmail.com	CA. Abhijit Bandyopadhyay Council Member, ICAI ☎: 98310 59999 ✉: babhijit@deloitte.com

Programme Coordinator	CA. Krishanu Bhattacharyya, Chairman, EIRC of ICAI, ☎: 9831208273, ✉: krishanu_b@rediffmail.com
For registration & further details, please contact	EIRC of ICAI, ICAI Bhawan, 7, Anandilal Poddar Sarani (Russell Street), Kolkata – 700 071. ☎: 033- 30211104/ 33/32, ✉: eircevents@icai.in

CPE 12 Hours

Two-Day Conference on Auditing

Organised by: Auditing and Assurance Standards Board and Internal Audit Standards Board of ICAI
Hosted by: Eastern India Regional Council of ICAI

Theme:	Excellence in Financial Reporting
Date:	August 20th & 21st, 2010
Venue:	Kolkata
Topics Include	
• Standards on Auditing – An Overview • Companies (Auditor's Report) Order, 2003 • Audit of Smaller Entities – Special Considerations • Audit of Public Sector Entities – Special Considerations • Audit Reporting – Best Practices	• Issues in Tax Audit • Internal audit and risk management • Concurrent audit in banks • Codifying best practices in internal audit – Standards on Internal Audit
Conference Chairmen	
CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board ☎: 0983105 9999 ✉: babhijit@deloitte.com	CA. Rajkumar S Adukia, Chairman, Internal Audit Standards Board ☎: 09323061049 ✉: rakjumarfca@gmail.com
Conference Director	**Conference Coordinator**
CA. Sumantra Guha, Central Council Member ☎: 09831015331 ✉: oisuad@vsnl.net	CA. Krishanu Bhattacharyya, Chairman EIRC of ICAI ☎: 098312 08273 ✉: krishanu_b@rediffmail.com
Fees	Rs. 2000/-Cheques/ demand drafts should be made in favour of EIRC of ICAI payabe at Kolkata. Please also mention your name, membership number and contact details at the back of the cheque/ demand draft.

CPE 12 Hours

Two Days National Conference on Direct Taxes, Mangalore

Organised by the Direct Taxes Committee of ICAI and hosted by the Mangalore Branch of SIRC of ICAI

Theme	"ANVESHNA"
Date and Time	20.08.2010 [Friday]: From 9:00 a.m. to 5:30 p.m. & 21.08.2010 [Saturday] : From 9:00 a.m. to 5:30 p.m.
Venue	Loyota Hall, St. Aloysius P U College Campus, K.S. Road, Mangalore

Discussion Sessions	
Topics to be discussed (i)Discussion paper on Direct Taxes Code (ii)Appellate Proceedings – Practical Issues (iii)Skit on International Taxation (iv)Indirect Taxes – Recent Issues in Works Contract under KVAT (v)Deductions under the head Business & Profession (vi)Indirect Taxes- Recent issues in Service Tax (vii)Accounting Standards in relation to Tax Audit cases (viii) Case Studies in code of Ethics under CA. Act	**Speakers** CA. T.N. Manoharan, Chennai CA. Jayant Gokhale, Mumbai Group Dynamics, Bangalore CA. S. Venkatramani, Bangalore CA. R. Bhupathy, Chennai Shri. K. Vaitheeswaran, Chennai CA. Chinnaswamy Ganesan, Chennai CA. K. Raghu, Bangalore

Fees	Rs. 1800/- for members Rs. 600/- for students ***[Cheque may be drawn in favour of "Mangalore Branch of SIRC of ICAI"]***

Contact Persons		
CA. Jayant Gokhale, Conference Chairman, Chairman, Direct Taxes Committee ☎: 09004693027 ✉: jayant@icai.org	CA. K. Raghu, Conference Director ☎: 09341219191 ✉: kraghu9999@gmail.com	CA. Babu Abraham Kallivayalil, Conference Co-ordinator ☎: 09846035333 ✉: babu.kallivayalil@gmail.com

Contact person for registration and other details	
CA. Srinivas Kamath, Conference Co-ordinator ☎: 09844073374 ✉: kamath070@yahoo.co.in	CA. Murali Mohan, Secretary, Mangalore Branch of SIRC of ICAI ICAI Bhawan, K.R. Road, Mangalore 575 003 ☎: 0824-2495722, 0824- 4279104, 0824-2496122 Mobile: 09845102004 ✉: mangalore@icai.org, muralimohan@mca.co.in

CPE 12 Hours

National Conference on Construction Industry

Organised By: Committee for Members in Industry of ICAI
Hosted by: WIRC of ICAI, 21st and 22nd August, 2010
Hotel Kohinoor Continental, J. B. Nagar, Andheri (East)

Timing of Sessions	9:30 a.m. to 5:30 p.m. (Registration 9:00 a.m. to 9:30 a.m.)
Technical Sessions	
• Overview of Accounting Standards applicable to construction industry with a comparison to IFRS, with special emphasis on specific accounting issues relating to construction industry • Overview of provisions applicable to construction industry under the income tax act with a brief comparison with the proposed Direct Tax Code. • Controversial issues and recent judicial pronouncements pertaining to construction industry (including redevelopment) - Direct & Indirect Taxation • MVAT and service tax provisions applicable to construction industry- issues relating to overlapping of these taxes, classification of services(works contract vis- a- vis other services) from a credit optimisation perspective and GST impact. • Fund raising for construction industry – project finance, banking perspective, private equity and recent funding trends • Overview of key legal statutes applicable to construction industry, including rules relating to FSI, etc. • Perspective on how the construction industry is faring and is likely to perform in the next 3 to 5 years, with specific emphasis on real estate prices.	
Participation Fees	Rs. 2500/- for Members enrolled/registered for the above conference before 10.08.2010 and Rs. 2750/- thereafter (inclusive of course material, breakfast and lunch). (Please add Rs. 250/- towards CA Benevolent Fund as Voluntary Contribution)

Cheque / DD in favour of 'WIRC of ICAI' payable at Mumbai and should be sent to Mr. Koshy John, Dy. Secretary, WIRC of Institute of Chartered Accountants of India, 5th Floor, ICAI Bhawan, 27 Cuffe Parade, Colaba, Mumbai- 400 005		
Contact Details		
Conference Chairman	**Conference Director**	**Conference Coordinator**
CA. Subodh Kumar Agrawal Chairman Committee for Members in Industry of ICAI Mobile: +9830022848	CA. Pankaj Jain Central Council Member, ICAI Mobile: 9833225025	CA. Dilip Apte Chairman, CMII WIRC of ICAI Mobile: 9930314856
Official Coordinator Shri Shaleen Suneja, Secretary, Committee for Members in Industry, ☎: 011 – 30110491/ 09350799916, ✉: cmii@icai.in	**For Registration and further details, please contact** Mr. Vijay Gaikwad/ George Sequira ☎: 022 – 39802923/ 2922, ✉: wirc@icai.in	

CPE 6 Hours

Full Day Programme on GST – Road Ahead

Organised by: INDIRECT TAXES COMMITTEE OF ICAI
Hosted by: Eastern India Regional Council of ICAI, 13th AUGUST, 2010, Park Hotel, Kolkata

Topics include	➢ GST – Road Ahead ➢ Role of Accounting Profession in GST Road Map- Indian and International Scenario ➢ Excise in GST ➢ Customs in GST ➢ Service Tax in GST ➢ VAT in GST	
Participation Fees	Rs. 1,200/- The cheque should be drawn in favour of `The Institute of Chartered Accountants of India' payable at Kolkata and cheque should be sent to EIRC of ICAI, ICAI Bhawan, 7, Anandilal Poddar Sarani (Russell Street), Kolkata – 700 071. Limited Seats, Registration on First Come First Serve Basis. No spot registration, Advance confirmation of registration is required.	
Contact Details		
Programme Chairperson	**Programme Directors**	
CA. Bhavna Doshi Chairperson, Indirect Taxes Committee, ICAI ☎:98923 33374 ✉: bdoshi@kpmg.com	CA. Abhijit Bandyopadhyay Council Member, ICAI ☎: 98310 59999 ✉: babhijit@deloitte.com	CA. Sumantra Guha Council Member, ICAI ☎: 98310 15331 ✉: ca.sumantraguha@gmail.com
Programme Coordinator	**Official Coordinators**	
CA. Krishanu Bhattacharyya Chairman, EIRC of ICAI ☎ :9831208273, ✉: krishanu_b@rediffmail.com	CA. Smita Mishra, Secretary, Indirect Taxes Committee Phone: 0120 3045906 ✉:idtc@icai.org Shri Abhijit Basu, Deputy Secretary, EIRC of ICAI ☎: 033- 30211132, ✉ :eircchairman@icai.in	
For Registration and further details, please contact EIRC of ICAI, ICAI Bhawan, 7, Anandilal Poddar Sarani (Russell Street), Kolkata – 700 071. ☎: 033- 30211104/ 33/32, ✉ :eircevents@icai.in		

CPE 6 Hours

National Workshop on Real Estate Laws

Organised by Committee on Economic, Commercial Laws & WTO of ICAI
Hosted by: Hyderabad Branch of SIRC of the ICAI

Theme	In the era of globalization and increasing competition across the world over, at every stage the need arises to adopt different strategies to combat the emerging competitive issues tactfully. The objective of this workshop is to provide a forum to discuss the emerging issue relating to the Real Estate Laws, Legal issues thereto and Professional Opportunities.
Day and Date	Saturday, 14th August, 2010
Venue	Centre of Excellence, ICAI Bhawan, Plot No.10 & 11, Nanakramguda, Financial District, Gatchibowli, Hyderabad -500019
Discussion Sessions	➢ Overview of Real Estate Laws ➢ Taxation of Real Estate Transactions ➢ Accounting of Real Estate Transactions ➢ Drafting of Deeds & Documents.. ➢ Professional Opportunities in Economic, commercial laws & WTO & Internal Audit
Fees	➢ **Members: Rs. 750/- (Rupees seven Hundred and Fifty only)** ➢ **Non-Members: Rs. 1000/- (Rupees One Thousand Only)** Payment may be made by Cheque / Demand Draft in favour of "Hyderabad Branch of SIRC of the ICAI" payable at Hyderabad. For online payment, please visit website of the ICAI.

Programme Chairman	**Programme Co-ordinator**	**Programme Director**
CA. Rajkumar S. Adukia, Central Council Member, ICAI & Chairman, Committee on Economic, Commercial Laws & WTO, ICAI ☎: 09820061049, 09323061049 ✉: rajkumarfca@gmail.com	**CA. C. Venkatram,** Chairman, Hyderabad Branch of SIRC of the ICAI ☎:09849069009 ✉: cvr@cvrandco.com	**CA. M. Devaraja Reddy** Central Council Member, ICAI ☎: 09399935799 ✉: devarajareddy@yahoo.com

CPE 6 Hours

Seminar on Real Estate Laws

Organised by: Committee on Economic, Commercial Laws and WTO
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
Hosted by: Eastern India Regional Council of ICAI

Date and Time	Saturday, 7th August, 2010
Venue	R. Singhi Hall (EIRC Auditorium), Kolkata
Time	10.00 a.m. to 5.30 p.m.

Topics

- Overview of Real Estate Laws
- Implications of Direct Taxes in Real Estate
- Implications of Indirect Taxes in Real Estate
- Drafting and Conveyance

Fees	Rs. 500/-

Programme Chairman	**Programme Director**	**Programme Coordinator**
CA. Rajkumar S. Adukia Chairman, Committee on Economic Commercial Laws & WTO) ☎: 93230 61049 ✉: rajkumarfca@gmail.com	CA. Sumantra Guha Council Member, ICAI ☎: 9831015331 Off:(033) 23506991/23609686 ✉: ca.sumantraguha@gmail.com	CA. Krishanu Bhattacharyya Chairman, EIRC of ICAI ☎: 98312 08273 ✉: krishanu_b@rediffmail.com

CPE 6 Hours

Workshop on Taxation

Organised by: Committeefor Members in Industry of ICAI
Hosted by: NIRC of ICAI on August 21, 2010

Timing of Sessions	Details	
9:00 AM – 9.30 AM	Registration	
9.30 AM- 10.00 AM	Inaugural Session	
Session I 10.00 AM – 11.30 AM	**Transfer Pricing** Topic: Profit attribution to permanent establishment Speaker: CA. Rahul K Mitra	
Session II 11.30 AM - 1.00 PM	**International Taxation** Topic: Taxation of Non Resident in India Speaker: Dr. (CA.) Girish Ahuja	
Session III 2.00 PM – 4.00PM	**Goods and Service Tax** Topic: Overview of the proposed GST Regime in India and its comparative analysis. Speaker: Shri V. Lakshmikumaran	
Session IV 4.00 PM – 5.00 PM	**Indirect Taxation** CENVAT Credit & Service Tax Speaker: CA. P. Rajendra Kumar	
Participation Fees	• Rs. 1,500/- for the workshop • Free for All Study Group Members of NIRC • Fees for post lunch session Rs. 500 (For attending only post lunch session there would be 3 CPE hours and no lunch will be provided.) Cheque (local)/draft in favour of “NIRC of ICAI” payable at New Delhi and sent it with duly filled Registration to NIRC Office, ICAI Bhawan, 5th Floor, I. P. Marg, New Delhi-110002	
Limited Seats, Registration on First Come First Served Basis		
Contact Details		
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For Further details/registration, please contact	Shri Shaleen Suneja, Secretary, Committee for Members in Industry, ☎: 011-30110555,491, ✉: cmii@icai.in Northern India Regional Council, please contact ☎: 011-30100503/507	

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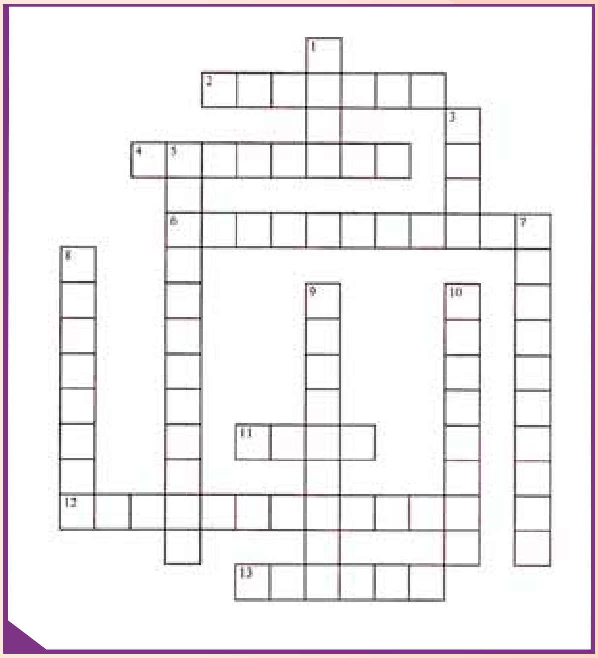
CROSS WORD 050



ACROSS

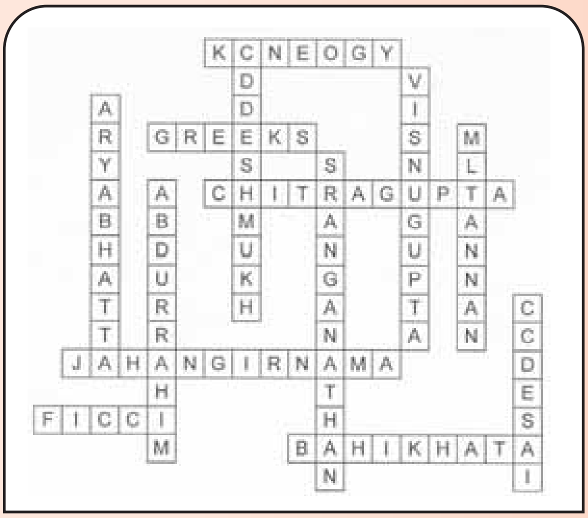
2. The government's proposes to compute minimum alternate tax (MAT) on _______and not on assets as was planned originally in the direct taxes code. (7)
4. It has been clarified by the CBEC that the process of ________ and oiling does not amount to manufacture.
6. Air transport of ______ ________ on board the aircraft shall be exempt from service tax. (4,7)
11. Clean energy cess announced in the Budget will be levied on ______ @ Rs.50 per tonne with effect from 01.07.2010. (4)
12. Name the noted academician who has been named professor of economics at the prestigious Harvard University and becoming the first Indian-origin woman professor in the institution's history. (4,8)
13. Construction of complex service in relation to __________ and Rajiv Awaas Yojana shall be exempt from service tax.

DOWN

1. Subscription to long-term infrastructure bonds to be issued by the _______ would qualify for deduction under Section 80CCF of the Income-tax Act, 1961.
3. Exposure margin for exchange traded derivatives has been reduced to ______ per cent. (4)
5. From this year, the Income Tax department has decided to celebrate 24[th] July as _______ ________ _______ to mark 150 years of existence of this levy. (6,3,3)
7. Loans made by two or more lenders and administered by a common agent using similar terms and conditions and common documentation are known as __________ loans. (10)
8. _________ of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of Section 80-IA(4)(i) of Income-tax Act, 1961. (8)
9. To sustain a growth rate of 9 per cent, focus is required on improving farm productivity, closing the large physical infrastructure deficit, especially in the power sector and controlling _________. (9)
10. The Maximum amount of gratuity entitled to exemption under section 10(10)(iii) of the Income-tax Act, 1961 has been enhanced to _____ _____. (3,5)

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 049

1

A group of managers were given the assignment to measure the height of a flagpole. They got their ladders and tape measures and went out to the flagpole. However, the measurement job had turned out to be a much more difficult task than any of them had imagined, with some of them falling off the ladders, some dropping their tape measures and so on, and the whole thing had just turned into a total mess.

After a while, an engineer happened along and saw what they were attempting to do. She walked over, pulled the flagpole out of the ground, and laid it flat on the ground. She measured it from end to end, gave the measurement to one of the managers and then walked away without saying a word.

After the engineer had gone, one manager turned to another and laughed as he's shaking his head. "Now that's just like an engineer! We're looking for the height and she gives us the length!"