

The Articled....

Because u'r Altitude is determined by u'r Attitude

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A Pristine Beginning.....

As the saying goes, **"Don't cry because it's over, the new we must release the old."** "A trapeze artist **smile because it happened**"; New Year is a time of new beginnings, time to start a fresh & do things that would make someone else smile.

So, we are at the time of the year again where there are faces glowing red with excitement, hearts bursting with joie-de vivre and souls looking up with hopes for a brighter tomorrow and for a fresh start. While the Eve traditionally is synonymous with late night parties, the New Year itself sets minds into myriad thoughts translated into the, "Oh so famous resolutions", which deep down inside all know is something that is oft not kept.



With this New Year, we hope to continue to enhance our Newsletter & put efforts to improvise our skills on it. We also hope to reach our goal & spread our Newsletter, **"The Articled"** to greater heights. Heading towards our vision for tomorrow, we would like to thank one & all for their continued support & faith they had in us & hope to

New Year is heralded as a time for reflection, a convenient benchmark for measuring all the learning's along the unpredictable roller coaster drive (Read life...).As said rightly, **In order to embrace** Happy 2008 to all our readers & well-wishers from DNS family!!!

"No one can defeat us unless we first defeat ourselves". Victory always starts in the head. It is to a large degree, a state of mind. Knowing ourselves superior to the anxieties, troubles, and worries which obsess us, we are superior to them. It is more of a mind game than an event. A mind troubled by doubt can not focus on the course of victory. Along with firm belief in oneself there are other qualities that one must possess to win, and those are definiteness of purpose, the knowledge of what one wants, and a burning desire to possess it. Then it is sheer hard work which can ultimately make the sight of victory visible.

8 Issue's of toil & Hard work, These months have been very fruitful & experiencing, but the Editorial baton must pass on. I take this opportunity to wish Mr. Soumitra Jathar(New Chief Editor) & his team all the luck for the future issues of "The Articled".

-rayan@dnsconsulting.net

Editorial

Chief Editor's Desk:

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IFRS - Transforming the landscape of Accounting

India has announced a plan to adopt IFRSs as Indian Financial Reporting Standards effective 2011.

-Komal, Tanuja, Priya, Vinay J, Chetan

In the history of civilization, a time comes when an idea, a thought or a concept catches the fancy of masses and spreads across the globe rapidly. Since 2005, we have been living in the midst of such a contagion- the relentless



march of IFRS, the International Financial Reporting Standards. IFRS, in its present form, was implemented in January 2005. Today more than 100 countries mandate and permit IFRS, which is now rapidly becoming the common language of business. IFRS refer to the new series of pronouncements that the International Accounting Standards Board (IASB) is issuing, as distinct from IASs series issued by its predecessor, the International Accounting Standards Committee (IASC).

Should India convert to IFRS ?

Today, it is no longer a question of 'Should India convert to IFRS?' But rather, a question of 'By when India should fully convert to IFRS?' The ICAI has tried to answer this with a convergence declaration for all Public Interest Entities from 1st April 2011 and that will be extended to other entities in a phased manner.

To enable convergence, a large number of Acts require to be amended. For starters, the Companies Act 1956 and the Banking Regulation Act, 1949 and each and every Act that has any pronouncement on accounting, presentation, measurement and disclosure, requires to be brought in line with IFRS requirements, or better still, all provisions in the various Acts require to be jettisoned.

What is IFRS?

International Financial Reporting Standards (IFRS), together with International Accounting Standards (IAS), is a "principles-based" set of standards that establish broad rules rather than dictating specific accounting treatments.

Objectives of IFRS

- ✚ To develop a single set of high quality, understandable and enforceable global accounting standards that will form the '**stable platform**' for international accounting.

- ✚ To bring **more transparency and a higher degree of comparability**, both of which promise many benefits for the organization, including enhanced investor confidence.

- ✚ To bring **greater consistency and transparency** of financial reporting as well as the ability to compare financial information from companies around the

Why India need IFRS?

With the kind of massive globalization era that is going on its very important for every country to develop cross border businesses and also for attracting Foreign Investments there arises a need to have a common globally accepted accounting rules and standards.

Scope for converging with IFRS

- ✚ It is more comprehensive and investor-friendly.
- ✚ No need to reconcile the statement under Indian GAAP and IFRS, which is now-a-days a normal accounting activity.
- ✚ Easy to compare the financial statements with that of other Countries and Industries those are under IFRS.
- ✚ Merger and Acquisition of foreign entity and foreign investment made easy.
- ✚ Improve Comparability, Transparency and Credibility of financial statements of our country.

Overview of IFRSs

There are eight new IFRSs currently in effect. A brief introduction about the scope of each of IFRSs is given below.

IFRS 1 First-time Adoption of International Financial Reporting Standards:

- ✚ The **objective** of this IFRS is to ensure that an entity's *first IFRS financial statements*, and its interim financial reports for part of the period covered by those financial statements, contain **high quality information**
- ✚ It **sets out the procedures** that an entity must follow when it adopts IFRS for the first time as a basis for preparing its general-purpose financial statements.
- ✚ A first time adopter is an entity that for the first time makes an explicit and unreserved statement that its general-purpose financial statements comply with IFRS.

"Follow your instincts. That's where true wisdom manifests itself."

- Oprah Winfrey (2)

✚ The IFRS **grants limited exemptions** in specified areas where the cost of complying with them would be likely to exceed the benefits to users of financial statements.

✚ The IFRS also **prohibits retrospective application** of IFRSs in some areas; particularly where retrospective application would require judgments by management about past conditions after the outcome of a particular transaction is already known.

✚ The IFRS requires **disclosures** that explain how the transition from previous GAAP to IFRSs affected the entities reported financial position, financial performance and cash flows.

IFRS 2 Share-based Payment:

✚ The **objective** of this IFRS is to specify the financial reporting by an entity when it undertakes a *share-based payment transaction*.

✚ IFRS 2 **encompasses** the issuance of shares, or rights to shares in return for services and goods.

✚ **What is share based payment:** A share based payment is a transaction in which the entity receives or acquires goods or services either as consideration for its equity instrument or by incurring liabilities for amounts based on the price of the entity's shares or other equity instruments of the entity.

✚ The **accounting requirements** for the share-based payments depend on how the transaction will be settled, i.e. by the issuance of (a) equity, (b) cash, or (c) equity or cash.

✚ The IFRS prescribes various **disclosure requirements** to enable users of financial statements to understand:

- ✚ The nature and extent of share-based payment arrangements that existed during the period;
- ✚ How the fair value of the goods or services received, or the fair value of the equity instruments granted, during the period was determined; and
- ✚ The effect of share-based payment transactions on the entity's profit or loss for the period and on its financial position.

IFRS 3 Business Combinations:

✚ The **objective** of this IFRS is to specify the financial reporting by an entity when it undertakes a *business combination*.

✚ **What is business combination:** A business combination is the bringing together of separate entities or businesses into one reporting entity.

✚ The **result of nearly all business combinations** is that one entity, the acquirer,

obtains control of one or more other businesses, the acquiree.

✚ If an entity obtains control of one or more other entities that are not businesses, the bringing together of those entities is **not a business combination**.

✚ It **applies to** all business combinations except combinations of entities under common control, combinations of mutual entities, combinations by contract without exchange of ownership interest, and functions of joint ventures.

IFRS 4 Insurance Contracts:

✚ The **objective** of this IFRS is to specify the financial reporting for *insurance contracts* by any entity that issues such contracts (described in this IFRS as an *insurer*).

✚ **What is insurance contract:** An insurance contract is a contract under which one party (the insurer) accepts significant insurance risk from another party (the policyholder) by agreeing to compensate the policyholder if a specified uncertain future event (the insured event) adversely affects the policyholder.

✚ The IFRS **applies to** all insurance contracts (including reinsurance contracts) that an entity issues and to reinsurance contracts that it holds, except for specified contracts covered by other IFRSs.

✚ It **does not apply to** other assets and liabilities of an insurer, such as financial assets and financial liabilities within the scope of IAS 39 *Financial Instruments: Recognition and Measurement*. Furthermore, it does not address accounting by policyholders.

IFRS 5 Non-current Assets Held for Sale and discontinued Operations:

✚ The **objective** of this IFRS is to specify the accounting for assets held for sale, and the presentation and disclosure of *discontinued operations*.

✚ IFRS 5 **replaces IAS 35 Discontinuing operations**. The definition of discontinuing operations is very much the same as the definition of discontinuing operations in IAS 35. Discontinuing operation in IAS 35 is defined as a relatively large component of a business enterprise - such as a business or geographical segment- that the enterprise, pursuant to a single plan, either is disposing of substantially in its entirety or is terminating through abandonment or piecemeal sale. A restructuring, transaction or event that does not meet the definition of a discontinuing operation should not be called a discontinuing operation. (3)

✚ However, the **timing of the classification** now depends on when the discontinued operations satisfies the criteria to be classified as held for sale.

✚ The same requirement applies to non-current assets held for sale. Further, **IFRS 5 requires** the results of discontinued operations to be presented as a single amount on the face of the income statement.

IFRS 6 Exploration for and Evaluation of Mineral Resources:

✚ The **objective** of this IFRS is to specify the financial reporting for the exploration for and evaluation of mineral resources.

✚ **IFRS 6 requires** entities recognizing exploration and evaluation of assets to perform an impairment test on those assets when facts and circumstances suggest that the carrying amount of the asset may exceed their recoverable amount.

✚ When facts and circumstances suggest that the **carrying amount exceeds the recoverable amount**, an entity shall measure, present and disclose any resulting impairment loss in accordance with IAS 36.

✚ An entity shall **disclose information** that identifies and explains the amounts recognized in its financial statements arising from the exploration for and evaluation of mineral resources.

IFRS 7 Financial Instruments: Disclosures:

✚ The **objective** of this IFRS is to require entities to provide disclosures in their financial statements that enable users to evaluate the significance of financial instruments for the entity's financial position and performance; and the nature and extent of risks arising from financial instruments to which the entity is exposed during the period and at the reporting date, and how the entity manages those risks.

✚ It adds certain new **disclosures** about financial instruments and similar financial institutions; and puts all those financial instruments disclosures together.

✚ The remaining parts of IAS 32 Financial Instruments: Disclosures and Presentations **deal only with financial instruments presentation matters.**

✚ The IFRS **applies to** all entities, including entities that have few financial instruments (e.g. a manufacturer whose only financial instruments are accounts receivable and accounts payable) and those that have many financial instruments (e.g. a financial

institution most of whose assets and liabilities are financial instruments).

IFRS 8 Operating Segments:

✚ The **objective** of IFRS is to specify how an entity should report information about its operating segments in annual financial statements and, as a consequential amendment to IAS 34 *Interim Financial Reporting*, requires an entity to report selected information about its operating segments in interim financial reports.

✚ **Core principle**—An entity shall disclose information to enable users of its financial statements to evaluate the nature and financial effects of the business activities in which it engages and the economic environments in which it operates.

✚ It also sets out **requirements for related disclosures** about products and services, geographical areas and major customers.

✚ The IFRS requires an entity **to report** financial and descriptive information about its reportable segments and to report a measure of operating segment profit or loss and of segment assets. It also requires an entity to report a measure of segment liabilities and particular income and expense items if such measures are regularly provided to the chief operating decision maker.

✚ It **requires reconciliation** of total reportable segment revenues, total profit or loss, total assets, liabilities and other amounts disclosed for reportable segments to corresponding amounts in the entity's financial statements.

✚ The IFRS also requires an entity **to give descriptive information** about the way the operating segments were determined, the products and services provided by the segments, differences between the measurements used in reporting segment information and those used in the entity's financial statements, and changes in the measurement of segment amounts from period to period.

The Chairman of IASB listed out the benefits of IFRS as, *"the goal is to create one single set of accounting standards that can be applied anywhere in the world, saving millions for firms with more than one listing and allowing investors to compare the performance of businesses across geographic boundaries for the first time."*

Adopting a common financial reporting language is a big step towards improving the efficiency of international capital markets. The adoption of IFRS will reduce barriers to both trade and the flow of capital.

Environmental Responsibility- A Game for Profit!!!!

“It is evident that humanity has disappointed divine expectations humiliating . . . the earth our home. It is necessary, therefore, to stimulate and sustain ecological conversion, to protect the radical good life in all its manifestations and to prepare an environment for future generations that is closer to the plan of the Creator.”



-Pope John Paul II

Environment, in today's world has become a major issue closely related to the future of all countries and people in the world. Protecting the environment and our planet has become the unsinkable responsibility for all human beings. Witnessing the alarming situation created by the generation and incorrect disposal of hazardous waste, and the resultant irreversible damage to the environment. The Concept of Environmental Audit has been introduced. Environmental Audit seeks to protect the Environment.

The importance of Environment amplified consequent to the Bhopal gas tragedy, and hence, the Government of India enacted the Environment (Protection) Act, 1986 (EPA), under article 253 of the constitution. The main objective of this Act is to protect and improve the environment (which includes water, air, land, human being, other living creatures, plants, microorganism and properties) and for related matters. There is a constitutional provision also for the environment protection which specify that the State shall endeavour to protect and improve the environment and safeguard the forests and wildlife of the country and that every citizen shall protect the environment. The Act came into force on 19th November 1986 vide Notification No.G.S.R. 1198(E) dated 12/11/1986 published in the official gazette of India No.525 dated 12/11/1986 and is applicable to whole of India including Jammu & Kashmir.

Environmental Audit:

It is a systematic tool used to evaluate how well a project, organization or equipment is performing with the aim of helping to safeguard the environment. The audit should facilitate management control of environmental practices and assess compliance with policy objectives and regulatory requirements.

Why Environmental Audit:

The main reason for bringing environmental audit into lime light is to create an awareness of the importance of Environment and also is a means by which business can assess environmental impacts of its operations. It highlights areas of inefficiency in process, providing an opportunity for business to decrease its waste disposals and reduce the cost of waste treatment.

Applicability of Environmental Audit:

Every person carrying on an industry, operation or process requiring consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) or under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) or both or authorization under the Hazardous Wastes (Management and Handling) Rules, 1989 issued under the Environment (Protection) Act, 1986 (29 of 1986).

Auditors Role:

Role of accounting profession for environmental protection are recent developments. Environmental issues are business issues and have considerable implications for 'audit'. The environmental auditor as such cannot design a plan to suit all circumstances; however, a general frame work is set-out in table-1 below.

Sl. No.	Internal Auditor	External Auditor
1	Ensure Environmental problems are kept to the minimum	Ensure that the financial statements are proper
2	Ensure Environmental operations are effective and efficient	Review Organizational Environmental operations
3	Ensure that waste management operations are proper	Ensure that the organization is complying with governmental regulations in handling of emission of pollutants, disposition of waste, etc.

4	Ensure that the environmental decisions are based on factual information.	Check whether proper disclosure in compliance with legal regulations has been made.
5	Ensure that the statutory compliance has been complied.	

financial year ending the 31st March in Form V to the concerned State Pollution Control Board on or before the 13th day of September every year. It is not only the Environmental Protection Act but also, the Indian Companies Act, 1956, requires disclosure relating to energy consumption /energy conservation which are presented in the Directors report as annexures and highlights environment related policies.

Scope of Environmental Audit (EA):

The EA is quiet wider covering various areas shown in the chart below:

Benefits of Environmental Audit:

- Helps an organization to increase confidence with the general public.
- It helps an organization to identify the areas emitting environmental pollutants and help in taking safety measures.
- Enable the management to set targets and give credit for good environmental performance.
- Enables the management to create an environmental friendly production technique.
- Enables the organization to use its resources efficiently and effectively and hence help reduce financial cost.
- Helps to uncover existing and potential compliances.

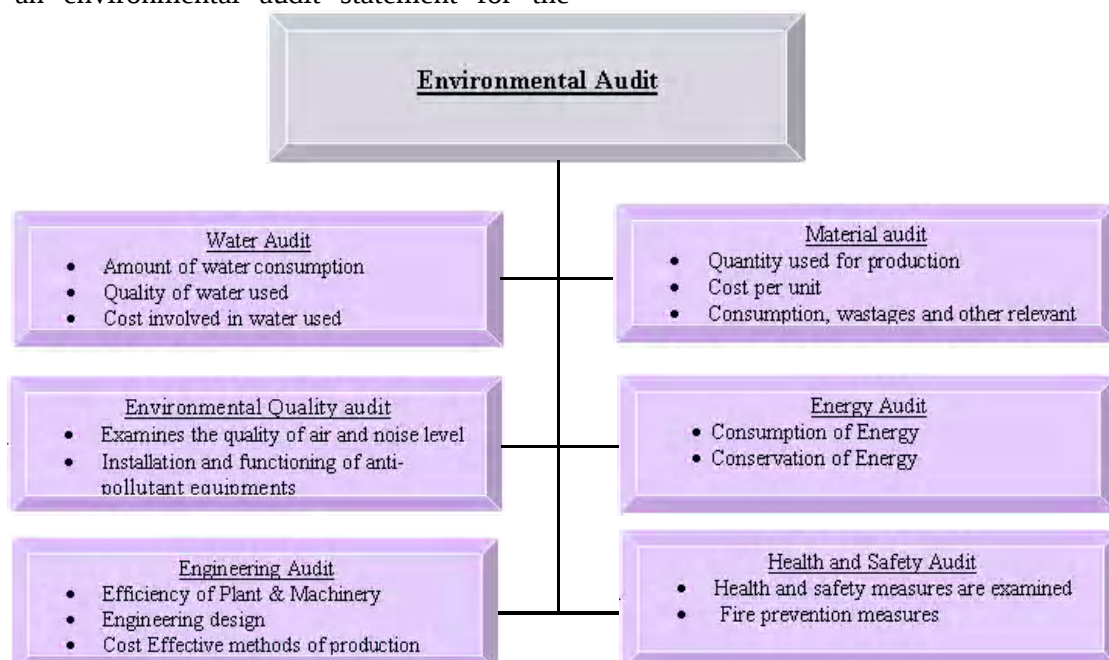
Compliance Of Environmental Statement:

Every organization falling under the provisions of the Environmental Protection Act is required to submit an environmental audit statement for the

Penalty under section 15 of the EPA Act:

As per the Penalty clause, an organization which fails to comply with or contravenes any of the provisions of the above said Act, or the rules issued there under, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first failure or contravention.

“Environmental audit” can be considered to be the first step towards environmental sensitivity as it helps to bring out the environmental awareness that most of the organizations ignore. Conservation and sustenance of environment needs the collective efforts of all persons who utilize its resources. Hence even the legislation is required to realise the need of the hour and come out with provisions for a regular Environmental audit which emphasizes the importance of Environmental Protection so as to promote greater transparency and accountability of corporate sector and public agencies.



"MONEY LAUNDERING"

-Shilpa, Amarnath, Saurabh, Bharath, Nikhil

Introduction

If you were to conduct a survey in the country asking the question, "What is money laundering?", the general response from most of the people would be that they had no idea. This typical response is one of the problems the Government is facing as it becomes difficult combating this type of crime. It seems to be a victimless crime. It does not have drama associated with a robbery or any of the fears that violent crime imprints upon people's mind and yet, money laundering can only take place after the crime has taken place. It is the lack of information about money laundering that is available to the person on the street, which makes it an invisible problem and hence difficult to tackle.



Fighting Money Laundering

The prime method of anti-money laundering is the requirement on financial intermediaries to know their customers - usually termed KYC (know your customer) requirements. With good knowledge of their customers, financial intermediaries will often be able to identify unusual or suspicious behavior, including false identities, unusual transactions, changing behavior, or other indicators that laundering may be occurring. But for institutions with millions of customers and thousands of customer-contact employees, traditional ways of knowing their customers must be supplemented by technology.

The Indian Scenario



The Indians are no exception to the Money Laundering that takes place at the global level. There may be a different name by which it may be called. In India it is popularly known as

Hawala. Terrorists and smugglers use this facility to transfer their money from one place to other place for their illegal activities. To prevent this The Indian Government has introduced PMLA (PREVENTAION OF MONEY LAUNDERING ACT, 2002).

What is Money Laundering?

Money laundering is the practice of engaging in financial transactions in order to conceal the identity, source, and/or destination of money, and is a main operation of the underground economy.

In the past, the term "money laundering" was applied only to financial transactions related to organized crime. Today its definition is often expanded by government regulators (such as the United States Office of the Comptroller of the Currency) to encompass any financial transaction which generates an asset or a value as the result of an illegal act, which may involve actions such as tax evasion or false accounting. As a result, the illegal activity of money laundering is now recognized as potentially practiced by individuals, small and large businesses, corrupt officials, members of organized crime (such as drug dealers or the Mafia) or of cults, and even corrupt states, through a complex network of shell companies and trusts based in offshore tax havens.

Money laundering consists of the following 3 stages:

- 1) Placement:** The initial point of entry for funds derived from criminal activities.
- 2) Layering:** The creation of complex networks of transactions which attempt to obscure the link between the initial entry point, and the end of the laundering cycle.
- 3) Integration:** The return of funds to the legitimate economy for later extraction

The offence:

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the **proceeds of crime** and projecting it as untainted property shall be guilty of offence of money laundering

Whosoever includes –

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a Company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

Proceeds of crime is the money generated by committing one or more of the following types of offence:

- Drug trafficking / Dealing in drugs
- Murder / Attempt to murder
- Extortion / Kidnapping for ransom
- Major thefts / Robbery / Dacoity
- Fraud / Forgery / Counterfeiting of currency notes
- Gun running (offence relating to illegal crime)
- Use / Purchase of illegal arms or for illegal purpose
- Offence relating to wildlife
- Prostitution money
- Corruption money

KYC:

IRDA has issued guidelines regarding KYC (Know your customer) i.e., customer identification as it is needed to;

- positively identify with whom the institutions are dealing with,
- identify the person actually making payment (if the person is someone else?)
- know the person is exactly the same who they claim to be,
- whether it is the same place they conduct the business as given by them.
-

Existing Legal Framework to Curb Money Laundering in India:

The Money Laundering Control Act of 1986 has strengthened the Government's ability to fight Money Laundering by making it a Federal Crime and by transforming the financial transactions into structured transactions to avoid a criminal offense.

The Anti-Drug Abuse Act of 1988 reinforced and supplemented anti-money laundering efforts by increasing the levels of penalties and sanctions for money laundering crimes and by requiring strict identification and documentation of cash purchases of certain monetary instruments.

Section 2532 of The Crime Control Act of 1990 enhanced the federal banking agencies enforcement position by giving it powers to work with foreign banking authorities on investigations, examinations,

or enforcement actions dealing with possible bank or currency transaction-related violations.

Section 206 of The Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991 entrusted the bank supervisory authorities some latitude in disclosing to foreign bank regulatory or supervisory authorities information obtained during its supervisory role. Such disclosure must be appropriate, not prejudice the interests of the U.S., and must be subject to appropriate measures of confidentiality.

The Annunzio-Wylie Anti-Money Laundering Act of 1992 increased penalties for depository institutions found guilty of money laundering. The act added several significant provisions including the reporting of suspicious transactions. The act also made the operation of an illegal money transmitting business a crime, and required that banking regulatory agencies formally consider revoking the charter of any depository institution convicted of money laundering.

The Money Laundering Suppression Act of 1994 required regulators to develop enhanced examination procedures and to increase examiner training to improve the identification of money laundering schemes in financial institutions.

The Money Laundering and Financial Crimes Strategy Act of 1998 required the Secretary of the Treasury, in consultation with the Attorney General and other relevant agencies, including state and local agencies, to coordinate and implement a national strategy to address money laundering.

Conclusion

Money laundering is a sleight of hand... a magic trick for wealth creation... the lifeblood of drug dealers, fraudsters, smugglers, arms dealers, terrorists, extortionists and tax-evaders. It is also the world's third largest business. Though a relatively new and in vogue subject, it [money laundering] has in fact been around for centuries. Criminals throughout history have had to hide the source of newly acquired wealth in order to escape prosecution for the predicate crime. However, the scale of the problem has escalated out of all proportion. Former US Secretary of State George Shultz summed it up when he stated:

"Today's criminals make the Capone crowd and the old Mafia look like small time crooks".

Tooth Pulling:

A man and his wife entered a dentist's office.

The wife said, "I want a tooth pulled. I don't want gas or Novocain because I'm in a terrible hurry. Just pull the tooth as quickly as possible."

"You're a brave woman," said the dentist. "Now, show me which tooth it is."

The wife turns to her husband and says: "Open your mouth and show the dentist which tooth it is, dear."

Opinion Poll:

The newsletter is a great effort made from your team of article students. There are many areas which are not touched upon by us in our day to day work & this newsletter has helped us gain in depth knowledge on particular topics. As the articles are written in a simple and easy language, we can understand and relate to it better. All in all...Keep up the good work!!

-Neha Bafna

MBA Student, Christ College.



I congratulate the entire team of "The Articled" for coming up with this informative newsletter. After reading all the issues of the newsletter I would like to recommend that with the start of this New Year, you could explore into other non-financial areas, which would also keep up the interest of the onlookers. All the best !!!

Pritesh K Shah
Student, MBA

First of all 'Thumbs up' to the entire team of "The Articled" for coming out with such an idea. I have gone through all the issues as of date and have found it very informative and useful especially for Articled Clerks as me. Congratulations and Best Wishes.

Mallikarjun

Articled Assistant, ABS & Co.



Sharing is learning, that's the way this newsletter goes!!!! It is very pleasing to see our generation of CA's work day in & day out and still attempt to bring such a wonderful newsletter which is so simple yet very informative to the readers. The best part is that even a novice can understand. The concepts are explained well with examples and there is so much more of fun in it like quiz, crosswords. Keep it up.

- CA Pawankumar & CA Poornima
Ex Employee's DNS Consulting Pvt Ltd.



Service Tax

Works contract & Renting of Immovable property Clarification or Controversy



Circular 98/1/2008 – ST, dated: January 4, 2007

This circular is issued to clarify issues with respect to Erection, commissioning or installation service; commercial; industrial construction service or construction of complex service.

I

Issue: Whether or not Commercial or Industrial Construction Service or Works Contract Service used for Construction of an immovable property, could be treated as Input service for the output service namely renting of immovable property service.

Clarification: Immovable property is neither subjected to central excise duty nor to service tax. Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' nor 'goods' as referred to above, input credit cannot be taken.

Controversies:

- Where the department contends that immovable property is not a service or goods is the levy of service tax on renting of immovable property justifiable in the first instance?
- Construction of an immovable property brings an asset into existence. Where such asset is used for the purpose of generation of revenue, which is made a subject matter of service tax, is disallowing CENVAT credit in respect of service received for bringing that asset into existence (i.e. construction of Immovable property) justifiable under law?

The authors of this article are of the view that classifying renting of immovable property as a service is bad in law. Further this circular would rather than clarify the existing doubt only attract further litigation as the words of this circular can itself be used to strike down the said levy.

II

Background: Service tax is leviable on the value equivalent to the gross amount charged for the works contract less value of the transfer of property in goods involved in the execution of the works contract which is leviable to VAT / sales tax.

Issue: Whether or not, excise duty paid on goods, subjected to levy of VAT / sales tax under works contract service, can be taken as credit under the CENVAT Credit Rules, 2004?

Clarification: Value for the purposes of levy of service tax under works contract service does not include the value pertaining to transfer of property in goods involved in the execution of a works contract leviable to VAT / sales tax. Works contract service provider is, therefore, not eligible to take credit of excise duty paid on such goods involved in the execution of works contract.

The authors are of the view that the Works Contractor cannot claim CENVAT credit of excise duty paid on material. However they can claim CENVAT Credit of Service Tax paid on input services and CENVAT Credit of excise duty paid on Capital goods.

III

Background: Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides option to pay service tax @ 2% of the gross amount charged for the works contract. However, the service provider opting for composition scheme for payment of service tax should exercise the option **prior to payment of service tax**.

Issue:

- (i) In respect of Contracts entered into prior to 01.06.07 for providing erection, commissioning or installation, and commercial or residential construction service, and
- (ii) Service tax has already been paid for part of the payment received before 01.06.2007 under the respective taxable service.

Whether in such cases, the service provider can revise the classification to works contract service from the respective classification and pay service tax for the amount received on or after 01.06.07 under the Composition Scheme?

Clarification: The contract for the service under the category mentioned under Issue (i), where tax was paid under the said category, contract for service was a single composite contract. Part of service tax liability corresponding to payment received was discharged and

the balance amount of service tax is required to be paid under the same Classification even on or after 01.06.07 depending upon the receipt of payment.

Classification of a taxable service is determined based on the nature of service provided whereas liability to pay service tax is related to receipt of consideration. Vivisecting a single composite service and classifying the same under two different taxable services depending upon the time of receipt of the consideration is not legally sustainable.

In view of the above, a service provider who paid service tax prior to 01.06.07 for the taxable service, is not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 01.06.07 and hence, is not entitled to avail the Composition Scheme.

Controversies:

- Where this circular requires a service provider to continue paying service tax on ongoing projects initiated before 01.06.2007 under the classification commercial or industrial construction service or construction of complex service on the contention that a single composite service cannot be classified under two different taxable services depending upon the time of receipt of consideration, Whether the service provider can opt to discharge service tax under the composition scheme of Works contract on new projects which will be executed in the same way as the ongoing projects? In such a case is it justifiable to Classify new projects under the new Classification and the old projects under the old Classifications.
- Whether the Words- “should exercise the option **prior to payment of service tax**” Can be read to mean before commencement of project or before Discharge of service liability for the period falling after 01.06.2007.
- If the works contractor is allowed to pay service tax under the classification “Works Contract”, then the service coming to force from 01.06.07 he is liable to pay service tax only under the head Works contract. In this backdrop will the payment made under the classification “erection, commissioning or installation service, commercial or industrial construction service or construction of complex service” become a payment with no specific levy and thus be refundable?

- The classification rule 1 says the sub-clause providing most specific description shall be preferred to the sub-clauses providing a more general classification. As per this classification Specific entry is “Industrial construction service or construction of complex service”. The classification rule 3 also specifies that the Service which come first in among the sub-clause which equally merit consideration is to be taken.

The intention of legislature by introduction of Chapter “Works contract” was to make the entry under works contract more specific. If this intention of the legislature is not given effect for ongoing projects, and in spite of the existence of the specific classification namely “commercial or industrial construction service or construction of complex service” can the

said service be classified under Works Contract Service?

If yes, whether a service provider can opt for composition scheme under “works contract”. If not, will not the insertion of the new entry become redundant?

The authors of this article are of the view that with the co-existence of the entries “erection, commissioning or installation service, commercial or industrial construction service or construction of complex service” and “works contract” and instructing service provider to pay service tax on ongoing projects under the prior entry and on new projects under the new entry is not legally sustainable and can be challenged before the court.

-For comments & queries on this article please mail at: (supriya@dnsconsulting.net; sumana@dnsconsulting.net)

-Sumana, Supriya, Sashank

Important Deadlines to be met!!

❖ Income Tax

January 15 th :	Last date for payment of For Filing of E-TDS returns for the Quarter ended October-December
February 29 th :	- Last date for filing of income tax returns for those who have filed IT returns in Saral for the AY 2007-08. -Last date for filing of returns of Fringe Benefit for corporate and other assesseees who are liable to get their books audited under the Income Tax Act. Also includes working partners of the firm liable for audit under the Act.

❖ Indirect Taxes

January 5 th *:	Last date for filing of Service tax returns for Companies
January 15 th & February 15 th *	Last date for payment & filing of monthly sales tax returns under Composition scheme
January 20 th & February 20 th *	Last date for filing of monthly returns for Professional Tax, Entry Tax & VAT
January 25 th	Last date for filing of service Tax returns for the 3 rd quarter for assesseees other than companies.
February 29 th	Extended time limit for submission of VAT audit report.

Congratulations:

**The award for Crossword-7 is bagged by Mr. Deepak Gulecha
Whereas the Logo Quest-3 is jointly won by Mr Gopal PL &
Mr. Mukesh Jain**

We congratulate all the winners.

Chuckles

The navy psychiatrist was interviewing a potential sailor.

To check on the young man’s response to trouble, the psychiatrist asked, “What would you do if you looked out of that window right now and saw a battleship coming down the street?”

The baby sailor said, “I’d grab a torpedo and sink it.”

“Where would you get the torpedo?”

“The same place you got your battleship from!”

Tax Avoidance & Plugging the Loopholes"

-Soumitra, Udaya, Puneeth, Pavitra, Mitesh, Harish



The newspapers & the other media are often splashed with reports on tax avoidance & tax evasion wherein, they highlight assessee's attempt to trick the department resulting in huge loss of revenue. In some of the cases the legal provisions are bypassed by the assessee & in the other, he explores the weaknesses present in the law. There have been umpteen numbers of instances of tax avoidance in the past & gradually the tax department has taken notice of such instances & has enabled the legislature to take steps to stop these activities to facilitate a smoother collection of revenue. Before going into the instances of tax avoidance it is important to know even the related concepts such as Tax Planning & Tax Evasion.

- **Tax Planning:** This consists of reduction of ones tax liability within the framework of the law. Here the assessee avails the benefits which have been expressly conferred on him by the Act Eg: Section 80C benefit, Section 54F exemptions etc
- **Tax Avoidance:** This consists of reduction of tax liability taking advantage of the 'loopholes' present in the Act. Here the assessee explores the weaknesses of the law for his benefit. Examples have been discussed in detail in upcoming para's.
- **Tax Evasion:** This consists of reduction of tax liability by resorting to illegal methods. This activity consists of circumventing the provisions of the Act Eg: overstating expenses, suppression of sales invoices etc.

The discussion includes some instances of tax avoidance & the steps taken to plug the loopholes to avoid loss of revenue.

❖ Tax avoidance by bond washing transaction:

This technique was frequently practiced by people to avoid the tax liability & escape the tax net by transfer of bonds & securities.

- The interest on securities does not accrue from day to day but on certain fixed days. An assessee prior to receiving such interest, sells or transfers the security at a lower price than the

market to a person (friend or relative) whose income is marginal & not under the tax net.

- Interest is transferred in the name of the holder of the securities.
- The original owner of the securities repurchases from the holder.
- Thus interest on such securities escapes tax net from both the person's hands.

An assessee owning shares or securities can sell or transfer his securities to a third person on the eve of dividend declaration or on the eve of due date for payment of interest, to avoid higher tax liability. After the receipt of dividend or interest by the transferee, the assessee buys back the securities. The result is that the assessee though continuing to own the shares or securities, has successfully avoided payment of tax by him on the dividend or interest.

Thus to bridge this tax planning & avoidance of tax payment, **Section 94 (1)** was introduced.-

The owner of any securities sells or transfers those securities, and buys back or reacquires the securities, then, if the result of the transaction is that any interest becoming payable in respect of the securities is receivable otherwise than by the owner, the interest payable as aforesaid shall, whether it would or would not have been chargeable to income-tax apart from the provisions of this sub-section, be deemed, for all the purposes of this Act, to be the income of the owner and not to be the income of any other person.

Yet the owner of such securities can unplug Section 94(1) if he satisfies the conditions of **Section 94 (3)**.

As said under section 94(3)-

The provisions of section 94(1) shall not apply if the owner, or the person who has had a beneficial interest in the securities, as the case may be, proves to the satisfaction of the Assessing Officer—

- (a) That there has been no avoidance of income-tax, or
- (b) That the avoidance of income-tax was exceptional and not systematic and that there was not in his case in any of the three preceding years any avoidance of income-tax by a transaction of the nature referred to in sub-section (1) or sub-section (2).

Sec 94 (3) thus is a liberty given to the owner but not a loophole to escape any form of tax. The owner & the holder (i.e. 2nd person) has to be cautious & within the limits of Section 94 (3).

❖ Tax Avoidance by transactions in securities

This technique involves a level of sharpness & knowledge about the ways of the stock market. In this move the assessee acquires the shares of a company which has declared dividend & the corresponding 'Record Date' & disposes the shares after the record date, thereby pocketing the dividend & creating a notional loss.

The technique works as follows:

- First the assessee looks for a company which has declared a dividend & a corresponding Record Date & acquires the shares at a 'Cum-Dividend' price prevailing in the market.
- Holds the shares till the record date & becomes entitled for the dividend thereon.
- Then he disposes the shares at the 'Ex-Dividend' price prevailing in the market.
- By this he gets a twin advantage. Firstly he earns a dividend which is tax-free by virtue of Section 10 (34) & entitles himself for the set off & carry forward benefit under Section 70.
- Before the record date the price of the share normally tends to go up by the amount of dividend declared & after the record date it tends to drop by the same amount hence creating a short term loss for the assessee but, he would have already recovered the loss in the form of dividend on the record date. Hence he helps himself to two advantages at a time, avoiding tax thereby.

To put an end to this practice, sub section (7) to Section 94 was introduced

Section 94(7):

Where:-

(a) Any person buys or acquires any securities or unit within a period of three months prior to the record date,

(b) Such person sells or transfers such securities within three months after such record date (nine months in case of units),

(c) the dividend thereon being exempt from tax,

Then, the amount of dividend earned for the purposes of set off reduces the loss if any on the transfer of such securities.

❖ Tax avoidance by Cross Transfers:

The technique of Cross transfer is quiet unique & distinct from the rest techniques of tax avoidance. Normally such a practice is performed deliberately & with a purpose of escaping tax. Here an individual transfers an asset in the name of the spouse of another person; in-turn an asset of equivalent amount is transferred in the name of the spouse of the individual..

As said under Section 64 (iv) regarding income of spouse:

Any asset transferred by an individual to his or her spouse for inadequate consideration is taxable in the hands of the transferor.

Thus, a frequent attempt made by an assessee to avoid the applicability of this clause is effectuation of Cross Transfers.

For example, Mr. A transfers an asset to his friend Mr.X's spouse and in turn Mr. X transfers an equal amount of asset to Mrs A.

In such an instance, when the transfer is made deliberately with an intention to avoid tax, then such a transfer **even though indirect** is considered to be direct in nature and hence it will be taxable in the hands of transferor.(i.e. in this case Mr. A and Mr.X)

[CM Kothari vs. CIT,(1963) 49 ITR 107(SC)

These are just few examples where the revenue authorities have taken notice of the loopholes which were present in the tax structure and have been able to successfully plug them, putting the tax avoidance phenomenon beyond the reach of the assessee.

Work Experience:

"Why are you so excited?", the surgeon asked the patient that was about to be anesthetized.

"But doc, this is my first operation."

"Really? It's mine too, and I am not excited at all."

Beyond the Boundaries

(Audit under KVAT Act)

-Abhishek, Monica, Sashank, Supriya, Sumana, Vinay AG

Section 31(4) of the KVAT Act, 2003 makes it mandatory that, dealers whose taxable turnover exceeds Rs.25 Lakhs for the year 2006-07 & Rs.40 Lakhs from 2007-08 onwards shall have his accounts audited from Chartered Accountant or Cost Accountant or Tax Practitioner.

Rule 34(3) specifies that, the audited statement of accounts shall be submitted in Form VAT-240. Even before introduction of KVAT the system of audit was introduced by the State Government under Karnataka Sales Tax Act, 1957 but it was not compulsory due to absence of penal provisions. Unlike under KVAT there was no deemed assessment concept under KST other than assessments under section 12-C of the Act, where dealer was required to be get his accounts assessed by the assessing authorities.

Under KVAT Act, State Government introduced deemed assessment concept based on the returns filed by the dealer. The system of deemed assessment can be seen even in income tax, service tax and central excise. The introduction of new concept may be either to overcome the defects of the earlier methods followed or to achieve some objectives. To find out the same one has to compare the concept of assessment and audit.

The word assessment is used in a comprehensive sense and includes all proceedings, starting with the filing of returns or issue of notice and ending with the determination of the tax payable by the assessee (*ref: S Sankarappa v. Income Tax Officer, AIR 1968 SC 816, 818*). Assessing officer so authorized by the provision of law can only assess the assessee i.e., an intelligence officer cannot assess. An intelligence officer can refer the matter to the assessing authority. An assessment order will be issued by the assessing authority on determination of tax.

On the other than auditing has generally been associated with only accounting in the sense it is understood to mean verification of books of accounts and other relevant records in conformity with the norms set out by the organization and to report on the same. The economic developments in the last few decades have extended the scope of auditing. Auditing today is no longer concerned with the financial accounting records; it may also involve a review of compliance with law. In this regard it is important to quote the definition given by the ICAI.

Auditing as “a systematic and independent examination of data, statements, records, operations

and performances (financial or otherwise) of an enterprise for a stated purpose”

On comparing the same where the word assessment is a process to arrive the determination of tax liability in other words it is a specific audit, whereas an audit is broader meaning to include the assessment also. Therefore a job of an auditor is not limited to assessment proceedings but also to communicate his judgment through audit report. Thus it seems that, the expectation of the legislature is high level. To sum up the objectives of an audit can be summarized as under:

From the point of Department

To report whether the dealer has complied with provisions of law or not. This includes the following verifications;

- Returns filed with the department;
- Whether turnovers declared in returns are matching with books of accounts or not;
- Whether all the turnovers have been declared or not;
- Taxes discharged with the department;
- Input tax adjusted against output taxes;
- Utilisation of statutory forms;
- Books of accounts maintained in accordance with the provisions of law or not;
- Finally the quantification of final tax liability

From the point of Dealer

The audit will enable the dealer to

- Better equip himself with the provisions of the Law.
- Avail the correct quantum of input tax credit allowed by the provisions of Law.
- Remit the fullest tax and avoid litigation, payment of interest and penalty.
- Avail experts advice / suggestions on maintenance of books of accounts, other documents and records.

Under VAT, the concept of monthly assessment is prevalent. The dealer can revise his returns within 6 months from the last day of filing the monthly return. However, the VAT audit is conducted after the end of the financial year. It will be difficult for an auditor to verify the books of accounts after the end of the year and report whether the provisions of the law has been complied with or not. Suggestion to file revise returns makes no sense, where the time limit is provided within six months unless an issue raised by department.

The authors are of view that, a regular audit say 'quarterly audit' should be adopted to ensure that taxes are being discharged correctly, pointing out any procedural lapses, get full benefit of the input tax credit allowable or disallowable input tax credit will benefit the dealer to a great extent and the auditor to report.

It is also an obligation of the dealer to provide and kept it ready the necessary records, statements and other information to conduct better audit. This has been summarized by class of dealers as under;

Trader:

Books of accounts which include:

- Sales Register having bifurcations of commodity wise and rate of tax wise;
- Purchase Register having bifurcations of commodity wise and rate of tax wise as specified in Form VAT – 170;
- Output tax account;
- Input tax account;
- Stock register;
- Fixed Assets Register;
- VAT payable account.

In case any inputs which are used for stock transfer outside the state, separate books of accounts to be maintained to compute the actual amount of input credit for disallowing.

Documents include:

- VAT monthly returns;
- Tax invoices;
- Purchase invoices;
- Debit and Credit Notes;
- Counterfoil of Statutory forms like 'C' form, 'H Form' etc.,

Registers maintained include:

- Statutory Registers like 'C' form register;
- VAT 505/515 register etc.,

Manufacturer:

- Books of accounts and documents to be provided as mentioned in trader;
- Quantitative details of goods purchased, consumed and manufactured.
- Bifurcation of purchases which are used for manufacture of restricted products (eg: cement used in the manufacture of pipes)
- Manufacturing account;

Works Contractor:

- Books of accounts and documents to be provided as mentioned in trader;
- Details of projects executed;
- Agreement copies entered with land owner as well as with customers;
- Details of subcontractors;
- Confirmation copies obtained from subcontractors if they are registered;
- TDS Certificates;
- Details of labour and other like charges incurred;
- Running bills raised;
- Details of basis for raising running bills and tax invoices;
- Bank statements highlighting receipts from Works contract received;
- Bifurcation of receipts - land value, deposits in the form of electricity and water, registration fees, club membership fees, construction etc.,
- Completion certificate obtained from architect where exemptions claimed if any.

The authors are of the view that, the formats specified by the VAT department in Form VAT – 240 is exhaustive in nature, and an auditor should acquaint himself with the requirements of the KVAT Law and analyse the complexities and conduct the audit in the light of these requirements and complexities. This is because as Compared to other allied laws like income tax, where an auditor can take a help from the guidelines issued by the ICAI or from AAS, there are no such guidelines for VAT audit.

Email Heights

HEIGHT OF COWARDICE: Two persons fighting through emails.

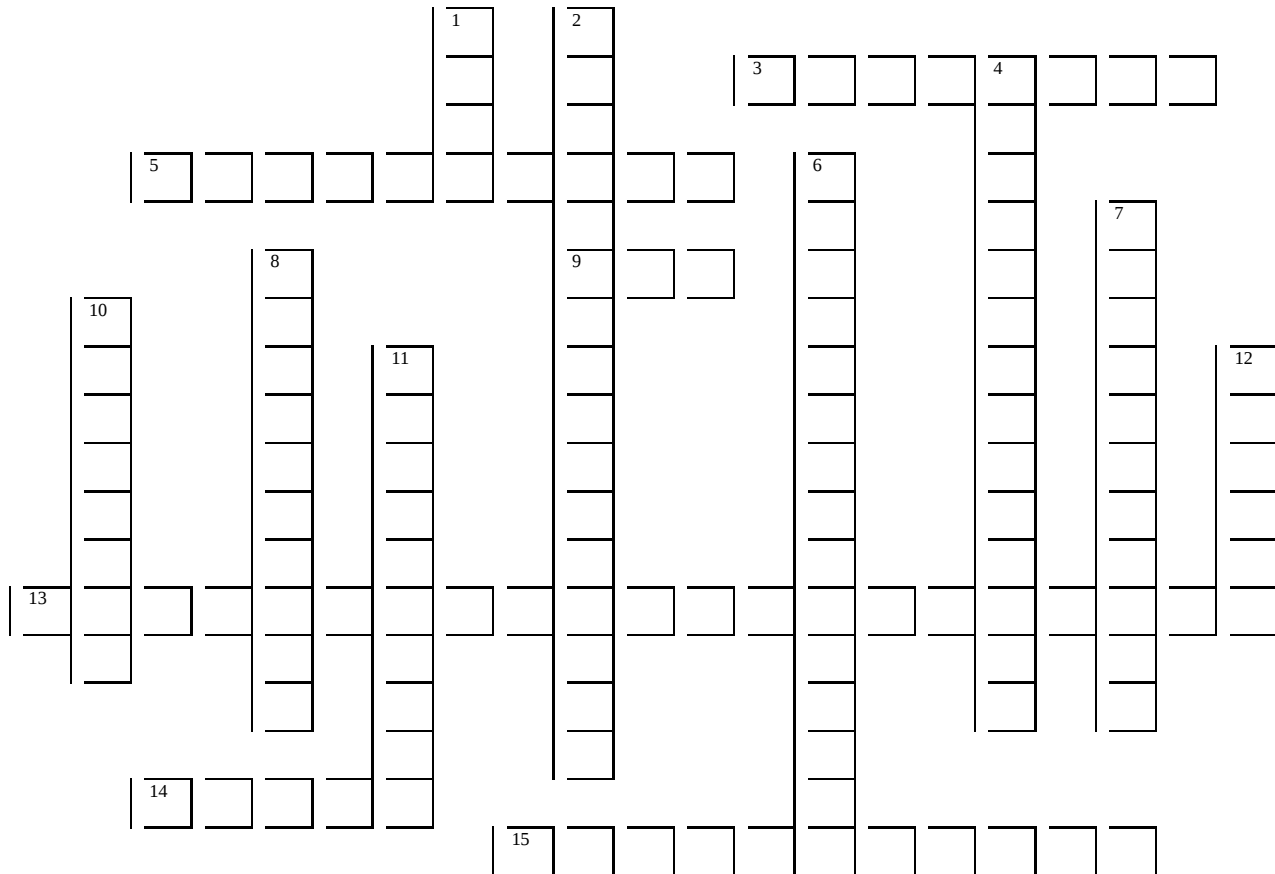
HEIGHT OF HELPLESSNESS: Receiving no emails for a week.

HEIGHT OF FRUSTRATION: The email server being down.

HEIGHT OF CARELESSNESS: Writing an intimate email and doing a 'Reply All.'

HEIGHT OF TIMEPASS: A person sending email to himself.

CROSSWORD - 8

**ACROSS**

- 3 Bonds below investment grade but promises high returns and are issued by companies who don't have any other option of raising money.
- 5 Type of annuity in which the periodic payments begin on a fixed date and continue indefinitely.
- 9 Securities offered by Non - US Companies who want their shares to be listed on any of the US exchange.
- 13 A market coverage strategy in which a firm goes after a large share of one or few sub - markets.
- 14 The amount before deductions.
- 15 Favourable condition in the organisation's environment which enable it to strengthen its position.

DOWN

- 1 Cash or other property used in an exchange to make the values of property traded equal.
- 2 Sustained increase in the stock of real capital in a country.
- 4 A final loan payment that is considerably higher than prior regular payments, in order to pay off the loan.
- 6 Additional cost of a change in the level or nature of activity.
- 7 Sending work to another organization instead of processing the work in-house.
- 8 An accounting year that ends on a date other than December 31.
- 10 The movement of cash into, through, and out of a particular entity.
- 11 Units of production which can be rectified and turned out as good units.
- 12 Process of translating a set of computer processing specifications into a formal language.

-Shilpa & Pavithra**Answers: Crossword – 7****Across:** 3- Stock, 8- Demand, 10- EPS, 12-Norm, 14- Sunk Cost, 15- Operational Gearing.**Down:** 1-Bar code, 2- Consistency, 4- P E Ratio, 5- Bad Debt, 6- Job Costing, 7- warrant, 9- Bluetooth, 11- Turnover, 13- Aging.

The Information Hotpan

Statutory auditors for public sector banks

The Reserve Bank of India will continue to appoint statutory auditors for public sector banks for the current fiscal year and held discussions recently with the Institute of Chartered Accountants of India (ICAI). There were some doubts about empanelling of statutory auditors this year, as some banks have been demanding autonomy in the appointments. In our recent meeting with the RBI officials, it has been finalized that the apex bank will continue the earlier practice of appointing statutory auditors for the current year as well," Mr Sunil Talati, President, ICAI, told. Generally, the ICAI would send a list of CAs to be appointed as statutory auditors to the RBI. The RBI would in turn send a list to the PSUs and then PSUs appoint statutory auditors from the given list. "However, for the last two years, some banks feel that this is against the principle of autonomy," Mr Talati said. The ICAI has already indicated to its members that there is no guarantee that this practice will be continued in future, Mr Talati said.



Rupees one-lakh car launch

Head of the Tata Group Ratan Tata would like to retire from active business life after his dream project "the Rs one-lakh car" is launched successfully. Tata said, "In an ideal world, after the small car has been launched and is successful, that would be a nice time for me to exit." Tata Motors, the automotive arm of the over Rs three-trillion market value group, is scheduled to unveil the vehicle, touted as the world's cheapest mass-produced car, on 10th January at an auto expo in New Delhi. Rival carmakers are, however, not convinced about the safety and emission standards of the car, coming as it is at that price level. Reacting to this, Tata told, "We are producing a car that will be no more polluting than a motorcycle." The report said that there was a big gap between the cost of the average two-wheeler and entry-level cars such as the Maruti 800, which retails for about 5,000 dollars, and Tata plans to fill it. Newspaper said that Tata would be one of the most visible faces of the new India in 2008.



The Best of Year, "2007"



It was the best of years, it was the worst of years, it was a year of triumph, it was a year of tragedy, it was a year of pride, it was a year of shame, it was a year of heroes crowned, it was a year were heroes were disgraced that is how we can sum up the entire sporting events for the year 2007.

So before turning off our calendar lets review the events which left a mark in the history books.

Cricket

The Australians continued to dominate the cricketing world by regaining the ashes and then went on to retain the world cup in west Indies but not before team India and Pakistan were eliminated from the first round by minnows Bangladesh and Ireland and the tragic death of Bob Woolmer which left the whole series in a bad spirit.



Team India and Pakistan after their humiliating exit in world cup stood up and made themselves counted in the T20 world cup at South Africa

where India prevailed over arch-rivals in a nerve racking final.

Football

AC Milan, Manchester United and Real Madrid added more cups to their glittering trophy rooms but the war-torn country of Iraq provided the most unexpected and memorable moment for soccer in 2007 be beating Saudi Arabia 1-0 in Asian cup final at Jakarta.

Milan avenged their defeat to Liverpool in the Champions League final in Istanbul two years earlier with a 2-1 win over the same opponents in Athens, while Manchester United were crowned English champions for the first time since 2004, Madrid won their 30th Spanish title but their first since 2003 and Inter Milan successfully defended its Serie A title.

Formula 1

The 2007 Formula One championship was a historic fight that came down to the final laps and was decided by one point between three drivers, yet the season will be remembered for its off-the-field antics rather than the great title battle.

Kimi Raikkonen came good in the second half of the year to snatch the title away from Hamilton's grasp at the Brazilian Grand Prix, the Finn in the process overturning the 17-point deficit which the young Englishman had held with just two races remaining.

Rugby



After lots of twist and turns the Webb Ellis trophy was finally conquered by South Africa in intense battle against England. The Boks defeated the defending champions thanks to their gritty defense.

Else were France laid its hand on six nations trophy and New Zealand were crowned Tri-Nation cup

courtesy of their win over Australia in finals.

Tennis

Roger Federer continued his dominance by adding three more grand slams to his kitty for second consecutive year. He continued to roll on all the surfaces except clay where he was left clueless by Nadal. The Swiss maestro looked in total control through his excellent strokes both of the back hand and fore hand throughout the season.

Venus Williams made a great come back from her injury by winning the Wimbledon fourth time in eight years. But the season belonged to Justine Henin Hardenne with two grand slams and Masters Cup in her kitty.

-Harish, Komal, Soumitra, Puneeth

DNS Family (The Lighter Side)

NEW YEAR CELEBRATIONS!!!!

New Year is the occasion to bid farewell the past & hail every moment approaching to us through all forthcoming joys and sorrows with open arms..... A luminous adornment goes an elongated path to create the right ambience and make the gathering a memorable one. Attractive décor makes every occasion stunning & on the eve of New Year, it is a primary inevitability.



We too celebrated the eve of this special occasion with lots of zeal and enthusiasm. Mrs. Annapurna addressed everyone with small but sweet words for best wishes. Ms. Priya Ranjani continued with a stanch song to Lord Ganesh- "The lord of all beginnings". The grandeur then begun with games that were organized by the Recreation Committee, which was a roller-coaster-joy ride to each member, unique & absolute special from the regular office atmosphere. The range of games played included Memory Game, Dumb-Sharaads, Treasure Hunt for guys, Fun Poll, Treasure Hunt for gals, Tol Mol Ke Bol.

The Winners were as follows:

Memory game: I Prize was bagged by Komal Jindal and the II Prize was bagged by Supriya Vaz.

Dumb Charades: Mukesh, Harish, Chetan, Vinay

Treasure Hunt for guys: I Prize was bagged by Vasanth, Harish, Mukesh and Gopal.

II Prize was bagged by Bharath, Vinod, Shashank, and Ramu

Treasure Hunt for gals: Shilpa and Poornima

Tol Mol Ke Bol: I Prize was bagged by Leelavathi

Best Singer: Amarnath Bhosle

We congratulate all the Prize Winners!!!!

As said to be a trade mark of every occasion, the celebrations came to an end with the cake-cutting by the partners & DNS Family Members. As the day came to an end, another experiencing & fruitful year was off, for a new beginning.



Happy New Year, Happy 2008 !!

"You have many years ahead of you to create the dreams that we can't even imagine dreaming."

- Steven Spielberg (18)

SIM card: Is it a Goods or service?

-CA Annapurna & Vasanth Kumar

What is a SIM Card?

A SIM card is a portable memory chip used in some models of cellular telephones.

Features of SIM Card

SIM holds personal identity information, cell phone number, phone book, text messages and other data. It can be thought of as a mini hard disk that automatically activates the phone into which it is inserted. It is also called Subscriber Identity Module. Where subscriber can be identified and the subscriber can access the activation. It is merely an identification device for operating the cellular phone through activation.

The SIM Card as such does not have any significant intrinsic value unless it is activated. Moreover, the SIM Card unlike the telephone instrument cannot be purchased by the customer from elsewhere.

Following are inter-related with each other

- a) Mobile Handset
- b) SIM Card
- c) Activation

It is not possible to achieve the desired object if any one of the above things is absent. It is possible where the mobile manufacturer can sell mobile along with SIM Card or without. On the other than if only mobile is sold where customer need purchase SIM Card and normally activation process takes later and amount paid or payable includes for both SIM Card and activation charges. Now the question arises whether there is any transfer of property in goods or service.

Before we precede the same it is important invite the attention towards gist o the important where some lights has been thrown on these issues.

1. Rainbow Colour Lab case (2000) 118 STC 9 *Rainbow Colour Lab and Another Vs. State of Madhya Pradesh and Others (SC)*

Taking photographs, developing negatives films and supplying prints not works contract even after 46th Amendment. Dominant intention must be transfer of property in goods.

Principles applied – Dominant intention of the parties. (this principle has been doubted in ACC's case and disapproved in BSNL's case)

2. ACC case (2001) 124 STC 29 *Associated Cement Companies Limited Vs Commissioner of Customs (SC)*

The definition of "goods" in section 2(22) of the Customs Act, 1962, includes in sub-clause (c) baggage and in sub-clause (3) "any other kind of movable property". In effect the definition is so worded that all tangible movable articles will be goods for the purposes of the Act under movable articles comes as part of baggage or is imported into the country by any other manner, for the purpose of Customs Act, the provisions of section 12 of the Customs Act would be attracted.

Principles applied – Actual transfer of property in goods dominant intention of the parties disapproved.

3. Escotal case (2002) 126 STC 475 *Escotal Mobile Communications Vs. Union of India (Ker)*

The state legislature is competent to impose tax on "sale" by a legislation relatable to entry 54 of List II of the Seventh Schedule to the Constitution, the tax on the aspect of "service" rendered not being relatable to any entry in the State List, would be within the legislative competence of Parliament under article 248 read with entry 97 of List I of the Seventh Schedule. The same transaction can be exigible to different taxes in its different aspects and there is no possibility of constitutional invalidity arising due to legislative incompetence by taking the view that "sale" of SIM card is simultaneously exigible to sales as well as service tax.

Principles applied – Levy of tax depends on application of nature of transaction.

4. Tata Consultancy case (2004) *Tata Consultancy Services Vs State of Andhra Pradesh*

The term "goods", for the purposes of sales tax, cannot be given a narrow meaning. Properties which are capable of being abstracted, consumed and used and/or transmitted, transferred, delivered, stored or possessed, etc., are "goods" for the purpose of sales tax. The test to ascertain whether a property is "goods" for the purposes of sales tax is not whether the property is tangible or intangible or incorporeal. The test is whether the concerned item is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed, etc. In the case of software, both canned and uncanned, all of these are possible. Intellectual property when it is put on a media becomes goods

Principles applied – If a thing has characteristics of goods whether corporeal or incorporeal is liable to sales tax as goods.

"I never did a day's work in my life. It was all fun."

- Thomas Edison (19)

5. BSNL case (2006) 145 STC 91 *Bharat Sanchar Nigam Ltd. and another Vs. Union of India and others* (SC)

Goods do not include electromagnetic waves or radio frequencies. The goods in telecommunication are limited to the handsets supplied by the service provider. It may be that the actual delivery of the goods is not necessary for effecting the transfer of the right to use the goods but the goods must be available at the time of transfer, must be deliverable and delivered at some stage. If the goods or what are claimed to be goods are not deliverable at all by the service providers to the subscribers, the question of the right to use those goods would not arise.

If the SIM card is not sold to the subscribers but is merely part of the services rendered by the service providers, the SIM card cannot be charged separately to sales tax. If the parties intended that the SIM card would be a separate object of sale, it would be open to the sales tax authorities to levy sales tax thereon. If the sale of the SIM card is merely incidental to the service being provided and facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax.

Principles applied – Both the taxes cannot be levied on single transaction.

6. Hari & Compnay case (2006) 148 STC 92 *Commissioner of Sales Tax, Mumbai Vs Hari & Company*

Taking out xerox copies on a xerox machine property in paper and ink passes liable for tax on the transfer of property in goods involved in the execution of works contracts.

Principles applied – Deemed transfer of property in goods whether smaller portion or not.

7. BPL case (2007) 10 VST 313 *BPL Mobile Communications Limited and Others Vs. Commissioner of Central Excise, Mumbai (CESTAT-Mum)*

The appellants having paid sales tax on the value of SIM cards and not having challenged the levy thereof having accepted the transaction to be a sale of goods,

the question of considering the activity is an auxiliary service did not arise and service tax could not be levied on the value of the SIM cards. The levy of service tax and imposition of penalty was not sustainable.

Principles applied – Levy of tax depends on application of nature of transaction.

To decide whether sale of SIM card is service or goods in has to look into the characteristics of goods;

- a) Whether it is tangible or intangible;
- b) Whether it is transferable from one person to another or not;
- c) Whether ownership has been transferred or not;
- d) Whether it is capable of being consumption and use;

The taxability of SIM Card is a question of fact which is not decided by the states but Apex court held that the SIM Cards cannot be made liable to tax by the states. They have the opinion that the term “goods” does not include electromagnetic waves and radio frequencies. The goods in telecommunication are limited to the handsets supplied by the service provider. There may be transfer of right to use goods by giving a telephone connection. The nature of the transaction involved in providing the telephonic connection may be a composite contract of service and sale.

The 46th Constitutional Amendment gives power to the states to bifurcate the indivisible contract one for supply of goods and another for labour separately for the purpose of levy of tax, the same principles can be applied even in this case also where the total value received or receivable by the supplier includes the value of the SIM card purchased and activation charges.

The author is of the view that, where the SIM card has the essential characteristics of goods and the necessary concomitants of a sale are present in the transaction, whether the intention of the parties is to provide service or not is liable to VAT under the state law. In such case, the services charges like activation charges will be liable to service tax.

Answers to Logo Quest -1

- | | |
|--------------------------|------------------|
| 1) Lewis | 6) Wedgewood |
| 2) Black & Decker | 7) Remmy Martin |
| 3) Aeroflot | 8) Mister Minute |
| 4) Electrolux | 9) Pringles |
| 5) Amnesty International | |

“I will not say I failed a thousand times, I will say I discovered a thousand ways that can cause failure.”

- Thomas Edison (20)

REPERCUSSIONS FOR DEFAULTERS OF BANKS/FINANCIAL INSTITUTIONS

-By Mrs. D Sailaja BSc(Agri),CAIIB

For the customers of Banks and Financial Institutions (FIs) which are under the purview of Reserve Bank of India, it is imperative to understand about various parameters considered by Lenders for inclusion of borrowers in Negative list. This helps them to avoid complications and obstacles in carrying out their business activities especially with financial support from Banks/FIs. Lenders include scheduled commercial banks, Development Financial Institutions, Government owned NBFCs, Investment institutions etc.

❖ Parameters that are normally considered for inclusion of borrowers in Negative List

- i. All black listed persons as advised by Govt. of India/RBI etc.
- ii. Borrowers who have defrauded bank.
- iii. Guarantors who have defrauded banks
- iv. Guarantors who have not fulfilled their commitments to the bank and borrowers against whom suit/s are/were filed by the bank.
- v. Borrowers whose line of activity is included in the Negative List by the Govt. of India/RBI/IBA.
- vi. Where Bank had entered into compromise settlement in sacrificing its dues either by way of write off of principal/interest charged or interest not charged, in normal course, the borrower will not have opportunity to avail fresh credit from Bank either in his individual capacity or in the name of any firm/company. However, based on the justifying reasons, the cases may be considered by Head /Board of a financial institution /Bank. Fresh loans can be sanctioned to the agricultural borrowers who had earlier settled their dues under One Time Settlement / Compromise settlement scheme subject to necessary approvals from their respective authorities.
- vii. In case of Group accounts where one of the accounts is a Non-Performing account, then consideration of facilities for other Standard accounts in the Group will also have an impact and undergo a careful scrutiny by banks.

viii. **RBI Defaulters List:** In case the name of

the proprietor, partners/s, directors, etc appear on the RBI Defaulters' list for reasons other than being a Professional / Nominee Director in the defaulting company, the proposal will undergo a careful scrutiny by Banks/FIs for the nature of default. In case of Consortium advances, the Consortium will specifically discuss this aspect in its meeting and take a view on the matter. Banks also discourage the proposals for granting fresh loans to such companies and to new constituents with whom any of the proprietor / partners / directors of defaulting company is associated.

The above aspects to decide the negative list of securities and the borrowers is only illustrative and not exhaustive. These aspects will be reviewed by banks from time to time.

❖ RBI GUIDELINES ON CLASSIFICATION OF WILFUL DEFAULTERS

BACKGROUND

Reserve Bank of India decided in April 1999 to introduce a scheme under which the banks and notified All India Financial Institutions were required to submit to RBI, the details of the wilful defaulters with out standings of Rs.25 lakhs and above. This was pursuant to the instructions of the Central Vigilance Commission for collection of information on wilful defaults of Rs.25 lakhs and above by RBI and dissemination to the reporting banks and FIs.

RBI prescribes the norms for:

- ✚ Declaring an individual borrower a wilful defaulter;
- ✚ Penal measures that can be taken against a willful defaulter;
- ✚ Roles and responsibilities of a audit and inspecting teams;
- ✚ Dealing with such accounts and a mechanism by which the grievance can be addressed, if any party feels aggrieved on account of inclusion of its name in the wilful defaulters list. ;
- ✚ Criminal action that a bank can take against the willful defaulters;
- ✚ Precautions a bank can take before giving credit facilities to the borrowers

Wilful default broadly covers the following:

- ✚ Deliberate non-payment of the dues despite adequate cash flow and good net worth;
- ✚ Siphoning off of funds to the detriment of the defaulting unit;
- ✚ Assets financed either not been purchased or been sold and proceeds have misutilised;
- ✚ Misrepresentation / falsification of records;
- ✚ Disposal / removal of securities without bank's knowledge;
- ✚ Fraudulent transactions by the borrower.

It covers all Non-performing borrowal accounts with out standings (funded facilities and such non-funded facilities which are converted into funded facilities) aggregating Rs.25 lakhs and above, identified as wilful default by a Committee of higher functionaries headed by the Executive Director and consisting of two GMs / DGMs.

❖ REPORTING TO RBI / CIBIL

- ✚ Bank/FIs will submit the list of suit-filed accounts of wilful defaulters of Rs.25lakhs and above as at end-March, June, September and December every year to Credit Information Bureau (India) Ltd. (CIBIL).
- ✚ Banks/FIs will, however, submit the quarterly list of wilful defaulters where suits have not been filed only to RBI.

RBI / CIBIL disseminate information on non-suit filed and suit filed accounts respectively, to all banks/FIs, as reported to them by the banks / FIs.

❖ WHAT IS A WILFUL DEFAULT?

A "wilful default" would be deemed to have occurred if any of the following events is noted:-

- ✚ The unit has defaulted in meeting its payment / repayment obligations to the lender:
 - Even when it has the capacity to honor the said obligations.
 - When unit has not utilised the finance from the lender for the specific purposes, for which finance was availed of, but has diverted the funds for other purposes.
 - When unit has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets."

Diversion and Siphoning of funds

- ❖ **Diversion of funds** would be construed to include any one of the under noted occurrences:
 - ✚ Utilization of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;

- ✚ Deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;
- ✚ Transferring funds to the subsidiaries / Group companies or other corporate by whatever modalities;
- ✚ Routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
- ✚ Investment in other companies by way of acquiring equities / debt instruments without approval of lenders;
- ✚ Shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

❖ **Siphoning of funds** would be construed to occur, if any funds borrowed from banks/FIs are utilized :

- ✚ For purposes un-related to the operations of the borrower;
- ✚ To the detriment of the financial health of the entity or of the lender.

However, the identification of the wilful default will be made keeping in view the track record of the borrowers and will not be decided on the basis of isolated transactions/incidents. The default to be categorized as wilful must be intentional, deliberate, calculated and based on objective facts and circumstances of the case.

❖ The following Penal measures will be initiated by the banks and FIs against the wilful defaulters identified as per the definitions indicated as above

- i. No additional facilities will be granted to the borrowers whose names appear in the list of Wilful Defaulters being circulated by RBI/CIBIL.
- ii. The entrepreneurs/promoters of companies where banks have identified siphoning /diversion of funds, misrepresentation, falsification of accounts and fraudulent transactions, will be debarred from Institutional finance from the Scheduled Commercial Banks, Development Financial Institutions, Government owned NBFC's, Investment institutions etc and will not be granted any finance at any level for floating new ventures **for a period of 5 yrs from the date the name of the wilful defaulter is published in the list of wilful defaulters by the RBI.**
- iii. In order to prevent the access to the capital markets by the wilful defaulters, a copy of the

list of wilful defaulters (non-suit filed accounts) and list of wilful defaulters (suit-filed accounts) are forwarded to SEBI by RBI and Credit Information Bureau (India) Ltd. (CIBIL) respectively.

- iv. Banks/FIs will examine all cases of wilful defaults of Rs 1.00 crore and above for filing of suits and also consider criminal action wherever instances of cheating/fraud by the defaulting borrowers were detected.
- v. In case of consortium/multiple lending, banks and FIs can report wilful defaults to other participating/financing banks also.
- vi. Cases of wilful defaults at overseas branches will be reported, if such disclosure is permitted under the laws of the host country.
- vii. Lenders may initiate the legal process, wherever warranted, against the borrowers / guarantors and foreclosure of recovery of dues will be initiated and may initiate criminal proceedings against wilful defaulters, wherever necessary.
- viii. Wherever possible, the banks and FIs will adopt a proactive approach for a change of management of the wilfully defaulting borrower unit.
- ix. Borrowing company should not induct a person who is a promoter or director on the Board of a company which has been identified as a wilful defaulter. In case, such a person is found to be on the Board of the borrower company, it would take expeditious and effective steps for removal of the person from its Board.
- x. **Reporting the names of Directors:** In addition to reporting the names of current directors, information about directors is also furnished who were associated with the company at the time the account was classified as defaulter, to put the other banks and financial institutions on guard. Banks and FIs will also ensure the facts about directors by cross-checking with Registrar of Companies.

xi. Guarantees furnished by group companies

While dealing with wilful default of a single borrowing company in a Group, the banks / FIs will consider the track record of the individual company, with reference to its

repayment performance to its lenders. However, in cases where a letter of comfort and / or the guarantees furnished by the companies within the Group on behalf of the wilfully defaulting units are not honoured when invoked by the banks / FIs, such Group companies should also be reckoned as wilful defaulters.

xii. Position regarding Independent and Nominee directors

Professional Directors who associate with companies for their expert knowledge act as Independent Directors. Such Independent Directors apart from receiving director's remuneration do not have any material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in the judgment of Board may affect their independent judgment.

- Therefore, against the names of Independent Directors and Nominee Directors, abbreviations like "Ind" and "Nom" respectively in brackets will be indicated to distinguish them from other directors.
- In the case of Government undertakings, the names of Directors are not to be reported. Instead, a legend "Government of ----- undertaking" will be added.

❖ GRIEVANCES

REDRESSAL

MECHANISM

- With a view to impart more objectivity in identifying cases of wilful default, decision to classify the borrower as wilful defaulter is entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided by the Board of the concerned bank/FI.
- The borrower will thereafter be suitably advised about the proposal to classify him as wilful defaulter along with the reasons therefore. The concerned borrower is provided reasonable time (say 15 days) for making representation against such decision, if he so desires, to a Committee headed by the Chairman and Managing Director.
- A final declaration as 'wilful defaulter' will be made after a view is taken by the Committee on the representation and the borrower will be suitably advised.

*"Never confuse the size of your paycheck with the size of your talent.
You are much more than your paycheck."*

- Marlon Brando (23)

Re-looking into oneself

-Komal Jindal & Tanuja J Kadamba

Each one of us crosses the mirror at least once a day; we analyze ourselves in more ways than one. Some people notice their positives: I have nice eyes; I look great, some notice their negatives: my nose is too long, my hair is not good, some conclude that they look happy & some feel that they look worried or gloomy. But how many of us attempt to go beyond our physical attributes? How many of us look into our real self? Or the attributes which really go into building our character? Not many!!



youth but compared to the instances of teenage aggression, depression and even suicides, the magnitude of the problem is alarming. To face the problem a systematic analysis is an urgent need. The issue is huge but the level of intervention is in fatal stage. It's better to be safe than sorry. Are we prepared to meet the challenges of life that it has in store. Preparation is essential tool for making life a more positive experience. We have to find answer for all six W's i.e. When, Where, Who, What, Why and Which; and then start answering each of them. Why we see a sea of change of youth behaviour. Why we often see them act apposite to what elders expect them to be. Is it what we call as generation gap?

The article is all about re-looking into oneself. Its something which is not new, it's just a means of refreshing our selves and knowing our selves. It's very real and has an application in the practical life. Youth today face a number of important choices everywhere as they navigate a rapidly changing world. With so many influences giving direction to young people, cultivating the qualities of inner strength and compassion will be essential for tomorrow's leaders. Present generation is dominated by science, technology & various luxuries which have mesmerized them to an extent that they have forgotten their basic duties & responsibilities. The present generation is no doubt excelling academically and has also proved themselves in various streams. This is one side of the coin. The other face of it is even though more luxurious has also turned to prove for them as a reason for not gaining knowledge, being more aggressive (violent).

What are the reasons for this? Why is our generation lacking behind? How has this affected us? What will be the plight of our next generation? Let's have a look on this side of the coin. This side of the coin consists of the grey strokes which normally occupy today's youth.

More and more instances of stress, aggression, depression, exuberance come to light; it's a need of the hour for us to look into the mental health of young people. We have to treat it as a crisis. There are some researches in India sharing mental, emotional and behavioral problem being faced by the

It is a misunderstood generation in the stormy sea, though we know to swim, we are not aware in which direction to swim. These are generations of broken homes, broken hearts, drug addiction, failing health, and bleak future. No doubt we are energetic but we are not trying to understand the present issue and long term goals and failing to develop the attitude to face the challenges. A will power to convert an opportunity into an advantage is lacking. We are interested in short term satisfaction and gratifications.

Increased competition might have built up pressures but one should not cross the limits of decency & morality. Humanity should guide us. Means should become more important than end. A bad means will not justify a good end. What is Education all about? Is it Book-Keeping? Is it diverse knowledge? No. Now a days the situation has become so serious that the personal touch of parents to their children is missing completely. The Computer technology, internet features like browsing, chatting, orkut, video games, gambling, mobiles services like free messaging, mobile games, free talk-time and various attractive packages have taken people into a new world, forgetting the basic love and affection which is expected by any child or a parent. Lack of moral values, character and discipline is only one of the many evils with which Indian education is afflicted. In the, eyes of many observers, there are even graver problems warranting more drastic remedies. What we need, therefore, is, a complete- rethinking on educational goals and methods".

Media like television, films contribute mostly to their negative trends, and youth gets carried away by their base attractions – which go beyond decency. Fashion and trends carry us away from decency and decorum. Duty and hard work to reach the goal goes back. Student life is treated as golden opportunity to enjoy life. It is never treated as “Tapas” to achieve the high standards of life. This cynical approach guides us to despair and disappointment. We lack concentration and will power to set a dream and to chase it.

Acharya Sri Mahaprajna, a Jain philosopher in one of his sermon stated that, arrogance, anger, anxiety, misleads the youth. Moreover we are not utilizing the opportunities to its optimum. Rather than taking optimum advantage from the available opportunities youth starts grumbling about their surroundings, environment, infrastructure and colleges which ultimately results in nothing. We need to be more consistent and more focused. Our eating and sleeping habits have affected our mental stability, concentration and capacity to think to a great extent. We just want the taste; we are least bothered about its effects on our health. We see students complaining that they were not able to finish their exam in three hours time. All this is due to bad sleeping and eating habits, lack of planning and lack of ability to manage time. Proper planning is must for everyone. How to utilize the time to its maximum is dependent on us. Like for example one hour of studies before getting exhausted is equal to three hours of studies after getting exhausted. In this case we should develop a habit of getting up early in the morning and study rather than studying late nights.

I was angry with my friend
I told my wrath, my wrath did end
I was angry with my foe
I told it not, my wrath did grow.
-A Poison Tree

Anger kills away one's thinking ability. As long as anger is protected in us, it grows as much as it can – just like a plant growing into a big tree. A plant can be nurtured as we can. But not a tree which has laid its strong foundation on the ground. This is one of the qualities; the younger generation has cultivated and has become one of the serious miscommunications which are called as “The generation gap”.

Arrogant is an adjective that may refer to having excessive pride in oneself. A person who is arrogant may exaggerate one's own worth or importance in an overbearing manner. Today's generation is much concentrated to their thinking and views. It's become so much that we stick to our views and have almost neglected our elder's view.

Laziness is another feature which is guiding us. Laziness is nothing more than the habit of resting before you get tired. The present generation, wearied by its chimerical efforts, relapses into complete indolence. Its condition is that of a man who has only fallen asleep towards morning: first of all come great dreams, then a feeling of laziness, and finally a witty or clever excuse for remaining in bed. How is this affecting us? Laziness, in many cases, leads to poor health, low self-esteem, lack of hope, and low self-confidence. It also robs a person of a sense of accomplishment, a sense of self-worth, and self-development. How are we going to learn anything or pick up a new skill or develop a talent if we are too lazy to get up and do something? The laziness mentioned above refers to lack of desire to perform work. The alertness in oneself will definitely be a key to success. We have cultivated the habit of deferring our work; we are not focused towards what we want from life.

Concentration has been defined as "the ability to direct one's thinking in whatever direction one would intend".

This sort of concentration is hardly found in this generation. The main reasons being:

- ❖ Distractions
- ❖ Negative Attitude
- ❖ Pessimistic Approach

The fruits of Success are enjoyed only when one *concentrates* on what he wants and think of the ways to get it.

In our daily life we may observe the little things we know, whether we are able to apply it in our practical life. On the contrary we do things which are bad and harmful to us. We know it is very important for us to concentrate on our studies. But some how we cannot turn our eyes and ears from radio or T.V. If our subconscious reminds us to study also, we some how over come it and give it a thrashing, justifying that it's such a fantastic program which we can't afford to miss it. Its not that we shouldn't watch T.V. as it's again a means for gaining knowledge. It can prove its importance only when used at right time. It has to be utilized as a means for us to excel in our lives. Do not people know that it is not good to booze and fag? We just try to take a look at it, and then start for the first time, and then start calling it 'just for an occasion'. Slowly it becomes habitual and then become a deliberate act. The promise not to booze or fag is just to break it. The only thing missing is lack of *Will-Power*. It's hi-time for them to realize things and try to become a perfectionist.

Compared to previous generation the lust for money and comfort has increased. Nobody wants to work

hard and achieve. They want everything on a plotter and as quickly as possible. They lack patience and perseverance. Today the ambition for money has turned out to be greed. Various questions are to be answered. Why we need money, what is more important- relationship or money? Today we are running behind money, we have forgotten the basic moral values. We are giving more importance to money. Relationship has taken secondary place but none of us are able to realize money is just a means. If we can get back to our ancestor's era, the relationships were given importance than money. They always found the differentiation of both. The older generation only thought that money is just a means and not an end. Ultimately the relationships were given importance than anything else. We should realize that if we are greedy, we will forever covet for it, irrespective of how much ever we gain. Now the situation has turned out to be the opposite to what the older generation use to think. Man is more focused on the two things i.e., money and time. For him the money is time and time is money. He works round the clock irrespective of his relation as a social being. The relationships, even though we are a part of them, are not sensed and felt. He has to strike a balance between professional and personal life. A short story of a man highlights the importance of money than a relation.

A wife tells her husband to lock the door of the house, saying that she is going to market for shopping. Husband locked the door and is busy watching the television. Suddenly the house caught fire and the man suddenly tries to be out of it, by taking all the valuables at home. The entire house is burnt and when the wife is back, she was shocked to see the house burnt so suddenly. The husband

explains her incidence. He also says that he has taken all the valuables at home and they are safe in that regard. But the wife will be dumb stuck for a moment as she was not able to see their son. She asks him about their son who was inside the house. And the reply she gets is that he has forgotten about the son in a hurry to collect all valuables. This sort of negligence for his son and the value given for money shows the greediness in man. A man earns money to get comforts, and in the end loses all his comforts for money which is of no use.

Youth has become avaricious. Hobbesian said "Man is bad, nasty, and brutish and his life is short". He does not try to do good unless & until controlled and compelled by law. He tries to do all sorts of hasty things when he is not watched. When compared to older generation the life has become fast, values have receded, competition has become cut throat, methods have become dubious, and there is moodiness all around. There is no specific method. They want to achieve everything by hook or crook. End has become all the more important and means has lost its importance.

The only way to overcome all the limitations is to re-look into ourselves. It's only the self- evaluation that helps a man to regain his short comings and understand that we are humans.

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Feel free to send your opinions and views as to how best a man can overcome all the above mentioned limitations. E-mail to: tanuja@dnsconsulting.net, komal@dnsconsulting.net

LAW DICTIONARY

- Tanuja J

Here are some of the *meanings* of the terminologies used in field of Law.

Abatement = Removal or stopping of a nuisance.
Ab initio = Latin phrase meaning 'from the beginning'.
Abjure = To swear not to bear allegiance to another country.
Abscond = To go away without permission or not to return to the court after being released on bail or to escape from prison.
Actus Reus = Latin phrase meaning 'Guilty Act', Act which is forbidden by the Criminal Law, one of the two elements of a crime.

Ad Idem

Adjourn

Ad Litem

Alieni Juris

Ante

A posteriori

= Latin phrase meaning 'in Agreement.'

= To stop a meeting for a period, to put off a legal hearing to the later date.

= Latin phrase meaning 'referring to the case at Law'

= Latin phrase meaning 'of another's right'. A person (such as minor) who has a right under the authority of a guardian.

= Latin adverb meaning 'which has taken place earlier' or 'before'.

= Latin phrase meaning 'from what has been concluded afterwards'. (26)

Animus	= Intention.	Arm's length	= Not closely connected, to deal with someone at arm's length = to deal as if there were no connections between the parties.
<i>Animus cancellandi</i>	= <i>the intention to cancel.</i>		
<i>Animus Furandi</i>	= <i>Intention to steal.</i>		
<i>Animus Manendi</i>	= <i>Intention to stay (in a place)</i>		
<i>Animus Revocandi</i>	= <i>Intention to revoke (A will)</i>	Appurtenant	= To or belonging to.
Annul	= To cancel or to stop something having a legal effect.	Antedate	= To put an earlier date on a document.
Appeal	= Asking a higher court to change a decision of a lower court.	Amnesty	= Pardon, often for political crimes, given to several people at the same time.
Arson	= Notifiable offence of setting fire to a building.	Alimony	= Money which a court orders a husband to pay regularly to his separated or divorced wife.
Automatism	= Defence to a criminal charge whereby the accused states he acted involuntarily.	Adjoin	= To touch another property.
Autopsy	= Examination of a dead person to see what was the cause of death.	Accretion	= Enlargement of a piece of land by natural causes.
Autrefois Acquit	= French phrase meaning 'previously acquitted'. Plea that an accused person has already been acquitted of the crime with which he is charged.	Accredited	= (Agent) who is appointed by a company to act on its behalf.
Autrefois Convict	= French phrase meaning 'previously convicted'. Plea that an accused person has already been convicted of the crime with which he is now charged.	Alienation	= Transfer of property to someone else.
Aver	= To make a statement or an allegation in pleadings.	A fortiori	= Latin phrase meaning 'for a stronger reason'
Attorn	= To transfer.	Affray	= Public fight which frightens other people
Asylum	= Hospital for people who are mentally ill.	Aggrieved	= Who has been damaged/harmed by a defendant's actions
		Autarchy	= Situation where a state has total power over itself & rules itself without outside interference
		Autarky	= Situation where a state is self-sufficient & can provide all its needs without outside help.

Tid Bits

1. The Mona Lisa has no eyebrows. It was the fashion in Renaissance Florence to shave them off!
2. Until the nineteenth century, solid blocks of tea were used as money in Siberia!
3. No piece of square dry paper can be folded more than 7 times in half!
4. Over 2500 left handed people a year are killed from using products made for right handed people!
5. Ancient Egyptians slept on pillows made of stone!
6. The starfish is one of the few animals who can turn its stomach inside-out!
7. A man named Charles Osborne had the hiccups for 69 years! Wow!
8. A company in Taiwan makes dinnerware out of wheat, so you can eat your plate!
9. A giraffe can clean its ears with its 21-inch tongue!
10. Most dust particles in your house are made from dead skin!
11. The earliest maps were made by the Babylonians about 2300 B.C.
12. A zebra is white with black stripes.
13. A 'jiffy' is an actual unit of time for 1/100th of a second.
14. It's against the law to have a pet dog in Iceland!
15. 'Hippopotomonstrosesquippedaliophobia' is the fear of long words.
16. 55 per cent of people yawn within 5 minutes of seeing someone else yawn. Reading about yawning makes most people yawn. hello, zzzzz zzzz ?
17. The names of the continents all end with the same letter with which they start
18. More people are allergic to cow's milk than any other food
19. Earth is the only planet in the Solar System not named after a god.

-Mikita Jain & Rayan (27)

An Interview with CA Sunil D Surana

Soumitra: *What do the two words C.A. mean to you?*

Sunil: These are known as 'letters of trust'. For me it is beyond trust. It also represents a responsibility towards articles, clients, government bodies, law & society. CA like women takes several roles – a teacher, a friend, a guide for various sectors of the society.



Soumitra: *How did u feel when you cleared CA in the 1st attempt? What does it take to be there?*

Sunil: I felt excellent. It takes pure hard work. I was thought by my teachers that there is no substitute for the hard work. I applied the same during my exams. A bit of luck & well wishes are also required to be there.

Shilpa: *Tax being your specialization what would be the 1st change you would like to bring in the present tax system?*

Sunil: I would like the income tax to be based on transaction based. For example STT (Securities Transaction Tax). The tax rate then would be far lower and consequently it would become easy for the government to collect taxes on each transaction.

Shilpa: *What do you think is the U.S.P of DNS?*

Sunil: The average age of DNS personnel is less than 30 yrs which is the unique selling point of DNS. A client joining us today is very sure that this particular team is going to be there for next 10-15 years with them.

Shilpa: *You are known to be calm & composed. Is this a conscious effort from your part?*

Sunil: I have never thought about it. There is nothing conscious about it. Probably my nature is that I listen to the conversation before reacting. This make other feel that I am calm. The only plus point within me is that I listen to the conversation, I take my own time to react and this nature of mine makes me cool when compared to others. When I have recalled the moment I was wild or not cool I have analyzed that there was a mismatch between my listening & reaction.

Udaya: *Where do you picture yourself 10 years down the line?*

Sunil: As per my plan, I would retire from my profession in next 10 years time and would love to get into the agricultural activity. In India Agriculture as of now is not professionally managed. I would like to get create a company with a market cap of 1000 Crores that is into the agricultural activity.

Udaya: *What according to you is a CA's contribution for the development of the economy of the country?*

Sunil: Given an opportunity I would like to bring in what is called as Social Entrepreneurship. We can even start with looking at our clients. Identify a particular client and encourage entrepreneurship among the particular client. This will go a long way in having a very good client for ourselves as well as to the Nation. We would be lacking in the Industrial entrepreneurship unless we promote Social Entrepreneurship. There are people who are capable but are afraid to take a bit of risk. We being professionals & known for understanding the business will have to encourage those people to take risk. We may also be a part of their venture through "PSOPs" (Professionals Stock Options Plan). This will go a long way in developing the nation

Ps: CA Sunil D Surana Is a Director At M/s DNS Consulting Pvt Ltd

Logo Q uest

- Rayan Sequeira

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Figure out the above "Logos" and Mail it across to us at newsletter@dnsconsulting.net

The Last date for the submission of your Answers is 15th January.

Answers will be published in the next edition of "The Articled"

Chuckles

The local bar was so sure that its bartender was the strongest man around that they offered a standing \$1000 bet: The bartender would squeeze a lemon until all the juice ran into a glass, and hand the lemon to a patron. Anyone who could squeeze one more drop of juice out would win the money. Many people had tried over time but nobody could do it.

One day this scrawny little man came into the bar, wearing thick glasses and a polyester suit, and said in a tiny squeaky voice "I'd like to try the bet."

After the laughter had died down, the bartender said OK, grabbed a lemon, and squeezed away. Then he handed the wrinkled remains of the rind to the little man. The crowd's laughter turned to total silence as the man clenched his fist around the lemon and six drops fell into the glass.

As the crowd cheered, the bartender paid the \$1000, and asked the little man "What do you do for a living? Are you a lumberjack, a weight-lifter, or what?"

The man replied, "I work as a Depatmental Auditor."

Lateral Thinking - 7

- Rayan Sequeira

Are you open minded, flexible and creative in your questioning and able to put lots of different clues and pieces of information together. This is lateral thinking.

So lets see if you can find solutions to the following puzzles.

1. You are driving down the road in your car on a wild, stormy night, when you pass by a bus stop and you see three people waiting for the bus
 - An old lady who looks as if she is about to die.
 - An old friend who once saved your life.
 - The perfect partner you have been dreaming about.
 Knowing that there can only be one passenger in your car, whom would you choose?
2. How could a baby fall out of a twenty-story building onto the ground and live?
3. A police officer saw a truck driver clearly going the wrong way down a one-way street, but did not try to stop him. Why not?
4. There's a flash of light, and a man dies. How's come?
5. A man tries the new cologne his wife gave him for his birthday. He goes out to get some food and is killed. Why?
6. Adults are holding children, waiting their turn. The children are handed (one at a time, usually) to a man, who holds them while a woman shoots them. If the child is crying, the man tries to stop the crying before the child is shot.
7. A man marries twenty women in his village but isn't charged with polygamy. Why?
8. Joe wants to go home but can't, because the man in the mask is waiting for him. Why?

Answer the above questions and Mail it across to newsletter@dnsconsulting.net
Hurry, Last date for the submission of your Answers is 15th January.

Answers will be published in the newsletters February edition.

General Insights IN A NUTSHELL

MARKET STATS

Figures Courtesy The Economic Times

	CURRENT (\$ BN)	PERCENT WORLD
World	59827.68	100
America		
United States	16963.98	28.35
Canada	1700.34	2.84
Brazil	1348.59	2.26
Europe/Africa		
Britain	3908.37	6.53
France	2678.71	4.48
Germany	2153.48	3.60
Switzerland	1179.66	1.97
Italy	1080.31	1.81
Asia/Pacific		
Japan	4382.70	7.33
China	4627.13	7.76
Hong Kong	2587.11	4.32
India	1894.65	3.17

Markets:

Sensex	20812.65
Nifty	6279.10
Dow	12861.87
FTSE	6364.40
Nasdaq	2515.29
Nikkei	14500.55

Rates:

Rs/Dollar	39.28
Rs/Pound	77.54
Rs/Euro	57.86

Crude:

Brent	\$96.69
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Bullion:

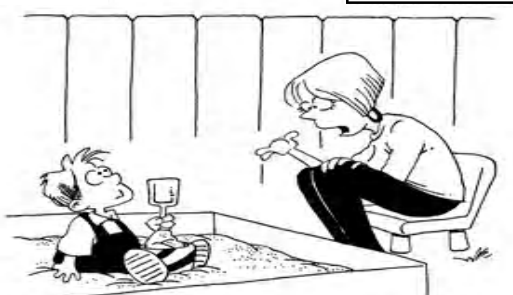
99.9 Purity Gold:	Rs. 10975
Silver (Kg):	Rs. 19450

Closings on 8th January 2008

Write to The Editor

"Continuous learning process" is the essence of our profession. To keep ourselves in pace with the emerging concepts is what we have endeavor through this "The Articled". We also intend to build this into a common knowledge-sharing platform and welcome any contributions to strengthen this common pool. Your views will help us fortify the forthcoming issues. You can mail us at newsletter@dnsconsulting.net or write to: The Editor, #10, South Park Road, Nehru Nagar, Sheshadripuram, Bangalore - 20.

Business Cartoon



"This is all well and good, Sweetie, but Mommy thinks it's time you started thinking outside the sandbox."

Editorial Board

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