



VOLUME 60 | No. 11 | MAY 2012 | ₹ 100

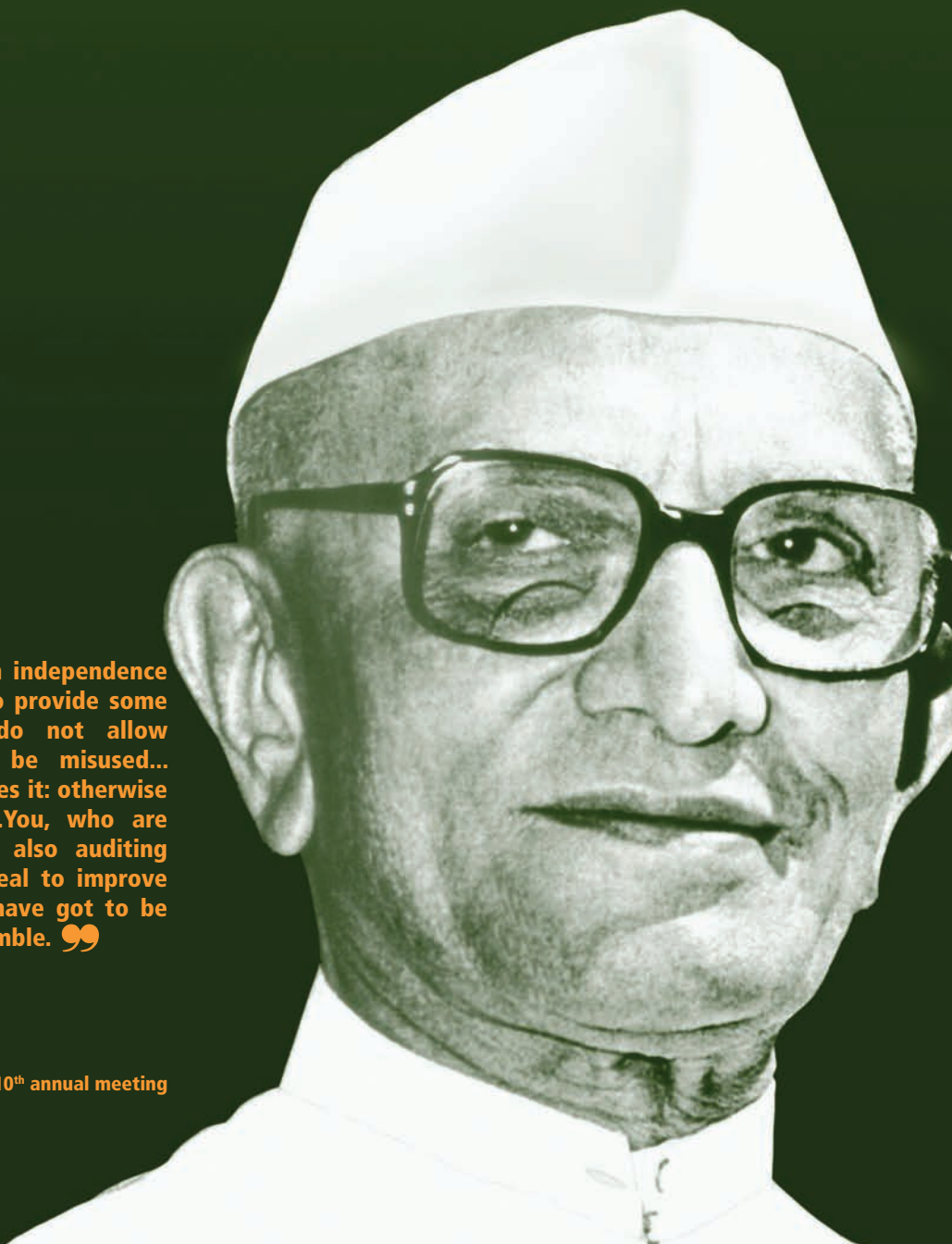
THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
SET UP BY AN ACT OF PARLIAMENT

“...for safeguarding our own independence and liberty, we have got to provide some checks, which automatically do not allow independence and liberty to be misused... Anybody who misuses power loses it: otherwise democracy is not maintained...You, who are accounting for everybody and also auditing the accounts, can do a great deal to improve standards. But to do that you have got to be vigilant all the time, and very humble.”

Shri Morarji Desai
Prime Minister of India, 1977-79

(Spoken as Union Minister for Finance at 10th annual meeting of the Institute on September 7, 1959)



Challenge of Financial Inclusion in India and Role of CAs

Financial Inclusion is identified as a key strategy to achieve inclusive development the world over. It is a necessary condition for financial deepening, which will help address the basic issue of growth with equity. In India, the process of leveraging financial services sector as the growth engine for transformation is closely entwined with the progress on financial inclusion. But, our economic success and the boom in banking notwithstanding, one of the contemporary critical challenges for India remains to be *financial inclusion* of its population, especially that of underprivileged sections, who remain cut off from not only formal sources of finance but also from basic banking services. Despite *financial inclusion* being high on agenda of the Government, and despite persistent policy initiatives and endeavours of the Reserve Bank of India since 2004, comprehensive and total *financial inclusion* is still a far cry. This is despite the fact that one of the major goals of the 11th Five Year Plan was attaining financial inclusion of the most and extending the reach of microfinance to meet credit needs of approximately 80% of the population not directly covered by banks.

Approximately only 45% Indian earners have bank account. Of this, only 38% of paid workers in villages had accounts compared to 62% of those in urban space in 2007. Based on the All India Debt and Investment Survey, the C. Rangarajan Committee on Financial Inclusion observed in its report that 111.5 million households had no access to formal credit, 17 million households were indebted to moneylenders, and 45.9 million farmer households in the country out of a total of 89.3 million (or 51%) did not have access to credit, either from institutional or non-institutional sources. India has been ranked poorly, i.e. 50th, below the African countries like Kenya and Morocco, in first-ever index of financial inclusion prepared by Indian Council for Research on International Economic Relations. The number of branches of a bank per one lakh adults in India is just 9.4, as compared to 14.6 in Malaysia. While domestic deposit as share in the GDP is just 54.9% in India compared to 123.9% in Malaysia. The Rangarajan committee in its report had said that financial exclusion is most acute in Central, Eastern and North-Eastern regions – having a concentration of 64% of all financially excluded farmer households in the country.

As such, to remedy the situation, the Finance Minister Mr. Pranab Mukherjee has rightly announced various steps in Union Budget 2012-2013. These include extension of the scheme 'Swabhimaan' to habitations with population of more than 1,000 in NE and hilly states as per Census 2011. The 'swabhimaan' campaign was launched in 2010-2011 to extend banking facilities through business correspondents to habitations having a population in excess of 2,000. As such, after business correspondents, the next phase of financial inclusion seems to be establishment of ultra-small branches. Mr. Mukherjee said in the Budget speech: "As a next step,

ultra-small branches are being set up at these habitations where the business correspondents would deal with cash transactions." Besides, Kisan Credit Card will now act as smart card which could be used in ATMs and there will be a financial support of ₹ 10,000 crore to NABARD to refinance RRBs. Further, the Unique Identification Number (UID)-Aadhaar platform will be encouraged to support payments of MG-NREGA.

Empowering rural India is of utmost importance and the government can effectively do so through financial inclusion. The Rangarajan Committee mainly mooted a mission called National Rural Financial Inclusion Plan and recommended to establish Financial Inclusion Promotion and Development Fund and Financial Inclusion Technology Fund. It rightly stressed the importance of looking at financial inclusion in a holistic manner and has emphasised on the need to look into insurance and remittance needs of the poor.

Although major initiatives have been launched in the direction of *financial inclusion*, what is needed is more sustained and sincere efforts on part of our Government as well as our banks. Irrespective of the fact that about 120 million farming families have been brought into the financial system by providing low-interest credits, debt-relief packages and a host of subsidies, banks still have to play an active role in agriculture sector. Indian bankers need to overcome the challenge of finding a low-cost approach to financial inclusion sooner than later. A larger spread of the "business correspondent" model of forging linkages with local communities and a shift from class to mass banking is required for the penetration of the financial services in the rural areas. Particular attention has to be paid to certain under-banked states like Bihar, Orissa, Rajasthan, Uttar Pradesh, Chattisgarh, Jharkhand, West Bengal and North-Eastern states.

In this regard, the Chartered Accountants, in association with micro-finance institutions, self-help groups and NGOs, can play a pivotal role. Prime Minister Dr. Manmohan Singh rightly pointed out during the Diamond Jubilee celebrations of the ICAI that CAs of the country can promote *financial inclusion* by creating awareness about microfinance, financial products, money management and other initiatives of the Government like NABARD, and encouraging public to join formal financial systems. Technology can be a tool in providing access to banking products in remote areas.

Financial inclusion, accepted globally as an explicit strategy for fostering economic growth, is a compulsion rather than a need. Financial inclusion is a must for inclusive growth of the nation.

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Inland subscribers :	₹ 1,000 per annum
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Tel.: +91 9676666691.

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Printed and published by Vijay Kapur on behalf of The Institute of Chartered Accountants of India (ICAI)

Editor – CA. Jaydeep Narendra Shah
Published at ICAI Bhawan, P.O. Box No. 7100, Indraprastha Marg, New Delhi - 110 002 and printed at Spenta Multimedia, Peninsula Spenta, Mathuradas Mill Compound, N. M. Joshi Marg, Lower Parel, Mumbai - 400013

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TOTAL CIRCULATION: 2,21,230

Total No. of Pages: 156 including Covers

Cover image: Government of India (Photo Division)

Inside images and Graphics: www.dreamstime.com

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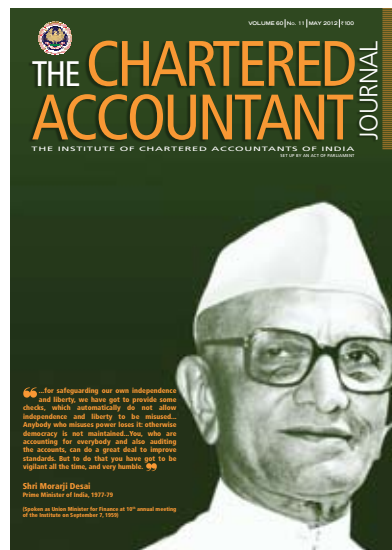
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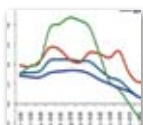


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CA. Jaydeep Narendra Shah, President, ICAI

Dear friends,

The future belongs to those who live intensely in the present. As such, we need to intensify our core competence, add more and more value to our services, and be a complete business solutions provider. In line with the saying that 'success is a journey, not a destination,' we should not rest with success — instead should sustain it as a continuous journey to ultimate excellence - season after season. April and May are the months of hectic activity for a chartered accountant's office, with the March year-end closing of financial statements and expectations from all clients, especially public-sector banks and listed company clients, to get their financial statements audited on a priority basis. Indeed, it is the time that tests our resource management skills. But, more importantly, it is the time that tests our grip not only on the understanding of client and its business environment, but also our understanding of the sacrosanct Engagement and Quality Control Standards, as well as our ability to apply them under a time-bound schedule.

Let's try to tap even the most distant of emerging opportunities, many of which may come in the garb of challenges. With fast-paced changes happening all around us, it is high time that we thought out of

the box to deal with emerging challenges and excel in the long run too. Remember that even small opportunities are often the beginning of great enterprises, provided you act with wisdom. But, as the saying goes, *never mistake knowledge for wisdom, because while one helps you make a living, the other helps you make a life.* Knowledge, skill and experience may not be enough, unless we develop wisdom to use them. "These days, people seek knowledge, not wisdom. Knowledge is of the past, wisdom is of the future," so goes a saying, which is worth taking note of in present times. It is all about how best we shape our future.

Now, let me update you on some major developments pertaining to our profession over the last month:

CA Fraternity Loses a Doyen in Shri NKP Salve

The Indian chartered accountant fraternity lost a doyen in public life when former union minister and ex-BCCI president CA. Narendra Kumar Salve, popularly known as N. K. P. Salve, passed away on April 1st, 2012, at the age of 90. A chartered accountant by spirit and profession, with an active practice from 1950 to 1982, Shri Salve was considered an authority on direct taxes. A gifted orator, especially on public finance, taxation, macro-economics, constitutional issues, etc., he headed the Joint Parliamentary Committee on Taxation Laws in 1975. He gave up his practice after getting elected to the Union Cabinet in 1982 under the leadership of the then Prime Minister Smt. Indira Gandhi. He had also worked closely with former Prime Ministers Shri Rajiv Gandhi and Shri P. V. Narasimha Rao while undertaking responsibilities for Ministries of Information & Broadcasting, Steel & Mines, Parliamentary Affairs, and Power. During this period, he also became the Chairman of 9th Finance Commission of India for 1987-90. He later shifted his base to Nagpur. He made valuable contributions towards promoting education in Maharashtra and sports across the country. I, on behalf of the profession, express profound grief on his demise and pay heartfelt tribute to the departed soul. I hope that his probity in public life as well as result-oriented enthusiasm for sports and education will continue to inspire younger generations. More details about the departed leader have been published elsewhere in the journal.

International Initiatives

ICAEW Head of New Business Opportunities Justin West in ICAI:

Recently, we had a visitor in Mr. Justin West, Head of New Business Opportunities, Institute of Chartered Accountants of England and Wales (ICAEW), who was here to discuss the implementation the strategy for enhancing the student base under our MoU with ICAEW, among other matters. In order to strengthen our bilateral relationships, we agreed to share our respective journals as well as other publications, besides sharing details of candidates enrolled by both institutes under the MoU. We also felt a need to develop modalities to frame *train the trainers* programmes to train the ICAI faculty to ensure that candidates pursuing ICAEW course in India achieve the desired targets. We also decided to organise our joint programmes in the UK, Dubai and India. A need to encourage students in England to undertake the ICAI course in India was also realised. Mr. West promised to get back to us soon after discussing all the ICAI-related issues at ICAEW, including the revision of the fees structure of ICAEW course for ICAI students to pursue the ICAEW course.

Initiatives for Government Offices and Officials

GASAB (C&AG) Meeting: I attended the 25th meeting of the Government Accounting Standards Advisory Board (GASAB) constituted by the Comptroller and Auditor General of India to formulate accounting standards to be applied in preparation of the financial statements of the Union Government, the state governments and the Union Territories having legislative assemblies. The GASAB is in the process of formulating Indian Government Accounting Standards (IGAS), which are applicable in the context of cash basis of accounting presently being followed by the Government and Indian Government Financial Reporting Standards (IGFRS) in the context of accrual basis of accounting, which will be applicable when the Government shifts over to that basis of accounting. At the meeting, drafts of IGFRS 1: *Presentation of Financial Statements* and IGFRS 6: *Accounting Policies, Changes in Accounting Estimates and Errors* were considered. It was decided to issue the aforesaid drafts as Exposure Drafts for public comments. It may be mentioned that the ICAI has always supported the Government's move on accrual basis of accounting, which is more a scientific basis, compared to the cash basis of accounting, and in this endeavour, the ICAI has been constantly providing inputs in the form of not only participating in various

meetings of GASAB, but also sending comments on the drafts issued by GASAB. At the aforesaid meeting also comments made by the ICAI were highly appreciated and accepted in the formulation of the Exposure Drafts.

Workshops on Insurance Jointly with IRDA:

Recently, we conducted a series of workshops on insurance for the benefit of our members engaged in audit of insurance companies and senior executives of insurance companies in Hyderabad and Kolkata, jointly with IRDA. In Hyderabad, it was hosted by our Hyderabad branch and inaugurated by IRDA Chairman Shri J. Hari Narayan. I, along with my Central Council colleague CA. J. Venkateswarlu and CA. Nilesh Vikamsey, Chairman and Vice Chairman, respectively of the Committee for Banking, Insurance and Pension, addressed the delegates. The workshop was attended by senior functionaries of IRDA and more than 150 delegates. In Kolkata, the workshop was hosted by EIRC of the ICAI and attended by more than 120 delegates. It was inaugurated by IRDA Board member Shri R.K. Nair. ICAI Vice-President CA. Subodh Kumar Agrawal, along with our Central Council colleagues CA. Sumantra Guha and CA. Abhijit Bandyopadhyay, also addressed the delegates. Shri Sriram Taranikanthi, IAS, Executive Director (Admin) and Financial Advisor, IRDA, also addressed the participants. The delegates included our members as well as executives of insurance companies.

Inauguration of IICA: Recently, I represented the Institute and CA profession at the inauguration of Indian Institute of Corporate Affairs (IICA), Haryana campus, at the hands of Prime Minister Dr. Manmohan Singh. Minister of Corporate Affairs Dr. M. Veerappa Moily, MCA Secretary Mr. Naved Masood and noted dignitaries from the Indian corporate world were present on the occasion. This unique world-class IICA has been established with an aim to function as a think tank, action research, service-delivery and capacity-building support to the Ministry of Corporate Affairs, the corporate sector, professionals and related stakeholders. I am sure that the IICA will add a new dimension to the knowledge infrastructure of the country, just as the setting up of IIMs/IITs did a few decades ago. I look forward to work closely with the IICA in the future.

6th International Banking & Finance Conference in Mumbai: I participated in the 6th International Banking & Finance Conference: Leveraging Financial Services Sector as Growth Engine for Transformation, jointly organised by us and the Indian Merchant Chambers (IMC) recently in Mumbai, where the focus was to contemplate and discuss the role of the financial sector in achieving sustainable growth in India. Union Finance Minister Shri Pranab Mukherjee inaugurated the Conference, which was also attended by IMC President and my Central Council colleague Ms Bhavna Doshi, IMC Director-General Shri Arvind Pradhan, Bank of Baroda CMD and Indian Banks' Association Chairman Shri M. D. Mallya, SBI Chairman Shri Pratip Chaudhuri, and Rajya Sabha MP and ASSOCHAM President Shri Rajkumar Dhoot, among others. Shri Mukherjee stressed his close-to-heart agenda of financial inclusion and said that it (financial inclusion) was a necessary condition for financial deepening.

Initiatives for Profession

Yashwant Sinha and CA. K. Rahman Khan Address Our Council: As you are aware, I, along with the ICAI Vice-President CA. Subodh Kumar Agrawal and my Central Council colleague CA. S. Santhanakrishnan, had met the Chairman of Parliamentary Standing Committee on Finance Shri Yashwant Sinha and discussed our concerns on the Companies Bill while submitting our viewpoints on the same. We had also met Deputy Chairman Rajya Sabha CA. K. Rahman Khan to discuss various issues of professional interest. Besides, we also had invited them to address our Council meeting to which they kindly consented. In their enlightening address to our recently held Council meeting, both of them hailed our profession and advised us how best we can help in the Budget exercise of the Government and in helping maintain the fiscal discipline of the country and high professional standards.

Meeting with SEBI Chairman Shri U.K. Sinha: I, along with Vice President CA. Subodh Agrawal, recently met SEBI Chairman Shri U.K. Sinha and discussed matters of professional and national interest. Among other issues, we impressed upon him that ICAI can act as an extended arm of the SEBI in monitoring market intermediaries such as brokers, merchant bankers, depositories, clearing corporations and mutual funds, among others. We also raised the issue that there should be separate reporting requirement under

Companies Auditor Report Order (CARO) for the listed and unlisted companies due to public interest involved in the listed companies. We also offered the SEBI Chairman ICAI help and involvement in the forensic cell of SEBI recently established to verify disclosures made by companies in their IPO offer documents and also to take up cases of accounts related financial malfeasance.

Provision for Advance Course on ITT: I am pleased to share with our stakeholders that consequent to our discussion with the Ministry of Corporate Affairs on the proposals regarding the amendment to Chartered Accountants Regulation, 1988 and consequent to certain amendments proposed in the Regulation 29C, we have agreed in principle to include a provision with regard to an advanced course on Information Technology Training (ITT), and the same has been exposed for public comments, too.

Initiatives for Members

General Amnesty Scheme: I would like to inform the accounting fraternity that our Institute has been working really hard to cater to the needs and requirements of our members and launched various initiatives for them from time to time. In line with that tradition, we had brought in General Amnesty Scheme for the purpose of restoration (from retrospective date) of membership of the members, whose names were removed for various reasons, including non-payment of membership fees. Let me inform you that we have received a good response to our Scheme. Some 3,493 members have applied for restoration under Regulation 19 of CA Regulations, 1988 and more than 345 members have applied under the General Amnesty Scheme.

New Online Portal on Health Insurance: This is to inform our stakeholders that an exclusive online portal, <http://icai.newindia.co.in>, has become operational with regard to the recently launched health insurance scheme through New India Assurance Co. Ltd., Mumbai, for our members and students, where they can calculate and pay premiums, and find other details about the scheme. The link of this portal is also available at the Institute's website.

Regional Chairmen Meet in New Delhi: I am pleased to share with our stakeholders that we recently had a useful meeting with all Chairmen of our Regional Councils in order to improve the overall

effectiveness of our professional operations as well as the Institute vis-à-vis improved communication and empowerment of our members. We have vowed to take new and more active initiatives for the benefit of our members in this annual exercise. I am sure such an exercise always expedites our initiatives for the cause of accountancy profession.

CIRC Chairmen Meet and Orientation Programme:

Recently, I took part in the meeting of chairmen of the branches of Central India Regional Council of the ICAI in the serene atmosphere of Haridwar, and discussed various crucial issues of interest to members of CIRC in particular and the profession and its other stakeholders in general. An orientation programme for the CIRC members was also organised. Yoga guru Baba Ramdev enlightened the gathering with his words of wisdom on the occasion. Union Minister of State in the Ministry of Agriculture and Parliamentary Affairs Shri Harish Rawat also addressed the gathering. Central Council members CA. Manoj Fadnis, CA. Vijay Garg, CA. Anuj Goyal, CA. Ravi Holani, CIRC Chairman CA. Mukesh Singh Kushwah, Vice Chairman CA. Manu Agrawal, office bearers of CIRC and other dignitaries were among the large gathering of members on the occasion. I am sure such programmes will go a long way in enriching the bonhomie among members and in their better understanding of the Institute, its objectives and initiatives for the ultimate benefit of the profession and the country.

Construction of CIRC Building in Kanpur Begins:

I am happy to inform you that to further strengthen the ICAI infrastructure for the benefit of members, I recently took part in the *Bhoomi Pujan*, and the foundation stone laying ceremony for the ICAI Bhawan of Central India Regional Council in Lakhanpur in Kanpur. Central Council members CA. Vijay Garg, CA. Anuj Goyal, CIRC Chairman CA. Mukesh Singh Kushwah, CA. Manu Agrawal and other office bearers of the CIRC were among those present on the occasion. I am sure that once completed, this building will cater to various needs of our members and students falling under CIRC.

Expert Panel on Bank Audit Issues: To help members achieve their bank audit targets we constituted an expert panel to address their bank audit-related queries for the year ended March 31st, 2012, which

provided online support to them from March 26th, 2012 to April 10th, 2012.

Two Technical Guides on Internal Audit Issued:

The Internal Audit Standards Board has issued two publications, *Technical Guide on Internal Audit of Mining and Extractive Industry* and *Technical Guide on Internal Audit of Not-for-Profit Organisations*.

SIRC Diamond Jubilee Celebrations:

Recently, I participated in the SIRC Diamond Jubilee Celebrations organised in Chennai. ICAI Vice-President CA. Subodh Kumar Agrawal, and my Central Council colleague CA. V. Murali and SIRC Chairman CA. K Viswanath were also present during the celebrations, which included felicitation of ICAI President and Vice-President. Former Intelligence Bureau Special Director Shri K. V. S. Gopalakrishnan was also present at the function as the Chief Guest.

Meeting Members at BCAS:

I, along with ICAI Vice President CA. Subodh Kumar Agrawal, recently was at the Bombay Chartered Accountants' Society (BCAS) in Mumbai to interact with its members, where I updated them on the professional initiatives launched by the Institute. BCAS President CA. Pradip Thanawal and WIRC Chairman CA. Durgesh Kabra were also present, among others. Initiatives and developments pertaining to the profession under WIRC were also discussed.

Initiatives for the Institute

Hospitalisation Assistance Scheme for Both Existing & Retired Employees:

I am really happy to give the information to all employees and ex-employees of the Institute that we have decided to extend the benefit of the hospitalisation assistance scheme to the retired employees/family pensioners of the retired and deceased employees as well, as part of our endeavours towards financial assistance to employees of the Institute under Employees' Benevolent Fund. Further, we have enhanced the ceiling on maximum medical assistance to ₹5 lakh for both serving and retired employees. We have decided that while the disbursement of medical assistance in the case of serving employees be continued to be made from out of the budget provided for the Employees Benevolent Fund, the same be met from out of the interest on the initial corpus of ₹2 crore, which was approved by the Council recently.

Social Get-together of ICAI Employees: I am happy to note that ICAI Employees Association recently organised a social get-together in Kolkata. I firmly believe that such programmes will ultimately benefit the Institute and its stakeholders, as the positive relations, motivation and high morale will help in better working environment and work culture. I will encourage more such programmes.

Initiatives for Students

May 2012 CA Examinations: Students' concerns have always been prime on my agenda. I would like to inform them that arrangements are being made for the May 2012 CA examinations at 135 centres across the country as well as at four centres abroad. Around 2,52,619 candidates, including 83,327 for Final, 1,44,032 for IPCE and 25,260 for PCE, have applied. Online Examination forms continue to attract a majority of students as 88% of them have submitted their forms online. Even 95% of students appearing for the Final opted for online. It is quite heartening and encouraging to witness the overwhelming response of students to our IT initiatives and green concerns in examinations. Besides, to prepare students for the exam, we recently organised mock tests through the Regional Councils and Branches.

GMCS Course: To equip entrants to the profession with some essential skills, it has now been decided that Articled Assistants joining Articled training on or after 1st May, 2012, shall have to undergo the GMCS Course twice during the period of training for 15 days each – once during 1st year of articled training and second during last one and a half years (i.e. between 19th and 36th month of Practical Training). Keeping in view the requirements of Indian Industry, the course content for the two phases of the GMCS Course has been comprehensively revised to make it more useful and informative.

National School-Level Debate Competitions: I am happy to inform that we will soon take initiatives to revive the national school-level debate competition by the Branches and Regional Councils in order to help students develop their oratory skills at young age. This initiative will also help create and enhance the brand image of the Institute. Display of ICAI trophies in academia as early as in schools

will help generate curiosity and buzz about the accountancy profession among their students.

E-Diary in Articled Training: I am happy to inform our members as well as our students that we have approved the introduction of e-diary concept on all-India basis. To start with, it will be implemented from 1st May, 2012, on a recommendatory basis and, with effect from 1st July, 2012 it will be made mandatory for all.

Before I conclude, let me remind you that as a facilitator of credibility to the country's financial structure and system, we must have the best of skills, most up-to-date knowledge, a clear mission and the highest integrity to bind it all together in alignment with changing facets of the Indian economy. We will have to epitomise excellence and ethics, as that is what the country expects from us for today as well as tomorrow. The primary qualification of a chartered accountant must be his/her commitment to a lifetime of learning, unlearning, relearning and to change with times. In a time of fast-paced changes, it is the learners who inherit the future.

Meanwhile, the summer has set in...many of us must have made plans to beat the sweltering summer heat by going on vacations during the holidays announced by schools and colleges. Indeed, we must take a break, and spend quality time with the family and loved ones too, but preferably after carefully planning and balancing our professional responsibilities. Grenville Kleiser has rightly said: *"You were intended not only to work, but to rest, laugh, play, and have proper leisure and enjoyment. To develop an all-round personality, you must have interest outside of your regular vocation that will serve to balance your responsibilities."*

I wish you all the best.



CA. Jaydeep Narendra Shah
President, ICAI
New Delhi, April 23, 2012



6th International Banking & Finance Conference at IMC, Mumbai

Union Finance Minister Shri Pranab Mukherjee inaugurating the Conference jointly hosted by Indian Merchant Chambers and ICAI in the august presence of ICAI President CA. Jaydeep Narendra Shah, ICAI Central Council member & IMC President Ms. Bhavna Doshi, IMC Director-General Shri Arvind Pradhan, Bank of Baroda CMD & Indian Banks' Association Chairman Shri M. D. Mallya, SBI Chairman Shri Pratip Chaudhuri, and Rajya Sabha MP and ASSOCHAM President Shri Rajkumar Dhoot, among others (07.04.2012)



ICAI-IRDA Joint Workshop on Insurance in Kolkata

ICAI Vice-President CA. Subodh Kumar Agrawal inaugurating the workshop in the presence of Central Council members CA. Sumantra Guha and CA. J. Venkateswarlu, EIRC Chairman CA. Prasun Kumar Bhattacharyya and Vice-Chairman CA. Ranjeet Kumar Agarwal, IRDA ED (Admin) and Financial Advisor Shri Sriram Taranikanthi, IRDA Member Shri R. K. Nair (20.03.2012)



ICAI Welcomes Shri Yashwant Sinha at 315th Council

Standing Committee on Finance Chairman and former Finance Minister Shri Yashwant Sinha welcomed at the ICAI Council by ICAI President CA. Jaydeep Narendra Shah, Vice-President CA. Subodh Kumar Agrawal, and Central Council member and former President CA. G. Ramaswamy (26.03.2012)



Rajya Sabha Deputy Chair Releases ICAI Publication

Rajya Sabha Deputy Chairman CA. K. Rahman Khan releasing the publication at 315th ICAI Council meeting in the august presence of ICAI President CA. Jaydeep Narendra Shah, Vice-President CA. Subodh Kumar Agrawal, Central Council members CA. Amarjit Chopra (past-President), CA. G. Ramaswamy (past-President), CA. Rajkumar S. Adukia and CA. Pankaj Tyagee, among others (27.03.2012)



ICAI Meets SEBI in Mumbai

ICAI President CA. Jaydeep Narendra Shah, and Vice-President CA. Subodh Kumar Agrawal greet Securities Exchange Board of India Chairman Shri U. K. Sinha (11.04.2012)



ICAEW Head of New Business Opportunities Visits ICAI

ICAI President CA. Jaydeep Narendra Shah presenting a bouquet to Mr. Justin West, Head of New Business Opportunities from ICAEW, on the latter's recent professional visit to ICAI, while the ICAI Vice-President CA. Subodh Kumar Agrawal relishes the pleasure of the hour (09.04.2012)



Interactive Workshop on Union Budget (2012-13) & Economic Survey in Delhi

ICAI President CA. Jaydeep Narendra Shah inaugurating the Workshop while ICAI Vice-President CA. Subodh Kumar Agrawal, Central Council members CA. Amarjit Chopra (past-President), CA. Rajkumar S. Adukia and CA. Rajendra Kumar P., and NIRC Chairman CA. (Dr.) Durga Dass Agarwal, and SCOPE Advisor (Finance & Accounts) Shri B. V. K. K. Rao (03.04.2012)



ICAI Greets MOF Financial Services Secretary

Financial Services Secretary of the Ministry of Finance, Shri D. K. Mittal, greeted by ICAI President CA. Jaydeep Narendra Shah and Vice-President CA. Subodh Kumar Agrawal (21.03.2012)



Technical Workshop on Arbitration in Ghaziabad

ICAI Central Council members CA. Jayant Gokhale and CA. Anuj Goyal could be seen sharing the dais with the members of Ghaziabad Branch of CIRC on the occasion (27.03.2012)



Meeting with Members and Felicitation at BCAS

ICAI President CA. Jaydeep Narendra Shah addresses the members at Bombay Chartered Accountants' Society, while ICAI Vice President CA. Subodh Kumar Agrawal, BCAS President CA. Pradip Thanawal and WIRC Chairman CA. Durgesh Kabra relish his words of wisdom (11.04.2012)



Bhumi Poojan in Kanpur for Branch Building

ICAI President CA. Jaydeep Narendra Shah performing the puja and other suitable rituals along with Vice-President CA. Subodh Kumar Agrawal, Central Council members CA. Anuj Goyal and CA. Vijay K. Garg, among others on the occasion at Lakhanpur in Kanpur (14.04.2012)



Workshop on Insurance in Hyderabad

IRDA Chairman Shri J. Hari Narayan inaugurate the Workshop in Hyderabad in the presence of ICAI President CA. Jaydeep N. Shah, IRDA Member Shri R.K. Nair, ICAI Central Council members CA. J. Venkateswarlu and CA. Nilesh S. Vikamsey, and Hyderabad Branch Chairman CA. Dayakar Gelli (13.03.2012)

Know Your Ethics*

Ethical Issues in Question-Answer Form

Q. What is professional or other misconduct?

A. Section 22 of the Act defines professional or other misconduct as follows:-

For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

What constitutes 'misconduct under any other circumstances' has to be determined on a case-to-case basis, keeping in view the facts of the circumstances of each case. Fraud, intention to deceive and committing an act, which affects the public or society at large, could be in the ambit of such misconduct. Following are a few examples of 'misconduct under any other circumstances' by a member:

1. Conviction by a competent Court for an offence involving moral turpitude punishable with imprisonment or for an offence not of a technical nature committed by a member in his professional capacity.
2. Retention of books and documents of the client and failure to return these to the client on request without a reasonable cause.
3. Material misrepresentation, e.g., misrepresenting to a firm, while seeking employment as an accountant, that he has worked for three years as a senior assistant with another firm.
4. Publishing an advertisement in a newspaper with malafide intention to malign any person.
5. Using objectionable, derogatory and abusive language or/and making irrelevant, incoherent irresponsible and insane statements in his correspondence with a person.

Q. What is the distinction between the two schedules?

A. The two schedules are distinguished on the basis of gravity of misconduct and quantum of punishment for the misconduct, the second schedule pertaining to comparably graver misconduct and higher punishment.

Q. What will be the procedure where a member is guilty of charges both under the First Schedule and Second Schedule to the Act?

A. The procedure to be followed when a member is accused of misconduct under both schedules is the same as is followed for misconduct under the second schedule.

Q. Can a member in practice render Management Consultancy and other services?

A. Yes, however, the areas covered under the Management Consultancy and other services have been summarised by the Council. The "Management Consultancy and other services" may be referred at pages 103 -105 of the Code of Ethics.

Q. Whether a member in practice is permitted to undertake the management of NRI funds?

A. No, the member is not permitted to undertake such assignment because the same is not covered under "Management Consultancy and Other Services" permitted to be rendered by the practicing members of the Institute.

Q. Can a Chartered Accountant provide 'Portfolio Management Services' (PMS) as part of CA practice?

A. No, the Explanation to Clause (xix) of the definition of "Management Consultancy and other Services" expressly bars the activities of broking, underwriting and Portfolio Management.

Q. Whether a Chartered Accountant in practice is required to obtain any trade licence for practising?

A. No, a Chartered Accountant in practice is not required to obtain any trade licence for practising as a professional. The certificate of practice issued by the Institute is the only requirement to practice as a Chartered Accountant.

Q. Can a Chartered Accountant in practice work as a 'Collection Agent/Recovery Agent'?

A. No, a Chartered Accountant in practice cannot work as a Collection Agent. However, he can act as a Recovery Consultant as provided in clause (xxv) of "Management Consultancy and other Services".

* Contributed by the Ethical Standards Board of the ICAI

Q. Whether a practising Chartered Accountant can agree to select and recruit personnel, conduct training programmes and work-studies for and on behalf of a client?

A. Yes. The expression "Management Consultancy and other Services" defined by the Council includes both personnel recruitment and selection and conducting training programmes and work-studies. Therefore, a Chartered Accountant in practice shall not commit any professional misconduct by rendering such services for and on behalf of the client.

Q. Can a member in practice have a branch office/ additional office/temporary office?

A. Yes, a member can have a branch office. In terms of Section 27 of the Act, if a Chartered Accountant in practice or a firm of Chartered Accountants has more than one office in India, each one of such offices should be in the separate charge of a member of the Institute. Failure on the part of a member or a firm to have a member in charge of its branch and a separate member in case of each of the branches, where there is more than one, would constitute professional misconduct. However, exemption has been given to members practising in hilly areas subject to certain conditions. The conditions are:

1. Such members/firm be allowed to open temporary offices in a city in the plains for a limited period not exceeding three months in a year.
2. The regular office need not be closed during this period, and all correspondence can continue to be made at the regular office.
3. The name board of the firm in the temporary

office should not be displayed at times other than the period such office is permitted to function as above.

4. The temporary office should not be mentioned in the letterheads, visiting cards or any other documents as a place of business of the member/firm.
5. Before commencement of every winter it shall be obligatory on the member/firm to inform the Institute that he/it is opening the temporary office from a particular date and after the office is closed at the expiry of the period of permission, an intimation to that effect should also be sent to the office of the Institute by registered post.

The above conditions apply to any additional office situated at a place beyond 50 km from the municipal limits in which any office is situated.

It is to be noted that the requirement of Section 27 with regard to a member being in charge of an office of a Chartered Accountant in practice or a firm of such Chartered Accountants shall be satisfied only if the member is actively associated with such office. Such association shall be deemed to exist if the member resides in the place where the office is situated for a period of not less than 182 days in a year, or if he attends the said office for a period of not less than 182 days in a year, or in such other circumstances as, in the opinion of the Executive Committee, establish such active association.

It is necessary to mention that the Chartered Accountant in charge of the branch of another firm should be associated with him or with the firm either as a partner or as a paid assistant. If he is a paid assistant, he must be in whole-time employment with him.

However, a member can be in charge of two offices if they are located in one and the same accommodation. ■



Classifieds

4914 FCA with 34 years industry experience wishes to enter profession with office at Dehradun. Firms based in Delhi-Dehradun desirous to engage may contact: aksg2012@gmail.com.

4915 Required Articles for Deepak Rai & Associates, Chartered Accountants, at New Delhi. Audit work related to ERP implementation/Business Intelligence/Internal Audit/ Income Tax and Finalization of accounts. Contact: 1 Mohammadpur, New Delhi - Letikka Gupta 95553 77776; Deepak Rai, 98100 13975.

4916 Hyderabad-based FCA, wishes to undertake statutory/tax/internal audits, project reports on an assignment/sub-contract/partnership/retainership basis. Contact: 9391048018, email: cagldoffice@gmail.com.

4917 A Bangalore-based CA with 12 years of managerial experience in manufacturing industry in accounts, taxation and finance intends to work on an assignment/

sub-contract basis. Contact: 9945421632, vpk23@yahoo.co.in.

4918 A Chartered Accountant, with 20 years of experience in the industry, is looking for a suitable opening, preferably at Bangalore. Have experience in Financial Accounting/Funds Management/Taxation/MIS and Budgeting. Also open to work with CA Firms. Please contact: anil.balakrishnan9@gmail.com. Mobile -91-9446061108.

4919 A CA Firm invites networking proposals from firms practising VAT (Mainly Works Contract) across the country. Interested may please send their profiles at statutory@smaca.in.

4920 A Rajasthan-based CA Firm having good experience and exposure of SAP/ERP seeks professional assignments/sub-contract/retainership/audit work. Please contact: camvandco@gmail.com.



Veteran Leader CA. N. K. P. Salve No More



The Indian Chartered Accountant fraternity lost one of its doyens in public life when former union minister and ex-BCCI president CA. Narendra Kumar Prasadrao Salve, popularly known as N. K. P. Salve, passed away on 1st April, 2012, at the age of 91. He is survived by his son Shri Harish Salve, an eminent senior advocate and a former Solicitor General of India (1999-2002), and his daughter, Arundhati Upadhyay, who, being a devout educationist, has been running a number of public schools in Nagpur. Shri Salve was a veteran Indian National Congress parliamentarian and a cricket administrator too. Shri Salve was a man of varied interests. He made quite a valuable contribution towards promoting education in Maharashtra and sports across the country. He was quite active leading the student wing for the cause of freedom struggle of our nation. He was an outstanding orator in English as well as in Hindi and Marathi. He was, interestingly, quite fond of classical music.

A chartered accountant by profession with an active practice from 1950 to 1982, Shri Salve was considered an authority on direct taxes. A front-ranking orator, especially on public finance, taxation, macroeconomics, constitutional issues, etc., he headed the *Joint Parliamentary Committee on Taxation Laws* in 1975, which was responsible for rewriting the Income Tax Laws. He gave up his practice after joining Union Cabinet in 1982 under the leadership of the then-Prime Minister Smt. Indira Gandhi.

Born in Chhindwara in Madhya Pradesh, Shri Salve became the

member of Lok Sabha in 1967 and remained so till 1977 from Betul constituency of Madhya Pradesh. Later, he was elected to the Rajya Sabha from Maharashtra and continued to be there for four successive terms from 1978 to 2002. He was the chairman of the Privileges Committee of the Lok Sabha from 1975 to 1977. He worked under the leadership of Smt. Indira Gandhi, Shri Rajiv Gandhi and Shri P. V. Narasimha Rao while undertaking responsibilities for Ministries of Information & Broadcasting, Steel and Mines, Parliamentary Affairs and Power. He is also credited with bringing private participation in the power sector. During this period, he also became the Chairman of 9th Finance Commission of India for 1987-90.

Shri Salve was quite fond of cricket since his early days. He even played cricket for Modi Club of Nagpur in Maharashtra. Later he served as an umpire too, especially in first class matches including those in Ranji Trophy and Commonwealth matches. He became the President of *Vidarbha Cricket Association* in 1972, and, then of the *Board of Cricket Control of India* (BCCI) in 1982, a post he held till 1985. In 1983, he was elected the first chairman of Asian Cricket Council, which was constituted by the collective efforts of Shri Salve, Air Marshal Noor Khan of Pakistan and late Gamini Dassanaik of Sri Lanka. He was instrumental in bringing the cricket World Cup out from England and, later, to the Indian subcontinent in 1987. During his administrative tenure, our cricketers brought home its first cricket World Cup in 1983. He managed to get joint hosting rights for the 1987 Reliance World Cup for India and Pakistan. He was the chairman of the India-Pakistan Joint Management Committee which organised the World Cup in the Indian subcontinent. He had written an acclaimed and interesting account of the world cup, *The Story of the Reliance Cup*, in 1987. The BCCI started NKP Salve Challenger Trophy in 1995 in recognition of his contribution to the Indian cricket.

Leaders across political spectrum have mourned and expressed grief over his demise. Hon'ble President of India, Smt. Pratibha Devisingh Patil was also deeply aggrieved, as she said: *Shri Salve*

was a personality with varied interests and was also associated with our freedom struggle from his student days. An expert in taxation matters...he was also keenly interested in Constitutional Law and Public Finance. Prime Minister Dr. Manmohan Singh condoled Shri Salve's demise saying the country had lost a senior and distinguished leader who left a lasting imprint in different areas of public life. He said: I was deeply grieved to hear of the sad demise...In his demise the country has lost a senior and distinguished leader who left a lasting imprint in different areas of public life. Hon'ble Vice President of India Shri Hamid Ansari sent his heartfelt condolences to the bereaved family: We pray to the Almighty to grant them the strength and fortitude to withstand this loss. Maharashtra Chief Minister Prithviraj Chavan said Salve's extensive political life and the work done by him will always remain inspirational. BCCI President N. Srinivasan has also expressed his deep regards for the departed soul and said: His contribution to Indian cricket, as President of the BCCI, can never be forgotten. It was during his tenure that India won the World Cup for the first time, in 1983...It was also due to his initiative that the World Cup was co-hosted by India and Pakistan in 1987. Shri Salve was responsible for the World Cup becoming a global event. AICC General Secretary Vilas Muttemwar remembered him as a thorough gentleman: Salve was a cultured person and was well versed in English, Hindi, Marathi and Urdu. BJP president Nitin Gadkari condoled: ...the movement for separate Vidarbha state has suffered a huge setback... (Vidarbha) region has lost a great leader of his stature. Rajasthan Chief Minister Shri Ashok Gehlot expressed his grief: Salve was a thorough gentleman and a perfect administrator in sports. His contribution to cricket would always be remembered.

Shri Salve was accorded state funeral by the Maharashtra government considering his contribution in the socio-cultural development of the state. The Institute of Chartered Accountants of India pays its heartfelt tribute to the departed leader and hopes that his probity in public life and result-oriented enthusiasm for education and sports will continue to inspire our younger generations in the years to come. May his noble soul rest in peace! Amen! ■

CA. N. K. P. Salve: Down the Memory Lane



CA. N. K. P. Salve with the then Prime Minister Mrs. Indira Gandhi and Indian cricket players, with 1983 World Cup



CA. N. K. P. Salve with the then Prime Minister Mrs. Indira Gandhi and melody queen Ms. Lata Mangeshkar



CA. N. K. P. Salve with the then Prime Minister Mr. Rajiv Gandhi



CA. N. K. P. Salve with the then French President Mr. Francois Mitterand (1981-85)



CA. N. K. P. Salve with President of India Smt. Pratibha Devisingh Patil



CA. N. K. P. Salve with Prime Minister Dr. Manmohan Singh



ICAI Can Effectively Advise Govt How Best to Mobilise Resources: CA. K. Rahman Khan

One of the doyens of Indian accountancy profession and country's public life, the Deputy Chairman of Rajya Sabha CA. K. Rahman Khan addressed the 315th meeting of the Council of Institute of Chartered Accountants of India on 26th March 2012 and delivered an enlightening speech highlighting various crucial matters of interest to the profession. A 'Friend, Philosopher and Guide' to Indian accountancy profession for long, he has actively supported the interests of the accountancy profession in whatever capacity he served the society. Recently, he has been renominated for the Rajya Sabha for a record fourth time. Following are the excerpts from his address to the ICAI Council:



"Being a Chartered Accountant, it is a privilege for me to sit with the Central Council which is a governing body of my profession. I have always felt that I am a CA first. Whatever positions I hold may only be temporary and may come and go but my profession will always remain dear and permanent for me.

I have been associated with the Institute much more than as a Member right from the day I entered Parliament. As the ICAI is a statutory body, it has to have a total coordination with the Government and the

Government has a major role to play in its functioning, and thus sometimes there will be occasions which will need certain clarifications and certain steps to be taken to strengthen the profession. I remember the first intervention I had in the Institute in the Service Tax matter, when Dr. Manmohan Singh was the Finance Minister. It was when for the first time the Service Tax was imposed on the profession (8%) by the Government. At that time the Council Members came to me and met in 1994 and I took up the matter with

Dr. Manmohan Singh and told him that it is not in the interest of the profession of Chartered Accountants. To this, Dr. Singh said: 'I will make it 4%, and then the Service Tax was made 4%.'

Being a Chartered Accountant and being a Parliamentarian, it is my responsibility and duty to protect the profession, and I feel it is my duty and obligation as a Chartered Accountant to serve the profession in whatever capacity I can. At the same time, I am very possessive of my profession and I do not

like its criticism. I am happy to note that the Council has addressed all issues concerning the profession judiciously. Sometimes I myself have painfully criticised the profession because it was in the interest of the profession, it was in the interest of the good image and public perception about the profession. I am thankful for getting one more opportunity to serve the nation through Rajya Sabha and I promise you that I will be with the profession, I will be with the Institute. I am particularly there to help the Institute whenever it takes up the issues of public interest. One thing I have to request you is to change our perception and make it more socially and economically responsive because India is a growing economy we have a very important role to play on that front.

The society in our country is divided in the sense that though we are the 2nd largest economy, there exist large-scale disparities in the society. Still 80% of our population lives with a very low income. So, in this background, we have a role to play. The social

The social obligation of the Government is too large. It has to provide subsidy for the food, fertiliser, for primary education etc. For this, the Government has to generate the revenue. As such, you have to play an all important role to advise government as to how best the resources could be mobilised, how government resources could be mobilised without resorting to heavy taxation, how the government can collect more taxes with lesser taxing the people. ”

obligation of the Government is too large. It has to provide subsidy for the food, fertiliser, for primary education etc. For this, the Government has to generate the revenue. As such, you have to play an all important role to advise government as to how best the resources could be mobilised, how government resources could be mobilised without resorting to heavy taxation, how the government can collect more taxes with lesser taxing the people. These are some of the issues, which have been left to the Government only. Our Members can play a crucial role in this regard. They are involved in every aspect of the finances whether it is corporate, banks or other sectors. As such, our active role in assisting the government on economic issues will further enhance the image of the ICAI.

I am of the firm opinion today a lot of leakage of revenue is taking place. There is no proper understanding about this phenomenon and about the consequences of the Government system of accounting in this background. This system is only accounting the expenditure but the consequences caused by this system are not fully understood and there are no proper systems to judge the consequences. The cost escalations are very harmful for the economy. A project is conceived and then when the project is completed, because of the cost escalation, the actual cost increases substantially. Because of the accounting process, because of not judging the consequences of not completing the project in time, the actual impact on cost escalations have generally not been reflected in the Parliament. Under the present system even the Members of Parliament who sanction the project are not generally aware as to how this amount has been spent and how this is accounted. Once you pass the budget it is over, and then the C&AG will come to play its role. Here the ICAI can take the proactive role.” ■

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CAs Can Help Govt Maintain its Accounts and Achieve Fiscal Consolidation: Yashwant Sinha

Member of Parliament and Chairman of the Standing Committee of Finance Shri. Yashwant Sinha, who has extended valuable guidance and support to the Institute of Chartered Accountants of India and its members on various important issues related to Indian accountancy profession, addressed the 315th meeting of the Council of Institute of Chartered Accountants of India on 26th March 2012. In his enlightening address, he talked about how the Chartered Accountants can effectively help the Government properly maintain its accounts to reflect a correct picture. Having excelled in both Government service and Public Life, Shri. Sinha has served the country in various

high profile capacities, including twice as Union Finance Minister. He has recently authored an acclaimed book *Confusion of Swadeshi*. Following are the excerpts from his address to the ICAI Council:



"I am quite familiar with the working of the Institute of Chartered Accountants of India. We had numerous occasions in the past to interact with each other, both formal and informal. I am very impressed by the work that you are doing as an Institute. Problems keep on arising from time to time and we solve them as and when they come, including the latest one related to branch audit of public sector banks for 2011-12. I am very happy that issue has been resolved. My writing to the Finance Minister

helped. I assure you of such help from me in future also.

I wish to share two issues with you. First one is with regard to how the Government of India's accounts should be written. I understand that Government of India had appointed a Committee on this under Shri Rangarajan. The question is whether to carry on with the accounting procedures which are prevailing in government at the moment, basically with reference to the issue of planned and non-planned expenditure and revenue

and capital. I think these are misleading nomenclatures for the classification of the accounts of Government of India as at present and you must be aware of the fact that a new concept has been forwarded which is called Effective Revenue Deficit. It is said that part of the revenue deficit of the Government of India also is accounting for the budget capital expenditure of the Government of India. So the deficit has been reduced and it is now classified in the Budget as Revenue Deficit and

Effective Revenue Deficit. How accurate or valid this classification is remains to be seen because this has not been examined in great detail. But the issue is that any expenditure, including household expenditure, can only be divided into two categories: Consumption Expenditure and Investment Expenditure. The Government's Consumption Expenditure and Investment Expenditure is not clearly defined. You have to look where exactly the investment or productive expenditure and what is being spent on current consumption which is not productive. We know that investment payment especially expenditure or the expenditure on Defence are all unproductive expenditure but it is the necessary part of the expenditure, but does not lead to returns. Then, there is expenditure which leads to production. I was recently in China and when one looks at the investment of the China, one wonders where the money comes from. And what is the accounting principle they follow? They would get money and not insisting on internal rate of return, they are able to build roads, bridges and airports and all infrastructure over

I would suggest that, may be, you can appoint a Committee or Working Group to examine the Government of India's classification of accounts and help the Government maintain its accounts. Tell the people of India what is Consumption Expenditure and what is Investment Expenditure because the whole concept of deficit is predicted on this. If the accounts are not classified correctly, you do not get the correct picture. ☺☺

a period of time. So, this is one issue which I mentioned the last time when I was with you. I would suggest that, may be, you can appoint a Committee or Working Group to examine the Government of India's classification of accounts and help the Government maintain its accounts. Tell the people of India what is Consumption Expenditure and what is Investment Expenditure because the whole concept of deficit is predicted on this. If the accounts are not classified correctly, you do not get the correct picture.

The second issue is with regard to fiscal consolidation. As you are aware, the fiscal responsibility and budget management responsibility targets have literally thrown open a window.

On the foreign exchange front we are safe because of the large reserves that has been built up over the time. But we know the experience

of the Brazil and other countries that the reserves can get exhausted in no time. About 10-20 billion dollars are put in to keep the rupee steady. The world economy is not in our control, we cannot order China or US what to do. We have to see our own economy. We have to have the effective policy implementation. I am not happy to tell you that our domestic saving rate has come down from 37% to 30%. About 7% of the GDP has been shelved out as a result of the lost domestic saving. If you don't have the savings you don't have the investors' resources and the private sector becomes reluctant; consumers don't consume; they do not save, and overall it becomes a complex and critical situation. This is an issue for the entire nation. You Chartered Accountants can advise how we get out of this situation. You are already advising the Corporate Sector in this regard and you can also effectively advise the Government and society at large how to maximise savings.

Please spend some time and tell the Government how to maintain their accounts and how they should maximise the savings and returns so that ultimately people in general get benefited." ■

If you don't have the savings you don't have the investors' resources and the private sector becomes reluctant; consumers don't consume; they do not save, and overall it becomes a complex and critical situation.

This is an issue for the entire nation. You Chartered Accountants can advise how we get out of this situation. You are already advising the Corporate Sector in this regard and you can also effectively advise the Government and society at large how to maximise savings. ☺☺

Legal Decisions¹

DIRECT TAXES



Income-tax Act

LD/60/109

Assistant Commissioner of Income-tax, Circle I, Cuddalore

Vs.

CMS (India) Operations & Maintenance Co. P. Ltd

Section 9 read with Section 195

and Section 40(a)(i) of the Income-tax Act, 1961 - Income - Deemed to accrue or arise in India.

When salaries were paid to deputed employees by foreign service provider, taxes were duly deducted and such tax deducted were reflected in income tax return filed by said employees and no technical know-how was made available to assessee foreign service provider, reimbursement of manpower cost to foreign company had no element of income therein and hence, no tax was leviable thereon

US Company CMS RDC, was engaged in the business of providing consultation, operation and maintenance services to electrical utilities outside USA. It deputed employees to the assessee's power plant for operation and maintenance work.

The assessee-company engaged in Operation and Maintenance of Power Plant, had made remittance abroad during the impugned assessment years, which as per the Assessing Officer, was fees for technical services. According to the Assessing Officer, the amounts debited by the assessee under the head 'Reimbursement of manpower cost' were payments effected to a US-Company CMS RDC. After making a study of agreement, Assessing Officer held that assessee should have deduct the tax at source from the payments effected. The assessee submitted that the payments were salaries to the persons deputed by CMS RDC, who were given advances by CMS RDC. Therefore, it was only the reimbursement.

The assessee further submitted that the amounts were treated by CMS RDC as money recoverable from assessee. Since the income of the recipient was chargeable under the head 'salaries', it did not fall within the term 'fees for technical services' as defined in *Explanation 2* to section 9(1)(vii) of the Act. The amounts paid were reimbursement of advances against salaries and was not a sum chargeable to tax as stipulated under section 195 of the Act. Hence, assessee was not obliged to deduct any tax at source.

However, the Assessing Officer held that the deputed persons were not salaried employees of the assessee, since the assessee was bound to make payment only to CMS RDC. He came to a conclusion that the amounts paid by the assessee to CMS RDC were fees for technical services taxable in the hands of CMS RDC and the assessee-company having failed to deduct tax at source as stipulated under section 195 of the Act, it was visited with the consequences of section 40(a)(i) of the Act. In this view of the matter, he disallowed the entire expenditure claimed by the assessee for payments effected to CMS RDC for the respective Assessment Years.

The Commissioner (Appeals) was appreciative of the assessee's submissions that the agreement between the assessee and CMS RDC was only a reimbursement agreement and not a supplementary to any agreement for technical know-how. Assessee had only reimbursed the money advanced by CMS RDC to the said persons and this would not result in any income to CMS RDC in India.

The Tribunal held that assessee could be fastened with a liability to deduct tax under section 195 and section 192.

Applying this position of law to the facts here, if the payments effected were salaries, no doubt by virtue of section 192, which does not make any differentiation between resident or non-resident recipient, assessee was bound to deduct tax. But here admittedly the persons involved were not employees of the assessee and there was no employee - employer relations between the assessee and the said persons. CMS RDC had deducted tax at source on payment of salaries effected to these persons who were on their rolls. Thus, they could only be considered as employee of CMS RDC.

To fall under section 195, the payment should be a sum chargeable under the provisions of the Act. No doubt if it was fees for technical services, it would definitely fall under section 9(1)(vii) of the Act and irrespective of the place of business or business connection of the non-resident entity in India such income has to be deemed as accruing or arising to the non-resident entity in India.

Even if the services rendered by the concerned persons are considered as fees for technical services within the meaning of the above definition, assessee could still fall back on the section 90(2) of the Act,

¹ Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.org.

and say that Double Taxation Agreement between the two countries should be applied. Definition as per Double Taxation Agreement and that in the Act as to what is a fee for technical services differs. Double Taxation Agreement between India and U.S.A. and the Memorandum of understanding dated 15th May, 1989 between these countries, which defines the terminology used in the DTAA, specify that technical services should be made available. The assessee might have come to a bona fide belief that there were no technical services made available to it by CMS RDC. There is a clear finding by the Commissioner (Appeals) that when salaries were paid to the deputed employees by CMS RDC, taxes were duly deducted and such tax deducted were reflected in the income tax return filed by the said employees. The agreements between the assessee and CMS RDC clearly show that no technical know-how was made available to the assessee. The assessee could therefore, has formed a bona fide impression that no part of the payment the assessee had effected to CMS RDC had any element of income therein.

The circumstances here were such that the assessee could be justified in reaching a *bona fide* impression that payments effected by it to CMS RDC was not sums on which tax was chargeable in India. Therefore, the assessee was not at default of Chapter XVII-B and therefore, could not have been fastened with the consequences of the nature specified in section 40(a)(i) of the Act. Hence, disallowances were not warranted.

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LD/60/110

Airport Authority of India

Vs.

CIT

December 16, 2011 (DEL-FB)

**Section 28 (i) of the Income-tax Act, 1961 -
Business and professional income – Chargeable
as**

Whether where Customs, Immigration, Meteorological Department, Post Office, BSF, CISF, Special Bureau of Govt., FRRO, Intelligence Bureau etc. had their offices to facilitate functioning of assessee airport and they did not agree to pay any licence fee of space occupied by them, income would accrue merely because proforma advices were raised, that too, at instance of CAG of India

If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a hypothetical income which does not materialised. This principle is applicable whether the accounts are maintained on cash system or under



mercantile system. If the accounts are maintained under the mercantile system, what has to be seen whether income can be said to have been really accrued to the assessee company.

The appellant Airport Authority of India took over the functions of management of certain airports and other allied activities. Certain Government Department like Customs, Immigration, Meteorological Department, Post Office, BSF, CISF, Special Bureau of Govt., FRRO, Intelligence Bureau etc. have been provided accommodation in the terminal buildings and other technical areas by the assessee-Airport authority. It is the case of the assessee that these departments have their offices to facilitate the functioning of the assessee and they do not agree to pay any licence fee of the space occupied by them on the plea that they are regulatory bodies to provide special services in terms of the Government directions. Still the assessee had raised the proforma invoices in all these years and kept in memoranda account. According to the assessee these memoranda accounts are maintained by the assessee only because its auditors namely CAG of India had suggested/emphasised the assessee to maintain these accounts. The assessee also emphasised that such use by Government Department should not be treated as commercial departments since they have to be provided space for the performance of duty. Therefore, no regular revenue was being generated. The invoices were only proforma in nature. The Assessing Officer, however, did not accept the afore-said plea and treated the amount of proform invoices as income of the assessee. The plea of the assessee that there was no 'real income' accrued to the assessee was turn down.

The High Court of Delhi held that allocations towards proforma advices were made included private parties as well as Government Departments. Insofar as private parties are concerned, there is no issue that the income has accrued and would be taxable in the year in which these invoices are made. In case money

from these private parties is not realised later on, that can always be claimed as bad debt.

In respect of government parties against the huge total proforma invoice of, the payment receipt was of a meager sum. The same is the position in respect of earlier assessment years.

Merely because a meager sum of few lakhs was received, the entire amount of running in few crores could not be treated as income. What was to be seen as to which Government Department was remitting the amount. From the details furnished, it was obvious that some of the Departments have never made any payment.

In respect of the Government Agencies, like Police, Customs who have never paid any amount to the assessee-Airport authority, on the application of 'real income' theory and taking a realistic view, it is to be held that no income has accrued merely because proforma advices were raised, that too, at the instance of the CAG of India.

The Assessing Officer should determine the taxability of proforma invoices in respect of those parties who had been remitting part payments and had accepted their liability and not in respect of those Government Agencies who have never paid any amount.

Section 37(1) of the Income Tax Act, 1961 - Business expenditure – Allowable as

In schemes formulated by Government for removal of encroachers from airport surroundings and rehabilitate them at other places, if assessee airport authority had paid amount that amount could not be said to be for acquisition of new assets; payment was made to facilitate smooth functioning of its business i.e. in relation to carrying on business in a profitable manner; hence such an expenditure if incurred by assessee would be on revenue account and would not be capital in nature

The appellant Airport Authority of India took over the functions of management of certain airports and other allied activities. On some of these airports, illegal encroachments were found in and around the security area of the airports. With the intervention of local authorities, schemes were devised to rehabilitate the encroachers and the money required for rehabilitation. For this reason, the assessee has been making provisions for the aforesaid expenditure to be incurred in removal of encroachers and has been incurring the expenditure for the said purpose from time to time. The Assessing Officer disallowed the same and added to the income of the assessee which order has been

upheld till the stage of the Tribunal.

The Delhi High Court applying the ratio of *Bikarner Gyypsum v. CIT* [1991] 187 ITR 39 (SC) to the facts of this case held that a conclusion would be that the expenditure in question by the assessee was revenue in nature. It is not in dispute that the land belongs to the assessee. Certain encroachers in all these airports had encroached upon the part of the land. In the schemes formulated by the Government for removal of these encroachers and rehabilitate them at other places, if the assessee had paid the amount that amount is not for acquisition of new assets. The payment was made to facilitate its smooth functioning of the business i.e. in relation to carrying on the business in a profitable manner.

Such expenditure if incurred by the assessee would be on revenue account and is not capital in nature.

The Apex Court in *Bharat Earth Movers v. CIT*, 245 ITR 428 has laid down that the liability should have been actually incurred in the year and it should be capable of reasonable ascertainment, the assessee is to prove that such a liability had actually been incurred and was capable of reasonable ascertainment. A finding of fact is arrived at by the Tribunal that no such ascertainment of liability could be proved by the assessee. Certain documents were produced by the assessee to show that amount of ₹16.01 crores in the assessment year 1998-99 was in fact paid and similar amounts were paid in other years as well. If so, these would be admissible deductions being revenue in nature. The deduction would be allowed by the Assessing Officer only after the assessee furnishes proof of having made such a payment in the different assessment year in question.

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LD/60/111

CIT

Vs.

Integrated Technologies Ltd.

December 16, 2011 (DEL)

[Assessment Year 2004-05]

Section 37(1) read with section 36 of the Income-tax Act, 1961- Business expenditure – Allowable as

Where even though there was no sale or purchase or any manufacturing activity carried on in relevant previous year, business of assessee was not closed relevant expenditures were to be allowed

According to the Assessing Officer the expenses incurred by the assessee were not allowable in computing the business income of the assessee because no business activities were carried on in the relevant previous year. He therefore, proposed to

disallow the expenditure claimed by the assessee. It was contended by the assessee that even though there was no sale or purchase or any manufacturing activity carried on in the relevant previous year, the business was still a going concern and in order to keep it alive and fulfill several legal and statutory formalities, some expenditure has to be incurred.

The High Court of Delhi held that the assessee had not closed its business and had every intention to revive the same. The basis for this finding was the fact that the assessee had kept its establishment alive by paying salary and other allowances to the staff and had also acquired plant and machinery in the relevant previous year and had further incurred repair expenditure on its existing plant and machinery. These findings had not been challenged by the revenue as perverse. In fact, the allowance of the salary payments, staff welfare and repairs and maintenance expenditure by the CIT (Appeals) was not challenged by the revenue by filing any appeal on those points before the Tribunal and this aspect has been referred to by the Tribunal. Thus, the revenue had impliedly accepted the fact that the business was kept alive in the hope of revival and there was only a temporary lull in the business activities. The assessee had purchased new plant and machinery and had also incurred repair expenditure in respect of the existing machinery. Therefore, it was a fair and reasonable inference to draw that the assessee wanted to keep the business alive and revive the same at the earliest opportunity. The assessee had also stated before the BIFR that after the change in the business scenario globally, the company was expecting to receive substantial orders for its products. Thus, the finding of the Tribunal that the business of the assessee was not closed is fully supported by facts on record which have not been challenged by the revenue.

Therefore, the claims of deductions were to be allowed.

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LD/60/112

Mira Kulkarni

Vs.

Assistant Commissioner of Income Tax

December 16, 2011 (DEL)

[Assessment Year 2003-04]

**Section 37(1) of the Income-tax Act, 1961 -
Business expenditure – Allowable as**

For allowance of business expenditure, it is to be incurred wholly and exclusively for purpose of business and thus, personal expenses cannot be allowed as business expense

The appellant, an individual was a part owner of

a property. A portion of the said property was used as a hotel pursuant to an agreement. The appellant declared the income earned under the agreement as “income from house property” which was accepted by the assessing Officer.

The appellant had also claimed (i) Foreign travel expenditure, (ii) Repair and maintenance expenses, (iii) Salary and local conveyance under section 37, which were disallowed by the Assessing Officer and that was upheld by the Tribunal.

On appeal, the High Court held that section 37(1) postulates that the expenditure should be laid out or expended wholly or exclusively for the purpose of business. The two conditions, wholly or exclusively are conjoint and not disjunctive. This means that the expenditure should have been incurred for the purpose of business. It should be really incidentally connected with the business. The intention behind incurring the expense is relevant and it should be connected with the trade or business activity. It should be to enable a person to carry on and earn profits in the trade. The revenue's objection, unless permitted by law, is normally confined to deciding the reality of the expenditure which means; whether the expenditure was actually incurred and secondly; whether it was incurred wholly and exclusively for the purpose of business. Personal expenses cannot be allowed as business expense.

In view of the agreement it was agreed that the hotel would maintain all related facilities and amenities and business activities. All charges or taxes with regard to the running of the business of the said hotel including the charges for the salaries, telephone, electricity, food provisions water bills license fee, advertising, marketing had to be borne and paid by the hotel.



The agreement not only referred to the constructed hotel portion on the property but stated that all related facilities, amenities and business activities would be maintained by the Hotels. This was not confined to the hotel building only but also extended to the land apparent thereto. A hotel may not be restricted or consist of a constructed building and garden, precincts and land appurtenant thereto, may have to be developed and maintained. The clauses of the agreement indicated that this development and maintenance was the responsibility and liability of the Hotel. The appellant had not lead any evidence or placed material on record in form of any communication or confirmation by the Hotel that she had incurred expenditure, which was relevant for maintenance and running of the said hotel. Even otherwise the appellant could not produce evidence and material to substantiate her claim. The Tribunal had specifically recorded that 75 per cent of the property was in personal use of the appellant. Obviously the expenditure incurred on maintenance and repair on the personal property cannot be set off and allowed as business expenditure under section 37. In case the assessee had been able to produce evidence and show that she had incurred any expenses to earn and for purpose of business, she might have succeeded. Thus the appellant had not been able to show and establish her claim for deduction under section 37(1) as regard to repairs and maintenance expenses.

As regard to foreign travel expenses, as per the agreement, marketing, advertisement and reservations etc. were to be undertaken by and was the responsibility of the Hotel. There was no evidence or material placed on record as to how the said (personal foreign visit) expense was connected with or for the purpose of business income.

As regard to salary and local conveyance the Tribunal observed that the running of the hotel, including salary to the hotel staff etc. was the responsibility of the Hotel. The Hotel had stated that the appellant had regularly visited the property and conducted activities such as quality control of food but no specific details or particulars were elucidated. Further, it was the appellant's case that she had carried

out agricultural operations in the said property and grown agricultural produce. On the basis of material on record, the Tribunal recorded a finding of fact that the salary account and the local conveyance expenses claimed by the appellant did not pertain to running or operation of the hotel. The operational expenses etc. were incurred by the Hotels. Hence, the said expense was not for the purpose of business. The aforesaid findings therefore could not again be categorised as perverse and which require interference by this Court under section 260A.

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LD/60/113

Nandi Steels Limited

Vs.

ACIT, Circle 12(2)

December 9, 2011 (ITAT-Bangalore-SB)

[Assessment Year 2003-04]

Section 72 of the Income Tax Act, 1961 - Losses – Carry forward and set off of business loss

Business loss and depreciation brought forward from earlier years cannot be set off against income from "capital gains" under section 72

The assessee has sold the land situated along with the building and bore well which were all used for the business. The assessee had shown the profit and sale of land etc. as long term capital gains and offered to tax at the rate of 20%. The assessee had set off the long term capital gains of ₹43,36,640 against the brought forward business loss and depreciation contrary to the provisions of section 72. The Assessing Officer held that the brought forward business loss and unabsorbed depreciation cannot be set off against the income from capital gains.

The Special Bench of Bangalore Tribunal held that the capital receipts are not taxable nor are the capital payments deductible from the income of the assessee. The capital is to be used for the purpose of carrying on the business of the assessee and it shall remain in the business of the assessee till it is either converted into stock-in-trade or is disposed off. The income earned by the assessee by carrying on the business by use of the stock in trade only is the business income of the assessee. Likewise, any expenditure incurred by the assessee for carrying on of business and for earning the income from such business or profession is only allowable as deduction. After taking into account the receipts and payments for carrying on the business of the assessee only the profit or gain or loss from the business is computed. If the profit or loss relate to the same assessment year from one source then it can be set off from another source under the same head of income under section 70, and it can



be set off against the income from any other head of income under section 71. Section 72, however, permits the carry forward business loss to subsequent assessment years and allows it to be set off against profit & gains, if any, of any business or profession carried on by the assessee and assessable for the relevant assessment year. Thus, it is clear that it is only the business loss that can be carried forward under section 72 and it can also be set off only against the business income of the assessee, be it from the same business or from any other business.

Therefore, business loss and depreciation brought forward from the earlier years cannot be set off against the income from "capital gains" under section 72.

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LD/60/114

ACG Associated Capsules Pvt. Ltd.

Vs.

CIT, Central-IV, Mumbai

February 8, 2012 (SC)

[Assessment Year 2003-04]

Section 80HHC read with Section 80M of the Income Tax Act, 1961 - Deductions - Profits from export business

If any quantum of any receipt of nature mentioned in clause (1) of Explanation (baa) to section 80HHC has not been included in profits of business of an assessee as computed under head "Profits and Gains of Business or Profession", ninety per cent of such quantum of receipt cannot be deducted under Explanation (baa)

Profits of the business of an assessee will have to be first computed under the head "Profits and Gains of Business or Profession" in accordance with provisions of section 28 to 44D of the Act. In the computation of such profits of business, all receipts of income which are chargeable as profits and gains of business under section 28 of the Act will have to be included. Similarly, in computation of such profits of business, different expenses which are allowable under sections 30 to 44D have to be allowed as expenses. After including such receipts of income and deducting such expenses, the total of the net receipts are profits of the business of the assessee computed under the head "Profits and Gains of Business or Profession" from which deductions are to be made under clauses (1) and (2) of Explanation (baa) to section 80HHC.

Under Clause (1) of Explanation (baa), ninety per cent of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in any such profits are to be deducted from the profits of the business as computed under the head "Profits and Gains of Business or Profession". The expression "included any such profits" in clause

(1) of the Explanation (baa) would mean only such receipts by way of brokerage, commission, interest, rent, charges or any other receipt which are included in the profits of the business as computed under the head "Profits and Gains of Business or Profession". Therefore, if any quantum of the receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature is allowed as expenses under sections 30 to 44D of the Act and is not included in the profits of business as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of receipts cannot be reduced under Clause (1) of Explanation (baa) from the profits of the business. In other words, only ninety per cent of the net amount of any receipt of the nature mentioned in clause (1) which is actually included in the profits of the assessee is to be deducted from the profits of the assessee for determining "profits of the business" of the assessee under Explanation (baa) to section 80HHC.

For this interpretation of Explanation (baa) to section 80HHC, on the judgment of the Constitution Bench of Supreme Court in *Distributors (Baroda) P. Ltd. v. Union of India and Others* (1985) 155 ITR 120 was relied upon. Section 80M provided for deduction in respect of certain intercorporate dividends and it provided in sub-section (1) of section 80M that "where the gross total income of an assessee being a company includes any income by way of dividends received by it from a domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such income by way of dividends an amount equal to" a certain percentage of the income mentioned in this section. The Constitution Bench held that the Court must construe section 80M on its own language and arrive at its true interpretation according to the plain natural meaning of the words used by the legislature and so construed the words "such income by way of dividends" in sub-section (1) of section 80M must be referable not only to the category of income included in the gross total income but also to the quantum of the income so included. Similarly, Explanation (baa) has to be construed on its own language and as per the plain natural meaning of the words used in Explanation (baa), the words "receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits" will not only refer to the nature of receipts but also the quantum of receipts included in the profits of the business as computed under the head "Profits and Gains of Business or Profession" referred to in the first part of the Explanation (baa). Accordingly, if

any quantum of any receipt of the nature mentioned in clause (1) of *Explanation* (baa) has not been included in the profits of business of an assessee as computed under the head "Profits and Gains of Business or Profession", ninety per cent of such quantum of the receipt cannot be deducted under *Explanation* (baa) to section 80HHC.

Note: Decision of Bombay High Court in ITA(L) No. 1276 of 2010 dated 6-8-2010, set aside.

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LD/60/115

Veer Gems

Vs.

ACIT, Circle 7&1

October 19, 2011 (GUJ)

[Assessment Year 2008-09]

Section 92CA read with Section 144C of the Income Tax Act, 1961 - Transfer Pricing - Computation of

TPO is not authorised to judge whether there had been any international transaction or not; he has no competence to decide validity of reference itself; such issue has to be decided by Assessing Officer alone

For the Assessing Officer to make a reference

of computation of the arm's length price under sub-section (1) of section 92CA to the TPO, it is necessary that the assessee should have entered into an international transaction and further that the Assessing Officer considers it necessary or expedient to make such a reference to the TPO. Since the term "international transaction" means a transaction between two or more associated enterprises, which transaction satisfies the requirement under sub-section (1) of section 92B, it is necessary that there has been a transaction between two associated enterprises before a reference under section 92C can be made by the Assessing Officer. So much is plain and clear from the statutory provisions contained in the Act. The question is at what stage it must be finally and conclusively held by the Assessing Officer that in the previous year relevant to the assessment year under consideration there had been an international transaction between the petitioner and the associated enterprise. Surely the TPO would not be a competent authority to decide this issue. From the statutory provisions we have noticed, it clear emerges that upon a reference the TPO has to serve a notice on the assessee requiring him to produce



or cause to be produced evidence on which the assessee may rely in support to the computation of the arm's length price in relation to an international transaction. Thereupon, the TPO after considering such evidence, as the assessee may produce, including the documents referred to in section 92D, has to pass an order in writing determining the arm's length price in relation to the international transaction in accordance with sub-section (3) of section 92C, send a copy of this order to the Assessing Officer and also the assessee. It is, thus, clear that once a reference is made to the TPO, his duty is to pass an order determining the arm's length price after permitting the assessee to produce relevant documents on records. At that stage, the statutory provisions do not require or even permit the TPO to deliberate on the question whether there had been any international transaction during the period under consideration. The TPO whose primary task is to determine the arm's length price of an international transaction upon a reference being made in this regard by an Assessing Officer, would have no jurisdiction to decide the validity of any such reference. His jurisdiction to act in accordance with provisions contained in section 92CA and in particular, sub-sections (2) and (3) thereof, would commence only upon a reference being made to him for computation of arm's length price of an international transaction by the Assessing Officer. He cannot judge the validity of such a reference.

There is no provision under Chapter-X, which would require the Assessing Officer to hear the assessee, consider his objections and only thereafter make a reference to the TPO to compute the arm's length price. As already observed, it is true that the question of reference to the TPO would arise only in the case where there has been an international

transaction between the assessee and the associated person. Such a question in a given case may also be highly disputed question. However, under the scheme of the provision contained in Chapter-X, the Assessing Officer is not obliged to grant hearing to the assessee, invite and consider the objections with respect to the question whether during the previous year relevant to the assessment year under consideration, there had been any international transaction between the assessee and the associated enterprise before making a reference to the TPO. Such opinion the Assessing Officer would have to form on the basis of available material on record and such opinion would be having ad-hoc finality in the sense that for the purpose of reference to the TPO and till the stage that the TPO passes an order under sub-section (3) of section 92CA, such issue would be closed.

Before making any such reference, sub-section (1) of section 92C itself provides certain inbuilt safeguards. Firstly, the Assessing Officer has to consider it necessary or expedient to make a reference to the TPO and secondly the reference has to be made with the previous approval of the commissioner. Thus, not only the Assessing Officer before making a reference should be satisfied that with respect to an international transaction entered into by the assessee, it is necessary or expedient to refer the computation of arm's length price to the TPO, such opinion of the Assessing Officer would have to be approved by the Commissioner, before the same can be acted upon. This is one more filter provided by the statute to ensure that the reference is made only in appropriate cases with approval of the higher authority.

While framing the assessment in terms of the report submitted by the TPO under sub-section (3) of section 92CA, there is nothing to prevent the Assessing Officers from considering the objections of the assessee that, in fact, there had been no international transaction between the assessee and any other person. If the assessee succeeds in establishing such fact, naturally the Assessing Officer would have to drop the entire proceedings in connection with the international transaction.

By virtue of newly substituted sub-section (4) of section 92CA, the Assessing Officer is now bound by the order of the TPO on the computation of the arm's length price of an international transaction, the Assessing Officer is not and cannot be stated to be bound by the opinion of the TPO with respect to the question whether there had, in fact, been an international transaction between the assessee and the associated person during the period under

consideration. The TPO is not called upon to and, is not competent to decide this issue. This issue is within the sole jurisdiction of the Assessing Officer.

The assessee has one more opportunity to contest the question of presence or absence of an international transaction. Under section 144C, the Assessing Officer has to forward a draft of the proposed order of assessment to the eligible assessee. The eligible assessee, includes any person in whose case, variation arises as a consequence of the order of the TPO passed under sub-section (3) of section 92CA. Thus, in every case of variation of income pursuant to such order of the TPO, the Assessing Officer has to, at the first instance, forward a draft of the proposed order of assessment to the assessee. Under sub-section (2) of section 144C, on receipt of such a draft order, the assessee has an option either to file his acceptance of the variation of the assessment or file his objection to any such variation with the Dispute Resolution Panel and also the Assessing Officer. Sub-section (5) of section 144C provides that if any objections are raised by the assessee before the Dispute Resolution Panel, the Panel is authorized to issue such direction as it thinks fit for the guidance of the Assessing Officer. Under sub-section (6) of section 144C, such directions will have to be issued after considering various details provided in Clauses (A) to (G) thereof. Sub-section (8) of section 144C provides that the Dispute Resolution Panel may confirm, reduce or enhance the variations proposed on the draft order. Sub-section (11) of section 144C provides that no direction under sub-section (5) shall be issued unless an opportunity is given to the assessee and the Assessing Officer. Sub-section (13) of section 144C provides that upon receipt of directions issued under sub-section (5) of section 144C, the Assessing Officer shall in conformity with the directions complete the assessment proceedings. Section 144C, thus, provides for complete dispute resolution mechanism to an eligible assessee. He has an option either to accept the variation proposed by the Assessing Officer or to raise objections before the Dispute Resolution Panel. The Dispute Resolution Panel has wide powers of issuing directions under sub-section (5) of section 144C and to confirm, reduce or enhance the variations proposed under sub-section (8) of section 144C. Under sub-section (13) of section 144C, such directions are binding upon the Assessing Officer.

The issue whether there was an international transaction or not can also be examined by the Dispute Resolution Panel at the instance of the



assessee. There is nothing to limit the powers of Dispute Resolution Panel to completely nullify the variations arising out of the order of the TPO if it is found that there had, in fact, been no international transaction and that, therefore, the reference itself was invalid. Sub-section (5) of section 144C empowers the Dispute Resolution Panel to issue such directions as it thinks fit for the guidance of the Assessing Officer. When sub-section (8) of section 144C authorizes the Dispute Resolution Panel to confirm, reduce or enhances the variations proposed by the TPO, it can also annul any computations proposed on the basis of the order of the TPO.

This is not to suggest that the Assessing Officer can, without any basis or wholly arbitrarily at his whim or caprice, make a reference of any transaction to the TPO for computation of the arm's length price. He is expected to exercise his discretion on the basis of available material on record. Such decision is subject to approval by the Commissioner. At the time of framing final assessment even the assessee will have right to point out that there had been, in fact, no international transaction between the assessee and the associated enterprise. What has changed by virtue of substitution of sub-section (4) of section 92CA is that the opinion and the order of the TPO with respect to computation of arm's length price is now binding on the Assessing Officer. As recorded earlier, the TPO is not authorised to judge whether there had been any international transaction or not. In other words, he has no competence to decide the validity of the reference itself. Such issue has to be decided by the Assessing Officer alone. ■

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, MCA, RBI and SEBI during the last month for information and use of members. Readers are requested to use the citation/website or weblink to access the full text of desired circular/notification. You are requested to please submit your feedback and suggestions on the column at eboard@icai.org.

DIRECT TAXES



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

I. NOTIFICATIONS

1. Notified Rate of interest for special deposit schemes - Notification No. 5(4), dated 13-03-2012

With this notification, Interest on Special Deposit Scheme for Non-Government Provident, Superannuation and Gratuity Funds announced by the Ministry of Finance Notification No. F.16(1) PD/75, dated 30th June 1975, has been notified at 8.6% p.a. w.e.f. 1st December 2011.

2. Amendment in the procedure of Return of Income - Notification No. 14/2012, dated 28-03-2012

The Central Board of Direct Taxes has, through this notification, notified Income-tax (3rd Amendment) Rules, 2012 which shall come into force from 1st April, 2012.

The said amendment Rules have notified the Income tax return forms -SAHAJ(ITR-1), ITR-2, ITR-3, SUGUM (ITR-4S), ITR-4 and ITR-V for the Assessment year 2012-13 and also amended Rule 12 dealing with the procedure for return of income, to provide for the following:

- The Form 'SAHAJ' (ITR-1) shall not be applicable to a person being an individual who is resident and has assets located outside India or has signing authority in any account located outside India;
- The Form 'SUGUM' shall not be applicable to a person being an individual or a HUF who is resident and has assets located outside India or has signing authority in any account located outside India.
- An individual or a Hindu undivided family, if his or its total income, or the total income in respect of which he is or it is assessable under the Act during the previous year, exceeds ten lakh rupees, shall furnish the return for the assessment year 2012-13 and subsequent assessment years either electronically under digital signature or by transmitting the data in the return electronically

and thereafter submitting the verification of the return in Form ITR V.

- An individual or a Hindu undivided family, being a resident, having assets (including financial interest in any entity) located outside India or signing authority in any account located outside India and required to furnish the return in Form ITR-2 or ITR-3 or ITR-4, as the case may be, shall furnish the return for assessment year 2012-13 and subsequent assessment years either electronically under digital signature or by transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR V.

3. Depreciation restricted to 15% on wind mills installed after 31-3-2012 - Notification No. 15/2012, dated- 30-03-2012

The Central Board of Direct Taxes has, through, this notification, effective from 1st April, 2012 has restricted the depreciation on machinery and plants running on wind energy installed after 31st March, 2012 to the general rate of 15%.

The complete details of the text of the notifications can be downloaded from the link: <http://law.incometaxindia.gov.in/DIT/Notifications.aspx>

II. CIRCULARS

1. Circular No. 1/2012, dated- 09-04-2012

In order to strengthen the administration mechanism for electronic generation of TDS certificates from TIN central system, the CBDT has, through this circular provided the following:

- TDS certificate in Form No.16A is to be issued by all deductors (including government deductors who deposit TDS through book entry) only through TIN central system.
- The deductor issuing the TDS certificate in Form-16A by downloading from TIN website is required to authenticate such TDS certificate by either using Digital Signature or manual signature.
- In case of a deductor, where the deduction has been made between 1-04-2011 to 31-03-2012, being other than company/bank or banking institution/a co-operative society engaged in carrying the business of banking and who doesn't issue the TDS certificate in Form 16A

by downloading from the TIN website shall authenticate such TDS certificate in Form 16A by manual signature only.

The Circular further provides that the Director General of Income-tax (Systems) be authorised to specify and administer the procedure, format and standards for issuance of TDS certificates in Form 16A in electronic form.

Further, it has been clarified that the TDS certificate issued in Form 16A shall stand valid for the purpose of Section 203 of the Income-tax Act only if, it is in compliance with the procedures stated in this circular.

The complete details of the text of the circular can be downloaded from the link:

<http://law.incometaxindia.gov.in/DIT/Circulars.aspx>

INDIRECT TAXES



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

A. SERVICE TAX

1. Association including registered cooperative societies providing club or association service in relation to specified project has been exempted: Club or association service provided by an association including registered cooperative societies in relation to specified project has been exempted from payment of service tax. The specified project means common facility set-up for treatment and recycling of effluents and solid waste with financial assistance from the central or state government. Earlier, this exemption was available only to association of dyeing units. [Notification No. 1/2012 ST dated 17-03-2012]

2. The rate of service tax is restored to the statutory rate of 12%: Notification No. 8/2009 ST dated 24-02-2009, which had exempted all the taxable services specified in sub-section 105 of Section 65 of the Finance Act from so much of service tax leviable thereon under Section 66 of the Finance Act, as is in excess of the rate of ten percent of the value of taxable services, has been rescinded w.e.f. 01-04-2012. [Notification No. 2/2012 ST dated 17-03-2012]

3. Amendment in Service Tax Rule, 1994

The major amendments are:

- (i) Time period for issuance of invoice/bill/challan has been increased from 14 days to 30 days. Further, for banks and financial institutions providing banking and other financial services, the time

period for issuance of invoice/bill/challan would be 45 days.

- (ii) Rule 6(4B) has been amended to allow unlimited amount of permissible adjustments subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification. [Notification No. 3/2012 ST dated 17-03-2012]

4. Amendment in Point of Taxation Rules, 2011

The major amendments are:

- (i) Clause (ba) has been inserted in rule 2 to define the term "change in effective rate of tax", which include a change in the portion of value on which tax is payable as per the provisions of the Finance Act, 1994 or rules made thereunder. Earlier this was in the form of an explanation to the Rule 4.
- (ii) Date of payment has been defined by inserting rule 2A to mean the earlier of the date of entry in the books of accounts or credited to the bank account of the person liable to pay tax. However, in the following cases, the date of payment would always be date of credit in bank:-
 - (a) In case of change in rate between such entry and payment
 - (b) In case the credit in bank is beyond four days from the date of change of rate
 - (c) Payment made by an instrument which is credited to a bank account
- (iii) Definition of continuous supply of service has been amended to capture the entire dimension of the concept. Small service providers [less than 50 lakh per year] being individuals/partnership firms could discharge the tax on receipt basis.
- (iv) A new residual rule inserted by way of best judgement to ascertain the point of taxation in cases where the same cannot be ascertained by the rules prescribed. [Notification No. 4/2012 ST dated 17-03-2012]

5. Exemption to small service provider on invoice basis:

Notification No. 06/2005-ST dated 01-03-2005 granting exemption to small service providers has been amended recognising that the first clearances up to ₹10 lakh will be in terms of invoices and not in terms of mere payments received. [Notification No. 5/2012 ST dated 17-03-2012]

6. Exemption of 60% from service tax on air fare:

Service tax on services to any passenger in relation to air transport of such passenger embarking in India for domestic journey or international journey has been exempted from so much of service tax leviable



thereon, under Section 66 of the Finance Act, as is in excess of the service tax calculated on a value which is equivalent to 40 percent of the value of taxable services provided that CENVAT credit of duty on inputs or capital goods, used for providing such taxable services has not been taken. Earlier notification in this regard for charging dual rate of service tax from passenger of economy class has been rescinded. [Notification No. 6/2012 ST dated 17-03-2012]

7. Exemption to transport of goods by the Government railways extended till June, 2012:

Service tax levy on transport of goods by the Government railways and transport of goods by rail otherwise than in containers has been further postponed by three months. Now the levy would be applicable from June, 2012 instead of April, 2012 which was proposed earlier. Consequently, exemption for transport of notified goods like defence military equipments, railways equipment/materials, postal mail bags by rail and abatement of 70% of the gross amount charged for transport of goods by the Government railways and transport of goods by rail otherwise than in containers would also be effective from June, 2012. [Notification No. 7-9/2012 - ST dated 17-03-2012]

8. Rate of optional service tax to be paid under works contract increased from 4% to 4.8%: Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 have been amended to increase the rate of service tax to be paid under optional composition scheme from

4% to 4.8% of the gross amount charged for the works contract. [Notification No. 10/2012 - ST dated 17.03.2012]

9. Amendment in Service Tax (Determination of Value) Rules, 2006:

The major amendments are:

- (i) Rule 2A has been substituted by a new rule 2A to determine the value of taxable services involved in the execution of a works contract.
- (ii) A new rule 2C has been inserted after rule 2B to determine the value of taxable service involved in supply of food and drinks in restaurant or as outdoor catering.
- (iii) Rule 3 has been amended to provide that 'prescribed manner' in rule 3 will be applicable only in the cases where valuation is not ascertainable.
- (iv) Rule 6 has been amended to include any amount realised as demurrage in the valuation and exclude 'accidental damage due to unforeseen action not relatable to the provision of service' from the valuation. [Notification No. 11/2012 - ST dated 17-03-2012]

10. Abatement from service tax on 34 services:

In addition to the 17 services listed as negative lists of services by Section 66 D, additional 34 services have been notified to be exempt from payment of service tax. This may be called as mega exemption notification. [Notification No. 12/2012 - ST dated 17-03-2012]

11. Partial exemption from payment of service tax on 11 services: The government has granted exemption to 11 services listed in the notification from so much of the service tax leviable thereon as is in excess of the service tax calculated on a value which is equivalent to a percentage specified in this notification. [Notification No. 13/2012 - ST dated 17-03-2012]

12. Exemption from payment of service tax to the extent of cess paid on import of technology: The government has granted exemption from payment of service tax for the taxable service involving import of technology, to the extent of amount of cess paid on the said import, subject to some condition specified in the notification. [Notification No. 14/2012 - ST dated 17-03-2012]

13. Reverse charge mechanism of service tax modified: The government has issued new reverse charge mechanism wherein 10 services have been

included and has also specified percentage of service tax payable by service provider and receiver. In the case of three notified services, both service provider and receiver would be liable to pay service tax. [Notification No. 15/2012 - ST dated 17-03-2012]

B. CENTRAL EXCISE

1. Tariff value in case of jewellery would be 30% of invoice value: Government has fixed the tariff value in respect of articles of jewellery (other than silver jewellery) at the rate of 30% of transaction value as declared in the invoice. [Notification No. 09/2012-Central Excise (N.T.) dated 17-03-2012]

2. Modification in the Form ER-1: CBEC has amended Form ER-1 by adding following two points in the Form ER-1:

- (i) after sl. no. 9, sl. no. "9A - Credit taken from inter-unit transfer of credit under rule 10A of CENVAT Credit Rule, 2004" has been inserted.
- (ii) after sl. no. 16, sl. no. "16A - Credit utilised towards inter-unit transfer of credit under Rule 10A of CENVAT Credit rules, 2004" has been inserted.

Form ER-1 is the form for filing monthly return for production and removal of Goods. [Notification No. 12/2012-Central Excise (N.T.) dated 17-03-2012]

3. Quarterly return in place of monthly return under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001: Rule 5 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 has been amended to provide filing of quarterly return by manufacturer in place of monthly return. [Notification No. 13/2012-Central Excise (N.T.) dated 17-03-2012]

4. Amendment in CENVAT Credit Rules, 2004: The major amendments are:

- (i) CENVAT Credit on motor vehicles has been liberalised. CENVAT credit on motor vehicles, other than those falling under tariff heading 8702, 8703, 8704, 8711 and their chassis, would be allowed. The credit of service tax paid on their hiring, insurance and repair will also be allowed.
- (ii) Rule 4(1) and 4(2) has been amended to allow a service provider to take credit of inputs or capital goods as soon as the goods are delivered to him, subject to specified conditions.
- (iii) A simplified scheme for refunds of unutilised credit on account of exports has been introduced by substituting old Rule 5 with a new one. The

correlation or nexus between exports and input services used in such exports would not be required under such substituted rule.

- (iv) Changes have been made in Rule 7 relating to distribution of credits of input services by an input service distributor (ISD). This is to ensure their scientific allocation to only such units where they have been put to use and proportionate to turnover.
- (v) Rule 10A has been inserted to permit transfer of unutilised credit of SAD lying in balance at the end of each quarter to another factory of the manufacturer. [Notification No. 18/2012-Central Excise (N.T.) dated 17-03-2012]

The complete text of the above-mentioned notifications and circulars can be downloaded from the following link: www.cbec.gov.in

FEMA



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

1. Opening of Diamond Dollar Accounts (DDAs) - Change in periodicity of the reporting

A.P. (DIR Series) Circular No. 92 dated 13th March, 2012

Presently, AD Category - I banks are required to submit a monthly report to the RBI, giving details of the name and address of the firm/company in whose name the DDA is opened, along with the date of opening/closing the DDA, by the 10th of the following month to which it relates.

With a view to further rationalising the reporting mechanism, it has been decided that AD Category - I banks should submit quarterly reports instead of monthly reports to the Chief General Manager-in-Charge, Foreign Exchange Department, in whose name the DDA is opened, along with the date of opening/closing the DDA with effect from the quarter ended March 2012, by the 10th of the month following the quarter to which it relates.

2. Investment in Indian Venture Capital Undertakings (IVCU) and/or domestic Venture Capital Funds (VCF) by SEBI registered Foreign Venture Capital Investors (FVCIs)

A.P. (DIR Series) Circular No.93 dated 19th March, 2012.

RBI has allowed FVCI to invest in the eligible securities (equity, equity linked instruments, debt, debt instruments, debentures of an IVCU or VCF,

units of schemes/funds set up by a VCF) by way of private arrangement/purchase from a third party subject to terms and conditions as stipulated in Schedule 6 of Notification No. FEMA 20/2000-RB dated 3rd May, 2000 as amended from time to time. It has also been clarified that SEBI registered FVCIs would also be allowed to invest in securities on a recognised stock exchange subject to the provisions of the SEBI (FVCI) Regulations, 2000, as amended from time to time, as well as the terms and conditions stipulated therein.

3. Prior intimation to the RBI for raising the aggregate FII/Non-Resident Indian (NRI) limits for investments under the Portfolio Investment Scheme – Clarification

A.P. (DIR Series) Circular No. 94 dated 19th March, 2012.

The RBI has clarified that the Indian company raising the aggregate FII investment limit of 24% to the sectoral cap/statutory limit, as applicable to the respective Indian company or raising the aggregate NRI investment limit of 10% to 24%, must necessarily intimate the same to the RBI, immediately, as hitherto, along with a Certificate from the Company Secretary stating that all the relevant provisions of the extant Foreign Exchange Management Act, 1999 regulations and the Foreign Direct Investment Policy, as amended from time to time, have been complied with.

The RBI monitors the ceilings on FII/NRI/PIO investments in Indian companies on a daily basis.



For effective monitoring of foreign investment ceiling limits, the RBI has fixed cut-off points that are two percentage points lower than the actual ceilings. Once the aggregate net purchases of equity shares of the company by FIIs/NRIs/PIOs reaches the cut-off point of 2 per cent below the overall limit, the RBI cautions all the designated bank branches not to purchase any more equity shares of the respective company on behalf of any FIIs/NRIs/PIOs without prior approval of the RBI. The link offices have to intimate the RBI about the total number and value of equity shares/convertible debentures of the company proposed to be bought on behalf of their FIIs/NRIs/PIOs clients. On receipt of such proposals, the RBI gives clearances on a first-come-first-served basis till such investments in companies reaches the respective limits (such as 10/24/30/40/49% limit or the sectoral caps/statutory ceilings), as applicable. On reaching the aggregate ceiling limit, the RBI advises all designated bank branches to stop purchases on behalf of their FIIs/NRIs/PIOs clients. The RBI also informs the general public about the 'caution' and the 'stop purchase' in these companies through a press release and an updated list regarding the same is placed on the RBI website.

4. Foreign Exchange Management (Deposit) Regulations, 2000 - Credit to Non Resident (External) Rupee (NRE) Account

A. P. (DIR Series) Circular No.95 dated 21st March, 2012.

An individual resident in India is allowed to borrow a sum not exceeding \$250,000/- or its equivalent from her/his close relatives outside India, subject to the conditions mentioned in Regulation 5(6) of Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000, as amended from time to time.

It has now been decided that AD Category-I banks may allow repayment of such loans to NRE/Foreign Currency Non-Resident (Bank) [FCNR(B)] account of the lender concerned subject to the condition that the loan to the resident individual was extended by way of inward remittance in foreign exchange through normal banking channels or by debit to the NRE/FCNR(B) account of the lender and the lender is eligible to open NRE/FCNR(B) account within meaning of the Foreign Exchange Management (Deposit) Regulations, 2000, as amended from time to time (Deposit Regulations). Such credit shall be treated as an eligible credit to the NRE/FCNR(B) account in terms

of Para 3(j) of Schedule 1 read with Para 5 of Schedule 2 of Deposit Regulations.

5. Rationalisation of Overseas Direct Investments by Indian Party

A.P. (DIR Series) Circular No. 96 dated 28th March, 2012.

In order to grant more flexibility to the Indian party, it has been decided to further liberalise various provisions/regulations of the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 ("ODI Regulations") as detailed under:

1. Creation of charge on immovable/movable property and other financial assets

Presently, creation of charge on the immovable/movable property and other financial assets (except shares of JV/WOS) of the Indian Party is not envisaged under the current ODI Regulations. It has now been decided that proposals from the Indian party for creation of charge in the form of pledge/mortgage/hypothecation on the immovable/movable property and other financial assets of the Indian Party and their group companies shall be considered by the RBI under the approval route within the overall limit fixed (presently 400%) for financial commitment subject to submission of a 'No Objection' by the Indian Party and their Group companies from their Indian lenders.

2. Reckoning bank guarantee issued on behalf of JV/WOS for computation of Financial Commitment

Presently, the bank guarantee issued on behalf of JV/WOS is not reckoned for the purpose of computing the financial commitment of the Indian Party to its JV/WOS overseas.

It has been decided that the bank guarantee issued by a resident bank on behalf of an overseas JV/WOS of the Indian party, which is backed by a counter guarantee/collateral by the Indian party, shall be reckoned for computation of the financial commitment of the Indian Party and reported accordingly.

3. Issuance of personal guarantee by the direct/indirect individual promoters of the Indian Party

Issuance of personal guarantee allowed under the General Permission shall also be extended to the indirect resident individual promoters of the Indian Party with same stipulations as in



the case of personal guarantee by the direct promoters.

4. Financial Commitment without equity contribution to JV/WOS

Keeping in view the business requirement of the Indian party, particularly the legal requirement of the host country, henceforth the proposals from the Indian party for undertaking financial commitment without equity contribution in JV/WOS shall be considered by the RBI under the approval route. AD banks may forward the proposals from their constituents after ensuring that the laws of the host country permit incorporation of a company without equity participation by the Indian party.

5. Submission of Annual Performance Report (APR)

Where the law of the host country does not mandatorily require auditing of the books of accounts of JV/WOS, the APR may be submitted by the Indian party based on the un-audited annual accounts of the JV/WOS provided:

- The Statutory Auditors of the Indian party certifies that 'The un-audited annual accounts of the JV/WOS reflect the true and fair picture of the affairs of the JV/WOS' and
- That the un-audited annual accounts of the JV/WOS has been adopted and ratified by the Board of the Indian party.

6. Compulsorily Convertible Preference Shares (CCPS)

Presently, contribution to the preference share capital (whether convertible or non-convertible) of the JV/WOS abroad by the Indian party is treated as loan to them. However, keeping in view the nature of the CCPS, it has been decided that CCPS shall be treated at par with equity shares and the Indian party is allowed to undertake financial commitment based on the exposure to JV by way of CCPS.

6. Liberalisation/Rationalisation of Overseas Investments by Resident Individuals

A. P. (DIR Series) Circular No.97 dated 28th March, 2012

Consequent to the recommendation of the Committee under the Chairmanship of Smt. K. J. Udeshi to Review the Facilities for Individuals under the Foreign Exchange Management Act, 1999, the RBI has granted general permission to resident individuals in respect of the following:

1. Acquiring qualification shares of an overseas company incorporated outside India for holding the post of a Director:

Presently, resident Individual is permitted to acquire foreign securities as qualification shares upto 1% of the paid-up capital of the company. Since the necessity of having certain qualification shares by an individual to be appointed as a Director of the company is governed by the law of the host country, RBI has removed the existing cap of 1% on the ceiling for resident individuals to acquire qualification shares for holding the post of a Director in the overseas company. Accordingly, henceforth, remittance shall be allowed from resident individuals for acquiring the qualification shares for holding the post of a Director in the overseas company to the extent prescribed as per the law of the host country where the company is located. The limit of remittance for acquiring such qualification shares shall be within the overall ceiling prescribed for the resident individuals under the LRS in force at the time of acquisition.

2. Acquiring shares of a foreign company towards professional services rendered or in lieu of Director's remuneration:

RBI has decided to grant General Permission to the resident individuals to acquire shares of a foreign entity in part/full consideration of professional services rendered to the foreign company or in lieu of Director's remuneration. The



limit of acquiring such shares in terms of value shall be within the overall ceiling prescribed for the resident individuals under the LRS in force at the time of acquisition.

3. Acquiring shares in a foreign company through ESOP Scheme:

Presently resident individual is permitted to purchase equity shares offered by a foreign company under its ESOP Schemes, if he is an employee, or, a Director of an Indian office or branch of a foreign company, or, of a subsidiary in India of a foreign company, or, an Indian company in which foreign equity holding, either direct or through a holding company/Special Purpose Vehicle (SPV), is not less than 51%.

It has now been decided that resident employees or Directors may be permitted to accept shares offered under an ESOP Scheme globally, on uniform basis, in a foreign company irrespective of the percentage of the direct or indirect equity stake in the Indian company subject to:

- (i) the shares under the ESOP Scheme are offered by the issuing company globally on a uniform basis, and
- (ii) an Annual Return is submitted by the Indian company to the RBI through the AD Category – I bank giving details of remittances/beneficiaries, etc.

7. Review of all-in-cost ceiling for External Commercial Borrowings (ECB) Policy

A. P. (DIR Series) Circular No. 99 dated 30th March, 2012

RBI had, vide A.P. (DIR Series) Circular No. 51 dated 23rd November, 2011 enhanced the all-in-cost ceiling for ECBs with average maturity of three and up to

five years to 6 months Libor + 350 bps, subject to review on 31st March, 2012. On a review, it has been decided to continue with the enhanced all-in-cost ceiling for a further period of 6 months in respect of ECBs as under:

Average maturity period	All-in-cost over six months LIBOR*
Three Years and up to five Years	350 bps
More than 5 Years	500 bps
* for the respective currency of borrowing or applicable benchmark	

The above all-in-cost ceiling is applicable up to 30th September, 2012 and subject to review thereafter.

8. Review of all-in-cost ceiling of Trade Credits for Imports into India

A.P. (DIR Series) Circular No. 100 dated 30th March, 2012.

RBI had, vide A. P. (DIR Series) Circular No. 44 dated 15th November, 2011 enhanced the all-in-cost ceiling for trade credits to sixmonths Libor + 350 bps, subject to review on 31st March, 2012. On a review, it has been decided to continue with the enhanced all-in-cost ceiling for trade credits for a further period of six months as under:

Maturity Period	All-in-cost over six months LIBOR*
Up to one Year	350 bps
More than one Year and up to three Years	

* for the respective currency of credit or applicable benchmark

The above all-in-cost ceiling is applicable up to 30th September, 2012 and subject to review thereafter.

9. Overseas Direct Investments – Liberalisation/Rationalisation

A. P. (DIR Series) Circular No.101 dated 2nd April, 2012

Presently, an Indian Party is required to obtain prior permission of the RBI to open, hold and maintain Foreign Currency Account (FCA) in a foreign country for the purpose of overseas direct investments in that country, in case the regulation of the host country requires that the investment in the country is to be made through a particular account to be opened with the commercial bank of the country.

To provide operational flexibility to the Indian party, the regulations pertaining to opening/holding maintaining the FCA by Indian party outside India is liberalised.

An Indian party will now be allowed to open, hold and maintain FCA abroad for the purpose of overseas direct investments subject to the following terms and conditions:

- (i) The Indian party is eligible for overseas direct investments in terms of Regulation 6 (Regulation 7, if applicable) of Notification No. FEMA 120/RB-2004 dated 7th July, 2004, as amended from time to time.
- (ii) The host country Regulations stipulate that the investments into the country is required to be routed through a designated account.
- (iii) FCA shall be opened, held and maintained as per the regulation of the host country.
- (iv) The remittances sent to the FCA by the Indian party should be utilised only for making overseas direct investment into the JV/WOS abroad.
- (v) Any amount received in the account by way of dividend and/or other entitlements from the subsidiary shall be repatriated to India within 30 days from the date of credit.
- (vi) The Indian party should submit the details of debits and credits in the FCA on yearly basis to the designated AD bank with a certificate from the Statutory Auditors of the Indian party certifying that the FCA was maintained as per the host country laws and the extant FEMA regulations/provisions as applicable.
- (vii) The FCA so opened shall be closed immediately or within 30 days from the date of disinvestment from JV/WOS or cessation thereof.

10. Use of International Debit Cards/Store Value Cards/Charge Cards/Smart Cards by Resident Indians while on a visit outside India

A. P. (DIR Series) Circular No.102 dated 2nd April, 2012

In terms of A. P. (DIR Series) Circular No. 46 dated 14th June, 2005, use of the above referred cards is limited to permissible current account transactions and subject to the prescribed limits under the Foreign Exchange Management (Current Account Transactions) Rules, 2000, as amended from time to time.

As per the practice followed by issuers, resident Indians who purchase their travel cards, are permitted refund of the unutilised foreign exchange balance only after 10 days from the date of last transaction and accordingly, this condition is stated in the "user



guide". Since these cards are expected to act as substitutes for cash/Travellers Cheques, the facilities available to the user will have to be similar.

Accordingly, all such Authorised Persons are required to redeem the unutilised balance outstanding in the cards immediately upon request by the resident Indians to whom the cards are issued subject to retention of:-

- a) The amounts that are authorised and remain unclaimed/not settled by the acquirers as of the date of redemption till the completion of the respective settlement cycle;
- b) A small balance not exceeding \$ 100, for meeting any pipeline transactions till the completion of the respective settlement cycle; and
- c) Transaction fees/service tax payable in India in Rupees.

For the amounts that are authorised but unclaimed/not settled by the acquirer, the issuer of such cards can hold such amounts until such transactions are processed/settled by the acquirers within the prescribed settlement timeframe.

11. Modification in manner and frequency of statement required to be submitted for data on import of Gold

A. P. (DIR Series) Circular No.103 dated 3rd April, 2012

Hitherto AD Category – I banks are required to submit to RBI a monthly statement regarding the

number of transactions and value in USD million and Rupees in crores of gold imported by (i) Export Oriented Units (EOUs), (ii) Units in SEZ/EPZ, and (iii) Nominated Agencies/Banks. With a view to further rationalise the entire reporting system on import of gold, henceforth A.D. Category-I banks are required to submit the following statements to RBI:

- (i) Statement on half yearly basis (end March/end September) showing the quantity and value of gold imported by the nominated banks/agencies/EOUs/SEs in Gem & Jewellery sector, mode of payment-wise, as per the prescribed format;
- (ii) Statement on monthly basis showing the quantity and value of gold imports by the nominated agencies (other than the nominated banks)/EOUs/SEs in Gem & Jewellery sector during the month under report as well as the cumulative position as at the end of the said month beginning from the 1st month of the Financial Year, as per the prescribed format.

Both the statements shall be submitted, even if there is 'Nil' position so as to reach RBI by the 10th of the following month/half year to which it relates. The statements may also be submitted by e-mail at tradedivisionimport@rbi.org.in.

For the format as referred to above, please refer the circular available on RBI website at:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7108&Mode=0>

12. Permission to AD Category II for additional activity and opening of Nostro account

A. P. (DIR Series) Circular No. 104 dated 4th April, 2012

At present, only AD Category-I banks are permitted to issue forex pre-paid cards to residents travelling on private/business visit abroad. RBI has, now decided to permit AD Category-II also to issue forex pre-paid cards to residents travelling on private/business visits abroad, subject to adherence to KYC/AML/CFT requirements. However, the settlement in respect of forex pre-paid cards may be effected through AD Category-I banks.

To ensure greater flexibility in sending remittances, it has also been decided to allow AD Category-II to open Nostro accounts subject to specified terms and conditions.

For detail terms and conditions, please refer the circular available on RBI website at:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7112&Mode=0>

13. Consolidated Foreign Direct Investment (FDI) Policy – Circular 1 of 2012 effective from 10th April, 2012

Circular 1 of 2012 and Press Release dated 10th April, 2012

The Department of Industrial Policy and Promotion (DIPP) has, on 10th April, 2012 issued fifth edition of Consolidated FDI Policy i.e. Circular 1 of 2012 which is effective from 10th April, 2012. This circular subsumes and supersedes all Press Notes/Press Releases/Clarifications/Circulars issued by DIPP, which were in force as on 9th April, 2012, and reflects the FDI Policy as on 10th April, 2012.

Press release further states that in view of the fact that Government has undertaken substantial rationalisation/liberalisation of the FDI policy, it is felt that the need for frequent amendments to the Circular does not exist any longer. Further, any changes made in the FDI policy are notified through Press Notes issued during the year. It has, therefore, been decided that the Consolidated Circular on FDI Policy, which was, until now, being released on a six-monthly basis, may, henceforth, be issued after one year and hence the next version of the Consolidated Circular on FDI Policy, would be released on 29th March, 2013.

The Press Release and the Circular are available at DIPP website at:

http://dipp.nic.in/English/acts_rules/Press_Release/pr10042012.pdf

http://dipp.nic.in/English/Policies/FDI_Circular_01_2012.pdf

CORPORATE LAWS



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

MCA (www.mca.gov.in)

1. Indian Government Accounting Standards (IGAS)

The MCA has issued Notification No. 268(E) dtd. 13-02-2012 notifying the Indian Government Accounting Standards (IGAS) in terms of the powers to the government conferred under clause (2) of article 293 of the Constitution to make loans to the States, subject to such conditions as may be laid down by or under any law made by Parliament, any sums required for the purpose of making such loans being chargeable to the Consolidated Fund of India. The objective of the Standard is to lay down the norms for recognition, measurement, valuation and

reporting in respect of loans and advances made by the union and the state governments in their respective financial statements to ensure complete, accurate, and uniform accounting practices, and to ensure adequate disclosure on loans and advances made by the governments consistent with best international practices. It is provided that this standard applies to loans and advances given by the government for incorporation and presentation in the financial statements of the government. The standard inter alia covers and includes definitions of various terms, manner and method of Recognition, measurement and valuation and disclosure of the loans and advances as above. It is provided that the Indian government accounting standard would become effective for the financial statements covering periods beginning the 1st April of the year after the notification of the standard by the government. In the above notification, various formats are provided like the ones given below for disclosures in the financial statements of the union government and the state governments respectively:

- Statement of loans and advances made by the union/state government further sub-divided into several sections as under :
 - a. *Section: 1 Summary of loans and advances: loanee group-wise*
 - b. *Section: 2 Summary of loans and advances: sector-wise (in lakhs of rupees)*
 - c. *Section: 3 Summary of repayments in arrears from state or union territory governments and other loanee entities*





- Detailed statement of loans and advances made by the union/state government further sub-divided into several sections as under :
 - a. *Section: 1 Major and minor head-wise details of loans and advances*
 - b. *Section: 2 Repayments in arrears from state or union territory governments*
 - c. *Section: 3 Repayments in arrears from other loanee entities or institutions*
- Additional disclosures relating to *fresh loans and advances made during the year* and disclosures indicating extraordinary transactions relating to loans and advances as under :
 - a. Cases of a loan having been sanctioned as 'loan in perpetuity'
 - b. Loans been granted by the government though the terms and conditions are yet to be settled
 - c. Fresh loans and advances made during the year to the loanee entities from whom repayments of earlier loans are in arrears

Importantly, it is provided that the financial statements shall not be described as complying with this standard unless they comply with all the requirements contained therein. This standard shall apply only to government accounts being maintained on a cash basis. One may refer to the above citation for further details.

SEBI (www.sebi.gov.in)

2. Review of regulatory compliance and periodic reporting

The SEBI has issued Circular No. CIR/MIRSD/4/2012 dtd. 29-03-2012 in order to strengthen the compliance mechanism and role of the Boards of Bankers to an Issue (BTIs), it has

been decided to review the norms and format for periodic reporting. The revised format as given in the annexure to the above Circular includes the status of regulatory compliance and investor grievances redressal. The Board of the BTI shall, henceforth, review the report and record its observations on (i) the deficiencies and non-compliances, and (ii) corrective measures initiated to avoid such instances in future. Accordingly, in supersession of the earlier circulars on the subject, with effect from half year ending March 2012, the Compliance Officer of the BTI shall send the report in the revised format in excel format to SEBI at bti@sebi.gov.in on half yearly basis within three months of the expiry of the half year. Also, according to and Circular, BTIs were required to report the changes in their status or constitution. The same information has now been incorporated in the revised format too. One may refer to the above citation for further details.

3. Exemptions from 100% promoter(s) holding in demat form

The SEBI has issued Circular No. SEBI/Cir/ISD/1/2012 dtd. 30-03-2012 and has stated that while reviewing compliance, it was noticed that promoters of a large number of companies have complied with the requirement to demat their holdings ; however, SEBI has also received representations from various companies bringing out issues relating to dematerialisation of holdings of promoters and have sought exemption from compliance. Hence, SEBI has decided that following exemptions shall be taken into consideration while arriving at compliance with 100% promoter(s) holding in demat form. Such exemption shall be applicable in cases where,

(a) promoter(s) have sold their shares in physical mode and such shares have not been lodged for transfer with the company; or, (b) matters concerning part/entire shareholding of promoters/promoter group are sub judice before any Court/Tribunal; or, (c) shares cannot be converted into demat form due to death of any promoter(s); or, (d) shares allotted to promoter(s) that await final approval for listing from stock exchange and such pendency is less than 30 days or shares that upon receipt of final listing approval from stock exchange are pending conversion to demat and such pendency is less than 15 days. For availing such exemption, companies shall approach Stock Exchange(s) along with necessary documentary evidence. One may refer to the above citation for further details.

4. Processing of investor complaints against listed companies in SEBI Complaints Redress System (SCORES)

The SEBI has issued Circular No. CIR/MRD/DP/7/2012 dtd. 13-04-2012 stating that it has commenced processing of investor complaints in a centralised web-based complaints redress system 'SCORES'. As earlier clarified, all listed companies are required to obtain authentication on SCORES. Now, with a view to facilitate the online movement of complaints, it has been decided to mandate that companies desirous of getting their equity shares listed on the stock exchanges should also obtain authentication on SCORES, before listing approval is granted by the stock exchange. For this purpose stock exchanges are advised to ensure compliance of this requirement before listing approval is granted. One may refer to the above citation for further details.

5. Uploading of the existing clients' KYC details in the KYC Registration Agency (KRA) system by the intermediaries

The SEBI has issued Circular No. MIRSD/Cir-5/2012 dtd. 13-04-2012 reiterating that it had by an earlier dispensation simplified the account opening process for investors and made it uniform across intermediaries in the securities markets and also that to avoid duplication of KYC process with every intermediary, KRA system was developed for centralisation of the KYC records in the securities markets. The system was made applicable for new clients who opened accounts with the intermediaries from 1st January, 2012. Now, for convenience of the clients registered prior to 1st January, 2012 (hereinafter referred to as 'existing clients') and to expand the centralised database of the KYC records of the entire securities market, it is decided to upload the KYC details of the existing clients of the intermediaries in the current KRA system, in a phased manner. SEBI has now issued guidelines for uploading the KYC data of the existing clients in consultation with the major Stock Exchanges, Depositories, KRAs, AMFI Brokers' Associations and market participants.

It is provided that for existing clients who trade/invest/deal with the intermediary anytime during the time period specified in the table given below starting from 16th April, 2012, the intermediaries shall forthwith upload their KYC details in the KRA system.

They shall also send original KYC documents to the KRA on continuous basis and complete the process within the prescribed time limits. Considering the representations made by the intermediaries, they may send print outs of scanned documents to the KRAs instead of original documents in accordance with the schedule, certifying that they have retained the originals. However, they must complete the process of sending the original documents to the KRA by 31st March, 2013. The KRAs shall update their systems and send letters to the clients for the receipt of the initial/updated KYC documents from intermediary in accordance with the time schedule. The intermediaries shall maintain electronic records of the KYCs of their clients and keeping physical records would not be necessary.

Schedule for implementation (For the year 2012-13):

Existing clients of intermediary who trade/invest/deal with it during the below mentioned time period	Timeline for intermediary to upload existing client's KYC data on KRA system & send KYC documents to KRA	Timeline for KRA to update the record in their system & send acknowledgement to the existing client
16 th April, 2012 – 15 th June, 2012	31 st August, 2012	30 th September, 2012
16 th June, 2012 – 31 st August, 2012	31 st October, 2012	30 th November, 2012
1 st September, 2012 – 31 st October, 2012	30 th November, 2012	31 st December, 2012
1 st November, 2012 – 31 st December, 2012	31 st January, 2013	28 th February, 2013
1 st January, 2013 – 28 th February, 2013	15 th March, 2013	31 st March, 2013

The KYC data of the existing clients, who trade/invest or deal after the above mentioned schedule, shall be uploaded on a continuous basis. It is clarified that timelines mentioned in the schedule are the minimum requirements and the KYC data of the remaining existing clients can also be uploaded on the KRA system. One may refer to the above citation



for further details and also for more details on the guidelines.

6. Guidelines for business continuity plan (BCP) and disaster recovery (DR)

www.sebi.gov.in

The SEBI has issued Circular No. CIR/MRD/DMS/12/2012 dtd. 13-04-2012 stating that in the event of disaster, the disruption in trading system of stock exchanges/depository system may not only affect the market integrity but also the confidence of investors. In order to address this issue, the current BCP - DR setups of some of the stock exchanges having nation-wide terminals and depositories were examined by the Technical Advisory Committee of SEBI (TAC). Based on the recommendations of TAC, the broad guidelines for BCP - DR are given below:

- The stock exchanges and depositories should have in place BCP and DR Site (DRS) so as to maintain data and transaction integrity.
- Apart from DRS, stock exchanges should also have a Near Site (NS) to ensure zero data loss.
- The DRS should be set up sufficiently away, i.e. in a different seismic zone, from Primary Data Centre (PDC) to ensure that both DRS and PDC are not affected by the same disasters.
- The manpower deployed at DRS/NS should have similar expertise as available at PDC in terms of knowledge/awareness of various technological and procedural systems and processes relating to all operations such that DRS/NS can function at short notice, independently.

It is provided that these guidelines will be applicable to depositories, stock exchanges having nationwide terminals and stock exchanges having trading on their own platforms. Further stock exchanges, currently having no trading on their own platforms, will be required to comply with these guidelines before recommencement of trading on their own platforms. One may refer to the above citation for further details. ■

Computation of Depreciation on Extra Shift Workings

The following is the opinion given by the Expert Advisory Committee of the Institute in response to a query sent by a member. This is being published for the information of readers.

A. Facts of the Case

1. A company is a joint venture company of three public sector enterprises and is engaged in transportation of petroleum products through underground pipeline. The company was incorporated as limited company on 31st July, 1998.
2. The company is following depreciation policy of its fixed assets on Straight Line Method (SLM) at applicable rates as prescribed in Schedule XIV to the Companies Act, 1956. The company is charging average rate of depreciation on plant & machinery and main pipeline considering single shift @ 4.75%, double shift @ 7.42% and triple shift @10.34% as per the rates specified in Schedule XIV to the Companies Act, 1956. Zero depreciation was considered for shutdown period as no rate has been specified for shutdown period in Schedule XIV to the Companies Act, 1956. The methodology has been followed consistently since commissioning from the financial year 2003-04 onwards.
3. During the supplementary audit conducted by the Comptroller and Auditor General of India (C&AG) for the financial year 2009-10, the methodology of calculation of extra shift depreciation on plant & machinery and main pipeline by the company, viz., ₹42.45 crore was commented upon as follows:
4. Audit Committee and Board of the company advised that the present depreciation policy be reviewed keeping in view the comments made by C & AG.
5. The company had reviewed the calculation of extra shift depreciation based on the comments of C&AG and has also referred to an earlier opinion of the Expert Advisory Committee of the Institute of Chartered Accountants of India (ICAI) on the similar subject (published as Query No. 1.26 of Volume XIII of the Compendium of Opinions). As per the querist, the opinion on Clause 6 of Notes to the Schedule XIV to the Companies Act, 1956 provides that the average depreciation on shift working of plant & machinery is to be calculated on normal working days in a year. While calculating number of normal working days during the year, the idle days on account of maintenance etc. for which the factory/ concern have worked should be included even though the individual machine/ labourers in the factory/ concern might not have actually worked during these days.
6. Based on above, the average rate of depreciation for the financial year 2009-10 was worked out as follows as against the average rate of 8.547% as advised by the C&AG and average rate of 7.381% as considered by the company:

Shift	No. of Days	Average No. of days	Rate of Depreciation as per SLM	Average Rate of Depreciation
Shut Down	36	36/365	4.75	0.468.
Single Shift	77	77 / 365	4.75	1.002
Double Shift	95	95/ 365	7.42	1.931
Triple Shift	157	157/365	10.34	4.448
Total	365			7.849

"The above is understated by ₹6 crore due to the following:

- (i) According to para 6 of the Schedule XIV of the Companies Act, 1956, the extra shift depreciation (double/triple shift) was to be computed in the proportion for which the Company worked for double shift or triple shift bears to the actual number of working days or 240 days whichever is higher. However, the Company had worked out depreciation based on 365 working days instead of actual number of 329 working days during the year 2009-10 thus, the Company applied the average rate of depreciation of 7.381 percent against required 8.547 percent during the year 2009-10.
- (ii) The Company while computing the average rate of Depreciation as above has also not considered any depreciation for 36 days on which the plant remained closed.

The above have resulted in understatement of depreciation for the year and overstatement of net block of fixed assets by ₹6 crore."

7. The calculation was forwarded to C&AG for their concurrence to enable us to adopt the above depreciation policy on main pipeline and plant & machinery from the financial year 2010-11. However, C&AG advised that the earlier opinion of the Expert Advisory Committee of the ICAI forwarded by the company relates to iron and steel industry. As there are different plant units in the integrated steel plants referred to in the opinion, the comparison may not be relevant and the company should follow the depreciation policy as per note no. 6 (b) to Schedule XIV to the Companies Act, 1956. The company may

seek the opinion of the Expert Advisory Committee of the ICAI in this specific case.

8. In view of the above, the querist has sought the opinion of the EAC on calculation of average depreciation on plant & machinery and main pipeline as per the two methods illustrated as follows:

Method - I

Shift	No. of Days	Average No. of days	Rate of Depreciation as per SLM	Average Rate of Depreciation (%)
Shut Down	36	36 / 365	4.75	0.468
Single Shift	77	77/365	4.75	1.002
Double Shift	95	95/365	7.42	1.931
Triple Shift	157	157/365	10.34	4.448
Total	365			7.849

Method - II

Shift	No. of Days	Average No. of days	Rate of Depreciation as per SLM	Average rate of Depreciation (%)
Shut Down	36	36/365	4.75	0.468
Single Shift	77	77/365	4.75	1.002
Double Shift	95	95/329	7.42	2.143
Triple Shift	157	157/329	10.34	4.934
Total	365			8.547

B. Query

9. The querist has sought the opinion of the Expert Advisory Committee on the adoption of the method of depreciation on extra shift working from among the two methods to comply with the minimum depreciation as per Schedule XIV to the Companies Act, 1956.

C. Points considered by the Committee

10. The Committee notes that the basic issue raised in the query relates to extra shift depreciation on plant and machinery and main pipeline for various shifts worked. The Committee has, therefore, considered only this issue and has not examined any other issue arising from the Facts of the Case.
11. The Committee notes the definition of the term 'Depreciation' as provided in paragraph 3.1 of Accounting Standard (AS) 6, 'Depreciation Accounting',

notified under the Companies (Accounting Standards) Rules, 2006, which provides as follows:

"3.1 Depreciation is a measure of the wearing out, consumption or other loss of value of a depreciable asset arising from use, effluxion of time or obsolescence through technology and market changes. Depreciation is allocated so as to charge a fair proportion of the depreciable amount in each accounting period during the expected useful life of the asset. Depreciation includes amortisation of assets whose useful life is predetermined."

The Committee notes from the above that depreciation arises due to several factors including effluxion of time and wear and tear due to use. Accordingly, depreciation occurs with the passage of time, even if concerned asset is not in use. The Committee notes that Schedule XIV to the Companies Act, 1956 specifies separate rates of depreciation in respect of single shift, double shift and triple shift.

12. As regards depreciation to be charged in respect of extra shift working, the Committee further notes that Schedule XIV to the Companies Act, 1956, lays down higher rates of depreciation for certain items of plant and machinery in case these are worked for extra shifts. The Committee also notes clauses 4 and 6 of Notes to Schedule XIV to the Companies Act, 1956, which provide as follows:

"4. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a pro rata basis from the date of such addition or, as the case may be, upto the date on which such asset has been sold, discarded, demolished or destroyed."

"6. The calculations of the extra depreciation for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the normal number of working days during the year. For this purpose, the normal number of working days during the year shall be deemed to be –

- in the case of a seasonal factory or concern, the number of days on which the factory or concern actually worked during the year or 180 days, whichever is greater;*
- in any other case, the number of days on which the factory or concern actually worked during the year or 240 days, whichever is greater."*(Emphasis supplied by the Committee)

The Committee is of the view that physical wear and tear of a depreciable asset, which is operated for more than a shift, is generally higher than the one, which is used on a single shift basis. Accordingly, Schedule XIV to the Companies Act, 1956, prescribes higher rates of depreciation for the assets operating for extra shifts. Further, it prescribes methodology to compute 'extra depreciation' for the assets operating for extra shifts. The Committee is further of the view that the rates of depreciation specified in respect of single shift have been determined based on two factors – effluxion of time and wear and tear. However, in case of double shift and triple shift, the factor of effluxion of time remains constant. Therefore, rates for extra shifts include only the incremental/extra depreciation due to extra wear and tear. Thus, the Committee is of the view that single shift depreciation rate should be applied for the time period when the asset is held by the company irrespective of the fact whether such asset is in use or not. As regards 'extra depreciation' to be computed for items of plant and machinery operating for extra shifts, the incremental depreciation should be determined by applying the differential rate of depreciation, i.e., depreciation rate as specified for the relevant shift less the rate specified for the single shift in the proportion which the company worked for the double/triple shift bears to the number the number of days on which the factory or 'concern' actually worked during the year. The formula for arriving at the 'depreciation' shall be as under:

$$\begin{aligned} & \text{Depreciation for single shift working} \\ & + \\ & (\text{Depreciation for double/triple shift working} - \\ & \text{Depreciation for single shift working}) \times (\text{Number of} \\ & \text{days worked double or triple shift} / \text{Normal working} \\ & \text{days during the year}) \end{aligned}$$

13. The Committee further notes that clause 6 of Schedule XIV to the Companies Act, 1956 requires that, for 'extra depreciation', normal number of working days would be the number of days on which the factory or 'concern' actually worked during the year. Thus, it is not the working days of individual plant and machinery item, which should be considered for the purpose of computing extra shift depreciation rather it is the working days of the factory or 'concern'. In this regard, it may be mentioned that various units/departments/mills/ factories should be taken as separate concerns. Accordingly, the Committee is of the view that 'normal number of working days' should be calculated after deducting shut down period of the factory or 'concern'. In view the above, for the convenience of the querist, the Committee has also provided the calculations of depreciation for the concerned plant and machinery in the extant case as Annexure I.

D. Opinion

14. On the basis of the above, the Committee is of the opinion that the company should calculate depreciation as per principles laid down in paragraphs 12 and 13 above. For calculations, refer Annexure I.

Annexure I

It may be noted that the extant case indicates two situations – first, when the factory/concern was actually working for the whole year, whereas, the individual plant and machinery was shut down for a period of 36 days and the other, when both the factory/concern as well as plant and machinery were shut down for the period of 36 days.

Situation I: When the factory/concern was actually working for 365 days, whereas, the individual plant and machinery was shut down for a period of 36 days.

$$\begin{aligned} \text{Depreciation for the} & 4.75 + (7.42 - 4.75) \times 95/365 + \\ \text{concerned plant and} & = (10.34 - 4.75) \times 157/365 \\ \text{machinery (\%)} & = 7.849\% \end{aligned}$$

Situation II: When both the factory/concern as well as plant and machinery were shut down for a period of 36 days.

$$\begin{aligned} \text{Depreciation for the} & 4.75 + (7.42 - 4.75) \times 95/329 + \\ \text{concerned plant and} & = (10.34 - 4.75) \times 157/329 \\ \text{machinery (\%)} & = 8.189\% \end{aligned}$$

- | | |
|---|---|
| 1 | The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute |
| 2 | The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on 10.10.2011. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee. |
| 3 | The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in twenty nine volumes. A CD of Compendium of Opinions containing twenty nine volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur |
| 4 | Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'. |
| 5 | Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.org . |

Post-Budget Memorandum - 2012

Executive Summary: Direct Taxes

(For detailed suggestions please visit www.icaai.org)

I SUGGESTIONS ON PROPOSALS CONTAINED IN THE FINANCE BILL, 2012

1. Clause 2 - Rates of Taxes

The basic exemption limit of resident women below the age of 60 years may be increased to ₹2,25,000.

The basic exemption limit of resident individuals of the age of 60 years or more at any time during the previous year may be increased to ₹3,00,000.

2. Clause 4- Amendment in Section 9(1)

(a) (i) It is suggested that Explanations 4 and 5 to section 9(1)(i) and other consequential amendments in sections 2(14) and 2(47) may be given effect to prospectively, i.e. with effect from A.Y. 2013-14, to avoid undue hardship to tax payers consequent to which penalty proceedings may be attracted for –

(1) non-payment of tax by the person whose income is deemed to accrue or arise in India and

(2) non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.

(ii) Further, it is suggested that the words “derives directly or indirectly, its value substantially from the assets located in India” may be subject to different interpretations. The scope of “indirectly” may be defined to clarify the true intent of law. Further, the term “substantially” also need to be defined by specifying exact parameters like a specific percentage, as in section 2(32) of the Income-tax Act, 1961 or clause 314(185) of the Direct Taxes Code Bill, 2010 to avoid scope for any disagreements / litigation.

(iii) Furthermore, the liability to tax in India should be restricted to the extent of value derived from the assets located in India and not the value of the entire transaction.

(iv) The definition of royalty under section 194J may be delinked from the definition of royalty in section 9(1)(vi). There should be an independent definition of royalty under section 194J, since otherwise purchase and sale of software may fall within the definition of royalty, whereas the intent of proposed royalty definition is to cover exploitation of intangible assets.

(b) It is suggested that Explanations 4, 5 and 6 should be inserted with effect from 1.4.2013 and made applicable from A.Y.2013-14 onwards to avoid

undue hardship to tax payers consequent to which penalty proceedings may be attracted for –

(i) non- payment of tax by the person whose income is deemed to accrue or arise in India and

(ii) non-deduction of tax at source and disallowance of expenditure on account of non-deduction of tax at source in the hands of the person on whom the obligation to deduct tax at source is vested on account of the retrospective amendment.

(c) It is suggested that the proposed Explanation 6 to section 9(1)(vi) may be suitably re worded.

3. Clause 5-Amendment in section 10(10D)

Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications may be made accordingly.

4. Clause 3(iii), Clause 15 and Clause 16 - Amendment in sections 2(19AA)(iv), 47(vii) and 49

a) Since, the amendments are clarificatory in nature and are proposed to remove the conditions which were impossible to fulfill, it is suggested to make them applicable with retrospective effect i.e. from the date when the above conditions were inserted in the said sections i.e. for Section 47 (vii) with effect from 1 April 1967 and for Section 2(19AA) with effect from 1 April 2000

b) Section 2(1B)(i) may be amended appropriately to provide that all the property of the amalgamating company or companies (other than assets like shares, debentures etc. held by any amalgamating company or companies in another amalgamating company or companies) before amalgamation becomes the property of the amalgamated company by virtue of amalgamation. Corresponding amendment may also be made in Clause (ii) of section 2(1B).

5. Clause 11 and Clause 77 - Amendment in Section 40 and Section 201.

The provisions of section 40(a)(ia) and section 201(1) may be amended retrospectively with effect from 1.4.2005 in order to clarify the real intent of law and to remove hardship, thereby reducing further litigations.

The later part of the proposed second proviso may be suitably amended to provide that it shall be deemed that the assessee has deducted tax in the relevant previous year and paid the tax on such sum on or before the due date of furnishing the return of income.

6. Clauses 13 and 14 – Amendment in sections 44AB and 44AD – Consequential amendment required in section 47(xiiib)

The limit of total sales, turnover or gross receipts in the business of a company for availing the benefit under section 47(xiiib) on conversion to an LLP may be suitably increased to ₹1 crore, in line with the limits in section 44AB and section 44AD. In fact, with a view to popularize the concept of LLP and also in view of the fact that such provision should apply to all cases of revenue neutral conversions from one form of entity to another form of entity, there should be no threshold on turnover, to avail the benefit under section 47(xiiib).

7. Clause 14 – Amendment in section 44AD

The provisions of sub-section (6) of section 44AD should be made effective from A.Y.2013-14, since the persons earning income in the nature of commission or brokerage and persons carrying on agency business who had opted for presumptive taxation for A.Y.2011-12 and A.Y.2012-13 in the absence of specific exclusion in the definition of “eligible assessee” or “eligible business” would face genuine hardship on account of such retrospective amendment.

Further, instead of inserting sub-section (6), the definition of “eligible business” be amended to exclude professions, agency business and business in respect of which the earnings are in the form of commission or brokerage.

8. Clause 19 – Insertion of new section 54GB

- a) The benefit under section 54GB may be extended to long-term capital gains on sale of any capital asset which is invested in the equity of a new start-up SME company for purchase of new plant and machinery within the prescribed time.
- b) Investment in existing SME company may also be considered for the purpose of such exemption.
- c) Further, investment in LLP which satisfies the condition of SME enterprises may also be permitted, subject to conditions as may be necessary. Restrictive clauses may be inserted in line with the appropriate clauses of the proviso to section 47(xiiib).
- d) The restricted time limit for acquiring new plant and machinery will create difficulties and, therefore, it is suggested that the SME company may be allowed to make such investment in new plant and machinery within a period of 2 years from the date on which the assessee makes the investment in its equity shares.
- e) The period of 5 years for retaining the equity shares may be reduced to 3 years, in line with the requirement under section 54EC. Suitable exceptions for takeover/ merger/amalgamations etc. may also be provided.
- f) Similarly, lock-in-period for plant and machinery acquired by the SME company may be reduced from 5 years to 3 years.
- g) It may be clarified that the net consideration after deduction of tax at source@1% may be required

to be invested, so that there is no cash flow mismatch.

- h) *In case of a Sale of joint property, the condition regarding holding of more than 50% of the share capital of the SME company by the assessee should be deemed to have been fulfilled if the co-owners of the said property hold more than 50% of the Share Capital of the SME company.*

9. Clauses 21 and Clause 22 - Amendment in Section 56 and Section 68

- (i) Clause (viiib) in section 56(2) may be deleted. Alternatively, section 68 may be amended to exclude share premium. In such a case, the definition of income under section 2(24) should be amended to include any sum of money referred to in section 56(2)(viiib).
- (ii) A proviso similar to the proviso to section 56(2)(viiia) should be incorporated in section 56(2)(viiib) as well. Further, the proviso should also cover transactions not regarded as transfer under sections 47(vi) and 47(vib).
- (iii) The Valuation rules should be similar lines to rules prescribed by the Reserve Bank of India on the basis of Discounted Cash Flow method to permit capturing of future potentials in the valuation.
- (iv) Valuation Report from an ‘Accountant’ may be admissible so as to justify higher value of a share and the Share Premium on the basis of value of intangible assets, Land and Building etc. Higher valuation of Land and Building may also be supported by an Approved Valuer under the Wealth Tax Act.

10. Clause 21 – Amendment of section 56(2)(vii)

- (i) The provisions of clubbing of income as contained in Chapter V of the Income-tax Act, 1961 should not be attracted once the sum of money or value of assets are subject to tax under section 56(2) in the hands of the recipient.
- (ii) Lineal descendents of brothers and sisters of self and spouse may also be included in the definition of “relative”.

11. Clause 22 – Amendment in section 68

Since foreign investments are regulated by Reserve Bank of India through FEMA, it is suggested that the proposed clause be amended be made applicable for resident investors only like section 56 (viiib).

12. Clause 25 – Amendment of section 80D

It is suggested that section 80D be appropriately amended to provide for a deduction of ₹5,000 for preventive health check-up of any member of the family, which is in addition to the existing limits under that section for medical insurance premium paid.

13. Clauses 27 and 28 – Amendment in sections 80G and 80GGA

It may be clarified as to whether the limit of ₹10,000

is applicable in respect of each individual contribution or aggregate contributions to an institution or to all institutions covered under section 80G(2) and section 80GGA(2), respectively.

Further, since deductions under section 80GGB and 80GGC are also in respect of donations, the above limit should be made applicable in respect of such contributions to political parties and electoral trusts as well, to dissuade cash payments.

14. Clause 30 - Amendment to Section 80TTA

Interest on time deposits may also be included within the scope of section 80TTA for salaried taxpayers.

15. Clause 31 - Amendments to Sections 90 and 90A

As the proposed amendment is not an established international norm of treaty interpretation and also is not in line with the principles of Vienna Convention of Law on Treaties, it is suggested that the amendments in aforesaid sections be deleted.

16. Clause 34 - Amendment to Section 92B

- (i) It is suggested to substitute the definition of "international transaction" prospectively w.e.f. 1.4.2013 so that persons who have entered into such transactions in the past, which are now affected due to the proposed changes, do not face undue hardship on account of penal consequences which are attracted due to non-maintenance of prescribed books of account and non-furnishing of report of an accountant and any other associated requirement.
- (ii) Transfer Pricing provisions should not be made applicable to marketing intangibles, inter corporate guarantees etc unless a payment is made as it would increase litigation.
- (iii) Due to lack of comparables in case of intangibles, appropriate safe harbor provisions may be introduced. Though the enabling provisions for making rules for safe harbour have been conferred on the Central Board of Direct taxes three years back vide Finance (No.2) Act, 2009, the rules in this regard are yet to be notified. It is suggested that the rules may be notified at an early date so that the tax payers are able to avail the benefit intended by the legislature.
- (iv) Further, the requirement of obtaining a Valuation Report from an accountant may also be provided for.

17. Clause 35 - Insertion of Section 92BA

- 1) Transfer pricing provisions should not be made applicable in respect of domestic transactions, particularly in respect of transactions in the nature of expenditure under section 40A(2). In any case, payment of director's remuneration in compliance with Schedule XIII of the Companies Act, 1956 and partners remuneration within the limits prescribed under section 40(b)(v) should not be included in the scope of "specified domestic transaction". In case, such provisions are to be

made applicable to domestic transactions, the threshold limit may be increased to at least ₹50 crores in respect of transactions covered under section 40A(2)(b).

Alternatively, the amount of expenditure allowed as deduction in the hands of one enterprise as per the arm's length price determined should be treated as income of the other enterprise, and vice versa i.e. correlative adjustments should be allowed. Also, Advance Pricing Agreements should apply for domestic transactions as well.

- 2) The Finance Bill proposes to make transfer pricing provisions applicable to specified domestic transactions. As per the proposal, the existing Transfer pricing provisions would be applicable to domestic transactions covered by sections 40A(2), 80-IA(8)/(10) and 10AA and that domestic concerns would have to comply with the rigours of Rule 10D. This would mean that the provisions of section 92CA(1) w.r.t. reference to the TPO would also apply. The existing administrative machinery of Transfer Pricing (i.e. TPO and DRP) are already over burdened and any further workload without a corresponding increase in the infrastructure will jeopardize the quality of the work.
- 3) The penalty for non-disclosure in the certificate by Accountant should be much lower and not 2% of the value of international transaction.

18. Clause 36 - Amendment in section 92C

It is suggested that as it is possible that there may be more than one arm's length margin possible and to bring the Indian TP provisions more in line with international practices -

- (1) The concept of arm's length range like the inter quartile range instead of specifying the tolerance band for each industry may be introduced.
- (2) Alternately, the existing provision on 5% tolerance band should be extended till such time the government announces the specific industry percentages as was provided by the Finance Act, 2011
- (3) At the minimum, the provision of 5% as it existed before the amendment made by Finance Act, 2011 should be extended for the year April 2011- March 2012 for all taxpayers.

19. Clause 39 - Advance Pricing Agreements (APAs)

- (1) In line with the recommendations of the Parliamentary Standing Committee on the Direct Taxes Code Bill, 2010, it is suggested that an independent agency appointed by the CBDT consisting of technical and judicial Members, should be entrusted with task of framing APAs, specifying the manner in which ALP is to be determined in respect of an international transaction. The independent agency will advise the Board on APAs in order to ensure that the APAs reflect current commercial practices.
- (2) An appropriate guidance to the assessee as well as to the TPOs is required, laying the

appropriate steps and filtration process under all the recommended methods for transfer pricing by way of case studies which is internationally prevalent.

- (3) A mechanism for a review of an APA on account of change in law or facts should be formulated.
- (4) Appropriate procedure for withdrawal of application made by a tax-payer for APAs should be provided for in the scheme.
- (5) The APAs should also provide for renewal of APAs after the expiry of initial period of applicability, where the business model as well as the law remains the same.
- (6) Further, APAs should include a clause to provide that if any DTAA is entered into in future, and the provisions of the DTAA are more beneficial, the same would be applicable to the tax-payer.
- (7) For bilateral APA, the APA and MAP negotiation between the two Competent Authorities should commence simultaneously.

20. Clause 46 – Amendment in section 115JB

In view of the requirements of Revised Schedule VI, it is suggested that Clauses (b) and (e) of Explanation 1 may be deleted with effect from 1st April, 2012.

21. Clause 47 – Amendment in section 115JC

It is suggested that the provisions should be amended appropriately to clarify that the specified persons are entitled to set-off AMT credit even when their adjusted total income falls below 20 lakhs in the year of set off.

Further, even if the tax payer has discontinued the business, he should be allowed to set-off AMT credit, in line with the set-off of business losses allowed even after discontinuance of business.

The benefit of carry forward and set-off of AMT credit should be permitted also in case of conversion of sole proprietorship to firms and LLPs.

22. Clause 54 – Amendment in section 115U

Section 115U may be suitably amended to clarify the correct intention of law as laid down in the Explanatory Memorandum i.e. taxability of income in the hands of the investor and deduction of tax at source from such income by the VCC/VCF and non-applicability of dividend distribution tax in the hands of the VCC/VCF.

23. Clauses 61 and 62 - Amendment in Section 147 read with section 149

- (i) It is suggested that the Explanation proposed to be inserted after section 149(3) be omitted so that effect of this provision is made applicable with effect from a prospective date. Alternatively, it may be provided that assessments for A.Y.2007-08 or thereafter may be reopened on the basis of the amended provisions of section 149(3).
- (ii) Reassessment proceedings initiated for a period prior to six years should be restricted to only

income arising out of assets located outside India.

- (iii) Further, appropriate amendments may be made to address the genuine hardship which assessee who are subject to presumptive tax provisions may face on account of such provision.
- (iv) The term “financial interest” may be defined to ensure clarity.
- (v) Giving way forward for the accountability of the revenue, the provisions of section 147 deeming income to have escaped assessment in the hands of a resident having an asset located outside India may be replaced by provisions vesting the onus on the Assessing Officer to provide that the income from such foreign asset has actually escaped assessment.

24. Clause 71 – Amendment of section 194J

- (i) Section 194J be amended to provide an independent limit of ₹30,000, above which remuneration or fees or commission to director may be subject to tax deduction at source.
- (ii) Section 40(a)(ia) be amended to include within its scope payment to a director on which tax deductible at source has not been deducted.

25. Clause 73 – Introduction of new section 194LAA

- (1) The requirement to deduct tax at source may be on the transferee or the payee, as the case may be;
- (2) Since the main objective of this provision is to have a reporting mechanism in the real estate sector, deduction of tax on the actual sale consideration will serve the said requirement. Therefore, the provisions of adopting stamp valuation may be removed.
- (3) Assessing Officers may be empowered to give exemption from deduction on the assessee furnishing declaration that capital gains exemption would be availed by investing as per the requirements of section 54, 54F, 54EC etc. He may be authorised to issue a non-deduction certificate specifically for this purpose.
- (4) Appropriate clarifications be issued in respect of property jointly owned, part payments made in respect of property before 1st October, 2012 etc. Given the plethora of issues, the provisions may be re-considered before enactment.

26. Clause 76 – Amendment in section 197A(1C)

This probably results in unintended hardship to these senior citizens and hence, it is suggested that the proposed amendment u/s 197A should also be effective 01 April 2012 in line with the amendments u/s 80D and 80DDB.

Form 15H may also be amended requiring declaration under section 197A(1C) to be made by an individual who is of the age of sixty years or more at any time during the previous year rather than sixty five as mentioned presently in the Form.

27. Clauses 67, 68 & 89 – Provision for rectification and appeal of intimation under section 200A

The provisions amending sections 154, 156 and 246A to provide for rectification and appeal of intimation under section 200A and deeming such intimation as notice of demand may be given effect to retrospectively.

28. Clause 81 – Amendment of section 209

As per the implication of the proposed amendment in section 209 tax deductible or collectible at source cannot be reduced if the same has not been actually deducted or collected and remitted to the Government. Thus, it is suggested that interest under section 234C may be waived off in such cases. In the alternative, the liability to pay interest should arise only in respect of instalments which fall due after such non-deduction or non-collection.

29. Clause 90 - Provisions Related to Dispute Resolution Panel (DRP)

The enhancement powers given to the Dispute Resolution Panel (DRP) will create more legal disputes than resolve. The primary task of finding a dispute is that of the AO and the DRP is supposed to resolve the dispute. The proposed powers will lead to creation of disputes at the DRP level.

30. Clause 96 – Insertion of section 271AAB

Sub-section (3) may be amended to provide that the prosecution provisions under sections 274 and 275 would apply in relation to penalty levied only under clause (c) of this sub-section, and not in respect of cases covered under clauses (a) and (b).

31. Clause 98 – Insertion of section 271H

- (i) Sub-section (3) may be amended to provide that penalty provisions under section 271H would not be attracted if the person proves that after paying tax deducted or collected along with the fee and interest, if any, to the credit of the Central Government, he has delivered or caused to be delivered the statement referred to in section 200(3) or the proviso to section 206C(3) before the expiry of due date of filing of return of income of the previous year in which the tax was so deducted or collected, irrespective of the quarter to which the tax relates.
- (ii) Penalty may be prescribed having regard to quantum of default and the period of delay, and no discretion may be given to the Assessing Officer in this regard. In any case, it should not exceed the tax deductible or collectible at source, in respect of which the quarterly statement has not been filed.

32. Provision to be incorporated in the Finance Bill, 2012 to incorporate deduction in respect of investments made in Rajiv Gandhi Equity Savings scheme

A clause may be incorporated in the Finance Bill, 2012 to give effect to the above proposal. Further, while giving effect to the above proposal,

the benefit of deduction may be extended to existing retail investors also, in order to achieve the intended objective of encouraging continued flow of savings in financial markets.

33. General Anti Avoidance Rule (GAAR)

- 1) All the other recommendations given by the Parliamentary Standing Committee in respect of GAAR provisions under the Direct Taxes Code Bill, 2010 may also be considered with regard to the relevant provisions of GAAR in the Income-tax Act, 1961.
- 2) Applicability of GAAR provisions may be restricted only to instances of tax avoidance, as against legitimate tax planning, i.e., where the tax benefit is not within the intended scope of the Indian Income Tax Act, 1961; rather than covering all cases involving a tax benefit.
- 3) The constitution of the Approval Panel may include members from judiciary bodies, independent of the Income Tax Department. Objective guidelines, in the form of Notifications or Circulars may also be provided to illustrate cases where the Revenue Authorities will, and importantly, will not invoke GAAR.
- 4) The initial burden of proof must be placed on the Revenue Authorities, to prima facie make out a case for invoking GAAR.
- 5) Appropriate thresholds must be prescribed in order to prevent GAAR provisions being applied to cases which do not cross such thresholds. The thresholds may be defined with reference to any or more of the following:
 - a. Taxable income of the taxpayer involved,
 - b. Quantum of income or expense involved in the transaction,
 - c. Quantum of tax benefit or tax rate differential involved.
- 6) It is suggested that the existing provisions of sections 245N to 245V relating to Advance Ruling be extended to any arrangement or transaction to be entered into by Residents with Residents also. It may also be provided that if AAR approves any arrangement or transaction the provisions relating to GAAR (Sections 95 to 102) will not apply.
- 7) Transactions which have passed the specific anti-avoidance tests should not be subject to the rigors of GAAR. A specific exemption may be provided in this regard.

II. OTHER SUGGESTIONS

1. Section 43A - Exchange fluctuation loss due to sharp fall in Rupee value

It is suggested that Section 43A be amended to allow Capitalization of such foreign exchange loss even for domestically acquired asset.

2. Investment in Section 80CCF

Deduction under section 80CCF may be extended for the financial year 2012-13 and subsequent years and the limit may be suitably enhanced. ■

Post-Budget Memorandum - 2012

Executive Summary: Indirect Taxes

SUGGESTIONS ARISING OUT OF AMENDMENTS PROPOSED VIDE FINANCE BILL, 2012

1. Amendments in Service Tax Rules and Point of Taxation Rules, which are effective from 01.04.2012

- (a) Facility to pay service tax on receipt basis withdrawn in case of professionals
It is suggested to continue the due date for payment of service tax for specified professionals on receipt basis.
In the alternative, where the assessee is accounting on cash basis for the purpose of their income tax, the service tax rules should give them an option to pay service tax also on receipt basis. It is understood that this practice is also followed in GST regimes of other countries e.g. Australia.
- (b) Payment of tax in cases of new services
Service providers whose service is taxed for the first time may also be permitted to raise their invoice within 30 days from the date of completion of service, at par with the scenario present for existing service providers.
- (c) Rise in money changing rates by 20%
Clause (4)(c)(i) of the Notification No. 3/2012-ST dated 17.03.2012 be rectified as follows:
"for the figures and words "550 and 0.01 per cent.", the figures and words "660 and 0.012 per cent." shall be substituted;"
- (d) Payment on receipt basis for individuals and firms
 - (i) An Explanation be added after fourth proviso in the Rule 6 of S.T. Rules, 1994 to clarify that in this rule, individual includes HUF and proprietary concerns.
 - (ii) The following Explanation be added to Rule 5B of Service Tax Rules, 1994 –
"For the services specified in Rule 7(b) of Point of Taxation Rules, 2011, where the services were provided or amounts received prior to 1st of April 2012, the applicable rate of tax shall be the rate prevailing on the date of invoice to the extent covered by such invoices."
Alternatively, an exemption Notification be issued w.e.f. 1st April 2012, exempting the service to the extent of 2% along with cesses on the same, for the services set out in Rule 7(b) of Point of Taxation Rules, 2011 on the services provided or amounts received and invoice was also raised prior to 1st of April 2012.
 - (iii) Payment on quarterly basis and payment on receipt basis be extended to un-incorporated bodies as these bodies are generally non-business entities and cannot monitor payments etc.

2. Amendments in Statutory provisions which will be effective from the enactment of Finance Bill, 2012.

- (a) Time limit for issue of statement under Section 73(1A) of Finance Act, 1994
It is suggested that the time limit for issuance of notice as set out in Section 73(1) of Finance Act, 1994 be also made applicable to deemed notice issued under sub-section (1A).
Further, appropriate amendment be made to apply other sub-sections of 73 to sub-section (1A).
- (b) Practical difficulty in complying with Section 80(2) of Finance Act, 1994
It is suggested to exclude the period till the matters are disposed off by the High Courts from the time limit available under proposed section 80(2) and to reduce the payment liability to the extent already made by the tenants as per the direction of Hon'ble Supreme Court.
- (c) Applicability of Section 35EE to Service Tax
Instead of applying the revision provisions available under section 35EE of the CE Act to Service Tax, the Central Excise Law along with Customs law be amended to remove such mechanism under Central Excise Law and make it appealable to CESTAT.
Further, also though the provisions of Section 35EE are being made applicable, corresponding amendment has not been made in section 86 of Finance Act, 1994 directing the application to be made to Central Government.
- (d) Time limit for condonation of delay by Commissioner (Appeals) may be deleted
It is suggested to remove the time limit for such condonation of delay or add additional mechanism of either approaching Chief Commissioner or Board for condonation of delay in such cases.

3. Amendments in Section 65B – Interpretations – effective along with negative list based taxation.

- (a) Clause (4) – Agricultural Extension
The agriculture extension may also include the operations carried on by other persons, on any produce of agriculture, which are generally undertaken by the cultivator or producer, but would not cover the operations which transforms the goods beyond agricultural produce.
Alternatively, the same may be included in the exemption Notification No. 12/2012-ST.
- (b) Clause (5) – Agricultural Produce
The present definition of agriculture be continued in place of proposed definition of agriculture.
- (c) Clause (26) – Goods Transport Agency

The definition be amended to include the following words:

"but does not include person undertaking transport of goods under a contract directly with customer as truck owner or operator and does not require to issue consignment note in the normal course of business".

4. Amendments in the Section 66D – Negative List of services – effective along with negative list based taxation.

- (a) Clause (e) – Trading of Goods
The same need not be covered under 'negative list of services'.
- (b) Clause (g) - selling of space or time slots for advertisements other than advertisements broadcast by radio or television
It may be required that for the period prior to this amendment, amounts collected be refunded as it was without authority of law. Amendment to this effect may be incorporated.
- (c) Clause (l) – Education
It is suggested to add a new sub-clause (iv) to clause (l) of Section 66D which may read as follows:
"(iv) Continued professional educational activities undertaken by professional bodies recognised by any law for the time being in force."

5. Changes in the Section 66E – Declared services – effective along with negative list based taxation.

- (a) Clause (c) - temporary transfer or permitting the use or enjoyment of any intellectual property right
To avoid confusion as to right of taxation of software licenses, information technology software be also included in the above clause.
- (b) Composite contracts
A new clause be added or the existing clause be amended to provide that 'Service portion in an activity other than works contract, which involves transfer of property in goods in the course of such activity, which is leviable to VAT or Sales Tax'

6. Changes in the Section 66F – Principles of interpretation – effective along with negative list based taxation.

There is a need to clarify as to when the sub-contractor does the same activity as that of main contractor, whether they would be eligible for exemption or coverage under negative list.

7. Changes in Service Tax (Determination of Value) Rules, 2006 – effective along with negative list based taxation.

- (a) Rule 2A – Amendment in the mode of determining value of taxable services involved in the execution of a works contract
 - (i) Clause (II) of Explanation 1 to proposed rule 2A be redrafted as under:
 - (II) "total amount" means the sum total of gross amount and the value of all goods and services

supplied free of cost for use in or in relation to the execution of works contract, under the same contract or any other contract, excluding the value added tax, if any, levied on the same.

- (ii) In explanation (a) 'value added tax or sales tax' is used, whereas in other places in the said Rule, only 'value added tax is used'. The rule may be amended to include 'or sales tax' in all such places.
- (b) Double taxation in case of services recognised as works contract under various State VAT laws
 - (i) To avoid such double taxation, a new Rule 2D may be inserted as follows:
"2D. Determination of value of taxable services involving transfer of property in goods. - Subject to the provisions of section 67 and subject to Rule 2A of these rules, in any taxable service, if any property is transferred in the course of providing such taxable services, which is liable to Value Added Tax or Sales Tax, the value of taxable services shall be equivalent to the gross amount charged for such service less the value of transfer of property in goods involved in providing the said taxable service.
Explanation.- For the purposes of this rule,-
 - (a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in providing the taxable service;
 - (b) Where value added tax or Sales Tax has been paid on the actual value of transfer of property in goods involved in the said taxable service, then, such value adopted for the purposes of payment of value added tax or Sales Tax, shall be taken as the value of transfer of property in goods involved in providing the said taxable services for determining the value of such taxable services under this rules.
 - (c) Where value added tax or sales tax has not been paid as mentioned at clause (b) or the goods are exempted from payment of Value added tax or sales tax, the value of goods shall be determined by the service provider with sufficient documentary evidence establishing the value of property in goods transferred in providing the services."
 - (ii) Also corresponding amendment be made in Section 66E to include the following among the declared services:
'Service portion in an activity other than works contract, which involves transfer of property in goods in the course of such activity, which is leviable to VAT or Sales Tax'.
- (c) Double taxation in case of information technology software
A new Rule 2E be inserted to bring clarity in such cases and avoid double taxation. The new rule will read as under:

"2E. Determination of value of taxable services in case of Information Technology Software Service. – (1) Subject to the provisions of section 67, the value of taxable service provided for the services of 'development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software' or 'licensing of software', the value of taxable services shall be equivalent to the gross amount charged for such service less the value of transfer of property in goods involved in providing the said service.

(2) If the value of service and transfer of property in goods is not ascertainable for any reason, ...percent of value of the gross amount charged for the service shall be considered as value of taxable service."

8. Services earlier exempted which are now not covered under exemption/negative list.

The earlier exemptions given vide Notification Nos.29/2004, 12/2007, 34/2007, 14/2008, 1/2009, 32/2009, 39/2009, 17/2010, 41/2010 and 53/2010 be added to the mega exemption notification.

9. Mega Exemption Notification – 12/2012 – ST – effective along with negative list based taxation.

- (i) Sl. No. 4. – The language gives scope to interpret that all services provided by charitable institution registered under Section 12AA of Income-tax Act, 1961 would be exempt. Therefore, clarity is required as to whether all the services provided by such institution would be exempt or only such activity which are in the charitable nature as defined in the notification would be exempt.
- (ii) Sl. No. 6. – Chartered Accountants/Company Secretaries /Cost Accountants in practice be also included in the Clause 6 along with Advocates as the professionals stand in same footing and also the services provided by them are similar.
- (iii) Sl. No. 8. – the entry be changed as "Services by way of training or coaching in arts, culture or sports" since the words 'recreational activities relating to' would add to lot of confusion and may be difficult to establish whether that training was for recreation or not.
- (iv) Sl. No. 13(b). – The exemption under this clause be extended to buildings used for education and healthcare purposes.
- (v) Sl. No. 13(d). – The exemption given to electric crematorium be extended to all types of crematoriums.
- (vi) The definition of charitable activity at Sl. No. (9) to include 'relief to poor' to bring in line with the definition under Income Tax and not tax such services.
- (vii) Sl No.28(c) - An explanation be added to provide that the said amount of ₹5000/- shall not include Municipal Taxes, electricity and water charges.

10. EST Registration Form

- (i) Sr. No. 9: Mentioning of census code should not be made compulsory.
- (ii) Sr. No. 12: Reference to clause (105) of section 65 of Finance Act, 1994 may be removed. This is because when new provisions will become effective, the earlier provisions will only remain relevant in respect of services provided earlier.

11. EST Return

After Sl.No.7: The summary of account current be added in the following manner to give complete information about the discharge of excise duty liability.

Opening Balance....

Amount deposited....

Amount debited....

Closing Balance.....

12. Abatement Notification no.13/2012

- (i) The abatement could be given at a uniform rate of 75 % (indicative), with set off of eligible CENVAT credits on all input services and capital goods used for providing the taxable service. No credit on inputs need be provided.
- (ii) To avoid unnecessary litigations of very large numbers, the abatement to Construction Services (in which land value is not/cannot be offered for Service Tax purpose) at 67% may be continued.

13. Notification no.15/2012-ST

- (i) The proposal needs to be revisited.
- (ii) Alternatively, in Sl. no.7(a), phrase on abated value be deleted and S No.9 related to works contract be also deleted.

14. CENVAT Credit Rules

- (a) CENVAT credit on Insurance services on motor vehicles -
Clause (BA) sought to be inserted in rule 2(l) of the CENVAT Credit Rules, 2004 be amended as follows:
"BA) specified in sub-clauses (d) and (zo) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor vehicle, except when used by —
 - (i) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by him; or
 - (ii) a provider of output service as specified in sub-clause (d) of clause (105) of section 65 of the Finance Act, in respect of a motor vehicle insured or reinsured by him; or"
- (b) Condition of receipt of inputs and capital goods in the premises of the output service provider relaxed —
The condition of receipt of capital goods in the premises of the output service provider should be dispensed with in Rule 3(1) of CENVAT Credit Rules 2004 also.
- (c) CENVAT Credit on Inputs/Input Services used for Export of Services – Credit to be allowed for utilization against domestic services also.

Rule 5 of the CENVAT Credit Rules, 2004 be amended suitably to allow the facility of utilizing the credit taken on inputs or input services that are used by a manufacturer for manufacture and clearance of final goods for export, or a service provider who provides an exported service against the service tax payable on domestic output services/goods cleared for home consumption and the surplus, if any, would be refunded in accordance with certain notified procedures.

(d) Input Service Distributor

- (i) The credits should be allowed to be distributed based on the overall eligibility of CENVAT credits in relation to taxable activities carried on by the manufacturer of final products or the provider of output service.
- (ii) The turnover criteria should not be used to restrict the distribution of CENVAT credits.
- (iii) The CENVAT credit scheme is a beneficial scheme the benefit of which should not be restricted for technical reasons.

15. Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 – Scheme.

The amendment made by Notification No. 10/2012-ST dated 17.3.2012 and Notification No.11/2012-ST dated 17.3.2012 needs to be revisited considering the effective rate of tax intended to be levied by the revenue authorities is 7.42%. However, the assessee will have option to pay tax under composition scheme @4.8%.

16. Service Tax Audit

Service tax audit be made compulsory for the service tax assessee having a gross turnover of more than ₹1 Crore. A separate Service Tax Audit Report format on the line of Income Tax audit reports be also prescribed. The audit could be made compulsory for the following reasons:

- (i) This would ensure audit of statutory and procedural compliances of service tax law, divergences or non-compliances and quantification of the implications thereof.
- (ii) The non-compliances could be regularised by the assessee on a voluntary basis.
- (iii) This enables the assessee to comply with law in an easy manner based on the guidance received at the time of such audits.
- (iv) There would be a lesser chance of litigation when all the exceptions/issues are pointed out at time of Service Tax Audit.

OTHER SUGGESTIONS

1. Annual Maintenance Contracts

It is suggested that appropriate abatement (70%) be provided in case of annual maintenance contracts to take care of value of parts, consumables, accessories etc. included in the value of services.

To expand the scope of works contract services by borrowing the definition and mechanism of works

contract as defined under VAT laws and incorporating the same under Service Tax laws, so that the tax laws under VAT and Service tax are in parity and enable practical compliance and avoid hassle free litigation.

2. Service Tax on Renting of Immovable Property

It is suggested that in order to avoid multiplicity of levy and reduce the tax burden, appropriate abatement be granted in determining taxable value in relation to this category of service.

3. Works contract service

All types of contracts which are taxed as works contracts under VAT be brought under the category of "works contract service". Alternatively, benefit of composition scheme be made available to all works contracts classified as such under VAT laws irrespective of its classification under service tax law.

4. Reimbursable expenditure /common expenses

The definition of pure agent be simplified and modified to exclude the lines pertaining to "title of goods" and similar other requirements which are difficult to satisfy in practice.

Appropriate mechanism be worked out/clarification be provided so that the benefit of input tax credit is not lost when the service provider seeks reimbursement of expenses incurred on account of the service recipient.

5. Registration as a service receiver, even for single transaction

The concept of casual registration on the lines of VAT laws at State level be introduced in service tax law.

Such causal service provider for such one of transaction is granted exemption from procedural compliances and harass penal consequences.

6. Revision of returns

The time limit for revision of returns may be extended to 7 months from the end of the financial year as accounts under the Companies Act are required to be audited and finalized within 6 months from the end of the year and period of additional one month would thus be available for revision of returns.

7. Issue of show cause notice for recovery of service tax

It is suggested that a minimum limit of ₹1,00,000 for service tax escaping assessment be prescribed for the purpose of proviso to section 73(1).

8. Time limit for adjudication

Time limit for completion of adjudication be prescribed in the provisions of section 73.

Handling of adjudication by a different Official than the one who has issued the SCN would ensure fairness and independence in the adjudication process

9. Recording of statement

As far as possible, recording of statements should

be avoided and assesses should be asked to submit specific responses to the specific questions of the Department.

In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the Officer recording the statement, may be provided to the tax payer immediately after the recording the statement. Very often, the statements are written in hand and then typed. The use of computer systems can speed up the process. The statement recorded can be immediately printed, signed and handed over to the assessee.

10. Search of premises

It is suggested that in order to avoid vexatious searches, the reasons for conducting the search may be recorded in writing. This will also be in line with income-tax provisions.

11. Stay by CESTAT

Though CESTAT has power to extend the stay again, it is a cumbersome and taxing process, on part of the assessee as the department presses for recovery. Further, the delay may not be due to the fault of assessee. Hence the limitation period either be removed or extended looking into the current pendency list of CESTAT.

12. Powers under section 14 of the Central Excise Act, 1944

It is suggested that Section 14 be suitably amended to stop the misuse of the powers provided therein establishment of simplified procedure will reduce undue harassment and cost to assessee and will at the same time meet the needs of the department to obtain requisite information. This will also avoid high handedness of some officers in dealing with the tax payers and will create a more cordial attitude/approach.

13. Tax Audit Report in service tax

In order to streamline the process with all VAT laws, it is suggested that the submission of audit report be made mandatory in service tax also along with audited annual accounts.

14. Prosecution

Prosecution provisions ought to apply only in exceptional cases and must include mens rea as also have a minimum threshold over which only such proceedings would be taken. Also, provisions for compounding as is available under other laws be introduced.

Power to issue search warrant under section 82 may be given to Joint Commissioner with the prior approval of Commissioner/Chief Commissioner with the reasons in writing.

15. Interest on delayed payment of tax

Rate of interest may be reduced and brought in line with the income-tax provisions.

16. Disparity between interest payable by assessee and Department under central excise, service tax and customs

Interest rates at both the ends may be made uniform.

17. Chartered Accountancy Professionals in tax policy making body

Tax policy making body include a few professionals drawn from the Chartered Accountancy profession. Their contribution would be extremely useful when GST is implemented in India.

18. Training of Departmental Personnel

A comprehensive training covering all the substantive and procedural aspects of the law be scheduled for the officers at all levels.

19. De-linking of tax policymaking and tax administration

There is a urgent need to ensure that there is a clear divide between the tax policy making and the tax administration

20. Retrospective amendments

Retrospective amendments rectifying past drafting errors or adverse judicial decisions be avoided.

21. Accountability of tax collectors

In order to project a sense of even-handedness in dealing with tax payers, provisions relating to accountability need to introduced and not be formulated independently.

22. Appeals to High Court

The practice of going on appeal to the High Court quite routinely requires a review

23. Supplies to SEZ

It is suggested that this time limit may be enhanced to at least 60 days.

24. Online E-filing of weekly information by major duty paying units

The Trade and Industry is of the firm opinion that furnishing product wise information i.e. CETSH wise weekly information is consuming a lot of time and there is a cost involved in collecting information every week.

25. Audit Procedures

It is suggested that such demands be not made from the assessee. The audit parties be instructed to verify the data at the assessee's premises and seek hard copies of only very relevant data which is required for their records.

26. Benefit of Notification No. 108/95 CE and 6/2006 CE to sub contractors

It is suggested that in order to avoid ambiguity in law and divergent practices being followed, it is suggested that the benefit of notification be provided to the subcontractors as well. ■

Service Concession Arrangements – IFRIC 12



No IFRS or IAS exists for arrangements in the nature of public-private partnerships. On account of growing number of such arrangements between the government and private players, it was important to provide for a basis to account for such arrangements or understanding. By the introduction of IFRIC 12, the interpretation provides a ground of how different IFRS/IAS pronouncements are to be used in accounting for such arrangements, based on the substance of the transaction rather than its form. This article traces various aspects of the arrangement and explains how IFRIC views such arrangements, keeping in view of the nuances and subtleties embedded in the contracts. The article is an attempt to simplify the interpretation and to draw attention to various issues involved in income recognition, asset classification and measurement aspects relating to them.

Service Concession Arrangements (SCA) is in the nature of public-private partnership involving a long-term contract between the government, or a public sector authority, and private parties. As part of its obligation, governments and public authorities are responsible in providing public services such as national highways, state highways, airports, port terminals, transmission of electricity, roads, railways, bridges, and telecommunication networks, among others. The government has traditionally raised resources from the public by way of direct and indirect taxes. However, on account of reforms in the last part of the 20th century, public-private partnerships have come to the fore, which are providing lessons for sharing responsibilities and resources between the public and the private sector to undertake long-gestation projects of public interest. These types of projects seek for participation from the private sector to put in its own capital at risk and to deliver projects on a long-term basis. This enables the Government to provide services to the public without having to raise resources in advance. The private sector will invest its capital to recoup the cost of investment and return, over the arrangement period. The government also participates in providing concessions to the project, so as to ensure viability of the project to the private participant.

The Service Concession Arrangements are contained in IFRIC-12 of IFRS, which was issued in November 2006, and has become effective for periods



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beginning on or after 1st January 2008. A similar issue is contained in Appendix A to Indian Accounting Standard (Ind AS) 11 – Construction Contracts.

Characteristics of SCA

One of the main features of SCA is that it gives right for public and private sectors to provide services that give access to the general public for major economic and social facilities, which were only being provided by the Government. The right is exercised by the private sector by providing its own capital, to build-own-operate-transfer (BOOT) or build-operate-transfer (BOT) the assets that are created through this arrangement. Sometimes the arrangement is extended for its maintenance as well. There are many more variants to the public and private arrangements that have seen the light of day in various countries.

The grantor (the government or the public authority) provides concessions, provides incentives and allows private participants to make public collections over the arrangement period. It is essential that these arrangements are covered by 'Contract Act' or other regulations, so as to ensure its enforcement. This arrangement casts an obligation on the private operator to the hand over the infrastructure irrespective of the financing arrangement. One peculiarity of this arrangement is that the government continues to be the owner of the existing and the developed infrastructure during the continuance of the arrangement from its inception.

Terms and Conditions of the Contract

The contract of SCA like any other contract will provide for the following:

- Standards of performance;
- Payment mechanism;
- Adjustment to payments during the concession period; and
- Arrangement for settling disputes.

The above conditions are special requirements of SCA, besides all other requirements that are contained in any arrangement or contract. Each contract will be different depending upon the type of project, the complexities involved, the gestation period and the

duration of the concession arrangement. Except for the broad mechanisms of operating projects, which are common to any other project, specific issues will have to be determined and considered on a case-to-case basis. Even if they are similar projects, the change in location and the strengths and weaknesses of the participating private sector may alter the terms of the contract significantly.

Objective and Scope

The arrangements between the public authority and private participant in SCAs have to be reduced to such terms, so as to enable a fair accounting practice and disclosure in the accounting records of the private participant. The objectives as envisaged by IFRIC – 12 are as detailed below:

- The treatment of operator's rights over the infrastructure.
- Recognition and measurement of consideration.
- Construction and upgrade services.
- Operation services.
- Borrowing costs.
- Subsequent accounting treating of a financial asset and an intangible asset.
- Items provided to the operator by grantor.

It is interesting to understand that in a SCA, the grantor continues to have control on the assets right from inception to the time the asset is physically handed over to the grantor. In view of this control, it is important to understand that the accounting treatment will be different in SCA contracts, which is aided by the pronouncement in IFRIC -12.

The scope of every SCA will be decided by the government or the public authority. The government stands in the position of grantor and, therefore, controls or regulates, as to what services or infrastructure the private operator shall provide. The grantor dictates on the price, beneficial entitlement, residual interest, the type of public service, the type of infrastructure, etc., while the private participant has to only prove his ability and dexterity to take up the project. Hence, the scope of any SCA will vary based on the type of industry, the type of service, the location and the prevailing laws of country in which such arrangements are entered into and so on and so forth.

Price Controls and Residual Interest in SCA Type of Contracts

Initially, the private service provider is allowed to collect a service fee or infrastructure fee at fixed amounts. Sometimes, the grantor provides mechanism or a formula through which the private participant operating the project may be able to collect a maximum price, thus creating a capping mechanism. However, if there

The Service Concession Arrangements are contained in IFRIC-12 of IFRS, which was issued in November 2006 and has become effective for periods beginning on or after 1st January, 2008. A similar issue is contained in Appendix A to Indian Accounting Standard (Ind AS) 11 – Construction Contracts. ☺

are excess profits that can be generated as per the directions of the grantor, the same may go to reduce the period of holding the infrastructure or the asset by the private operator. Conditions of grantor's control over the asset and pricing bring in peculiarity for the private operator both in terms of operating flexibility and revenue recognition. A new feature comes into existence, and IFRIC – 12 has exhaustively dealt with such nuances under the changed circumstances.

Apart from control of the asset or infrastructure, created out of the capital of the private participant, the Government or the grantor will have the additional benefit of controlling the residual interest as well. It restricts the operator's choice to sell or pledge the infrastructure. The operator will only have functional access to the infrastructure, while the government reserves the right of a call option at fair value. This provides an uninhibited right to the grantor to short close the contract through the call option process.

Accounting for SCA

The scope of IFRIC 12 is limited only to accounting books of the private operator. It does not provide answers to how the books of the grantor should reflect SCA transactions. Here, the essence of the interpretation is that, since the private operator is not the owner of the assets, the right to recognise the value of property, plant and equipment (IAS 16) is lost altogether.

Irrespective of whether the infrastructure is acquired or constructed by the private partner, acquired or provided by the grantor, all the assets from inception, during accretion or on completion will always belong to the government or the public authority. The operator in fact is only managing the asset on behalf of the grantor, though the private participant has abundant managerial and operational bandwidth. All types and risks and rewards associated with the asset rests with the Government, and this is regardless of which party has the legal title to the asset.

The service provider receives his revenue flow or the consideration for the services that he renders and not from the infrastructure that he constructs for the public or the grantor. The operator has no right to consider this as a leased asset, as it does not fulfil the conditions contained in IAS 17. Further, the control and residual interest rests with the grantor, the private operator under the SCA shall have no right to sell or pledge the infrastructure or the asset created under the contract.

Let us consider the example of a public private partnership in building and operating super-class stretches of roads for public use, where users pay tolls at toll counters. The private participant is required

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to finance, build, and maintain such user roads. The grantor, usually the government, sets the toll charges and has complete control over the public infrastructure and its residual interest. The private partner has to bear the risk relating to construction, maintenance costs and the demand risk that emanates from public use or non-use of such infrastructure. In spite of all these impediments to the private operator, the grantor has complete control of the infrastructure.

As against the costs incurred and risks borne by the private partner, the grantor provides the following rights to the operator:

- A financial asset;
- An intangible asset;
- May be a portion of tangible asset for use;

The control, therefore, is on the right to collect the revenue, which was the primary right of the government. However, this is restricted by the conditions of the grantor, either by way of restriction on the quantum or the duration of collection. Therefore, this brings in the concept of valuing the above assets, or the right, in fair value terms. Hence, recognition of tangible assets as property, plant and equipment, though the private partner has made substantial investment is of no consequence and the recognition of asset creation under IAS 16, is denied.

Recognition of Financial Asset

Prudence plays a very important role in recognition of the financial assets in the books of the operator. Obviously, recognition of tangible assets being denied to the operator, he has to only recognise the financial asset as stated above. While doing so, the operator should recognise the financial asset to the extent there is an unconditional contractual right to receive cash or other consideration from, or at the direction of the grantor.

While revenue or the financial assets are being considered by the operator, he has also to be sensitive in recognising penalties for underperformance, poor quality of performance, not meeting performance or efficiency targets, etc. The ability to enforce a contractual right may be absolute or may be contingent upon

the happening or non-happening of a future event. Fair value accounting takes into its ambit such subtle issues emerging from any transactions from such contracts. A shortfall in user payments may sometimes be guaranteed by the grantor. Such assurances will also form part of financial asset recognition in the books of the private service provider.

Concept of Demand Risk in SCA

The private operator has a projection of the density of users, based on surveys conducted by the grantor or by the operator himself. If the density does not happen as projected, the service provider is put into double jeopardy of having spent huge resources on the project and is unable to recover the revenue from the users. There is a demand risk to the operator if the shortfall is not guaranteed and protected. Therefore, SCA provides for a clause, wherein the demand risk, in the initial stages, is borne by the grantor, or sometimes it is shared between the partners. The operator's cash flow gets effectively secured and the shortfall in collections gets protected. Depending on such protection and the extent of such guarantee by the grantor, the private operator has to suitably recognise the financial asset. In reality, the operator collects tolls from users on behalf of the government and receives compensation from the government irrespective of collections made.

On the other hand, if the operator is allowed to charge the users directly and is made to bear the demand risk, then instead of being a financial asset (where collections are made on behalf of the grantor and the demand risk is borne by the grantor), it will be an intangible asset in the books of the service provider. In other words, it is more a licence of collecting fees by bearing demand risk. It is a financial asset if there is an assurance or a guarantee of inflow to the operator, and an intangible asset on the basis of licence to operate with a demand risk. In other words, the intangible asset is recognised and contingent upon the extent of user demand or the traffic density of the infrastructure facility.

In situations where the demand risk is shared by the grantor and the operator, it may so happen

It is well understood that the private operator is only a service provider to the grantor. He either earns revenue from Construction Contracts (IAS 11) or earns

service operating revenue as enshrined in IAS 11. The construction part of SCA is in the form of construction or upgrade services, and the operating revenue is from collecting user fees from consumers of the facility.

that operator may receive user charges more than the minimum guarantee. Since the demand risk is divided, any consideration received from users over and above the minimum anticipated, is also divided between the partners in the agreed proportion. Here, it is a combination of assurance and a licence to receive additional amount based on usage and therefore the anticipated inflows will be recognised both as financial and intangible asset.

Revenue Recognition and Measurement

It is well understood that the private operator is only a service provider to the grantor. He either earns revenue from Construction Contracts (IAS 11) or earns service operating revenue as enshrined in IAS 11. The construction part of SCA is in the form of construction or upgrade services, and the operating revenue is from collecting user fees from consumers of the facility.

The construction or the upgrade revenue during the construction phase is subjected to percentage of completion treatment based on the stages of completion. It is measured at the fair value of the consideration received or receivable. Since the public-private participation arrangements are a conglomerate of both construction and service engagements, it becomes important that due allocation is made between various activities for a proper recognition as per the requirements of accounting standards. This is so because IAS 18 clearly indicates that the recognition criterion is to be applied separately to identifiable components of a single transaction in order to reflect the substance of the transaction.

It is pertinent to note that the contract revenue from construction of the infrastructure is not paid immediately, but is deferred for the entire arrangement period. It creates a financial asset on account of certainty of receiving the amount along with revenue from other services. The fair value of the consideration attributable to the construction services is determined, and the financial asset is recognised on the face of the balance sheet. All other services are separately identified for recognition of revenue in the profit and loss account, and financial or intangible asset in the balance sheet. The revenue from the construction part of the contract can also create an intangible asset, depending on whether the amounts received or receivable is guaranteed by the grantor or provides a licence to collect user fees along with demand risk.

On account of recognising the intangible asset, it may so happen that revenue may not be equal to the total cash flow. IFRIC 12 has been criticised for additional revenue recognition without actually matching it with the future cash flows. This peculiarity may be attributed to two sets of inflows and outflows arising

from SCA. The construction services are exchanged for an intangible asset as in a barter system, which conforms to the requirements of IAS 18. Then the same intangible is further deployed to earn revenues from users. The proponents of IFRIC 12 have argued that this is so with any transaction dealing with dissimilar assets or services and is not peculiar to SCA. Hence, it has been argued that the criticism against IFRIC 12 is without any sound logic.

Having recognised the financial or the intangible asset in the books of the private participant, the inflows during the operating phase is allocated between settling the financial asset that is already recognised in the balance sheet, and the balance is considered as current year's revenue for providing maintenance and operating services.

Financial Asset Recognition and Measurement

The recognition stems from the contents of IAS 39 (IAS 9 when it becomes effective). It is going to be initially recognised at fair value based on the NPV of all future cash flows, with a discount rate of interest for a similar instrument. Once the financial asset is recognised and measured, classification and disclosure becomes important. It is classified under anyone of the following categories depending on the substance of the transaction:

- a loan or receivable;
- an available-for-sale financial asset; and
- at fair value through profit or loss, if so designated at initial recognition.

All subsequent measurements of loans and receivables are measured at amortised cost using the effective interest method. The other two are measured at fair value, and the changes being recognised in the other comprehensive income. However, the amortised cost of available-for-sale financial asset must be calculated using effective interest method to determine interest income just like interest income is determined for an asset classified as a loan or a receivable. The interest income so determined is credited to revenue in the profit and loss account. The asset has also to be

Right to charge users (license) brings in the element of intangible asset for recognition. It begins from the day the construction starts, and continues to get accumulated until the work ceases. IAS 38 plays its role in defining how the asset is recognised. Since the asset is not traded in an active market, it is measured at cost less accumulated amortisation and impairment losses. ☺

Service Concession Arrangements, applicable to public-private partnership endeavours, are a class by themselves and require an in-depth understanding

of the issues involved. If substance has to rule over form and the nuances of IFRIC 12 have to be applied in letter and spirit, a great deal of understanding is required about the arrangements between the government and the private partner, in long-term projects having the characteristics of BOT, BOOT or any of its variants. ☺

tested for impairment at each balance sheet date as per the requirements of IAS 39.

Intangible Asset Recognition and Measurement

Right to charge users (license) brings in the element of intangible asset for recognition. It begins from the day the construction starts, and continues to get accumulated until the work ceases. IAS 38 plays its role in defining how the asset is recognised. Since the asset is not traded in an active market, it is measured at cost less accumulated amortisation and impairment losses. Amortisation takes place on a systematic basis over the life or is based on the traffic density of the users, generally determined as per SCA. Although the asset may have significant residual value, the operator or the service provider has no further stake in it. Therefore, it can be assumed with absolute certainty that the total amortisation amount will be equal to the original cost. Normally, the amortisation is considered under the straight-line method, as amortisation based on traffic density of the users or the revenue flow does not in reality reflect the inherent economic benefits that can be derived from the infrastructure. Impairment of the intangible assets is determined based on dictates of IAS 36, and for SCA 'the value in use' to the business entity plays a key role in determining the quantum of impairment.

Conclusion

From the above exposition it should be clear to the reader that Service Concession Arrangements, applicable to public-private partnership endeavours, are a class by themselves and require an in-depth understanding of the issues involved. If substance has to rule over form and the nuances of IFRIC 12 have to be applied in letter and spirit, a great deal of understanding is required about the arrangements between the government and the private partner, in long-term projects having the characteristics of BOT, BOOT or any of its variants. ■

Integrated Reporting: *Moving Beyond Financial Reporting*



The International Integrated Reporting Council has been working relentlessly to develop a renewed reporting model to refocus the scope of corporate reporting. Integrated reporting is about matching business strategy with short-term business results. The main output is expected to be an 'integrated report,' which would be an organisation's primary report. The proposed 'integrated report' would provide more concise, meaningful corporate reporting, combining the different strands of reporting into a coherent whole. The Council had come out last year with a discussion paper on integrating reporting with an objective to forge a global consensus about the direction in which reporting should evolve. Author in the present article has tried to simplify the agenda and vision of the IIRC with a focus on integrated reporting through its September 2011 discussion paper. Read on.

Development of integrated reporting is designed to enhance and consolidate existing reporting practices. The International Integrated Reporting Council (IIRC) had, on 12th September, 2011, published a discussion paper (DP) *Towards Integrated Reporting – Communicating Value in the 21st Century*, which describes the Council's vision to move towards a reporting framework that provides the information needed to assess organisational value in the 21st century. To elaborate, the intention of the IIRC is to work towards a fresh approach to reporting that puts together material information, which provides a clear and concise representation of how an organisation demonstrates stewardship and how it creates and sustains value. The paper offers proposals for developing of an international integrated reporting framework, and outlines next steps towards its creation and adoption that include a two-year pilot programme and a publication of exposure draft in 2012.

Reporting – Proposals by the IIRC

Role of IIRC

The International Integrated Reporting Council comprises a cross-section of leaders from various sectors, including corporate, investment, accounting, securities, regulatory, academic and standard-setting ones as well as the civil society. As part of the pilot programme, the IIRC offers a select group



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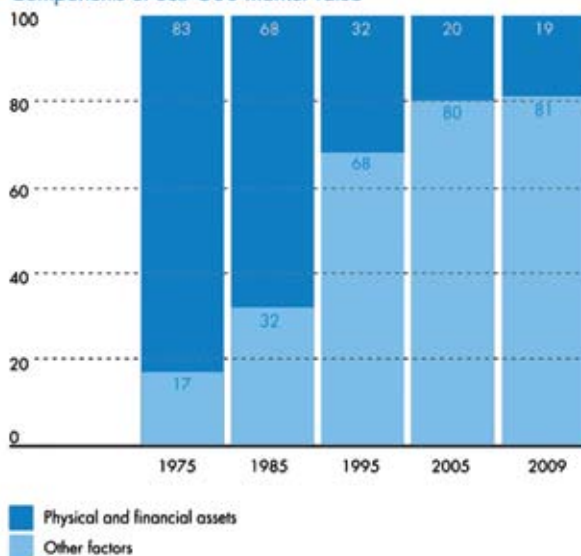
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of companies the opportunity to demonstrate global leadership in this emerging field of corporate reporting. Already over 60 international companies have been invited to join the programme, and the companies from various sectors including Tata Sons, Microsoft Corporation, HSBC, Coca Cola, etc., have been securing their participation. The objective is to create a globally accepted and integrated reporting framework in order to bring together financial, environmental, social and governance information in a clear, concise, consistent and comparable format with an aim to help with development of more comprehensive and comprehensible information about organisations, prospective as well as retrospective, to meet the needs of a more sustainable global economy.

Need for a change

The IIRC believes that the world has changed and hence the reporting should change as well. The world has undergone a change due to globalisation and has resulted in interdependencies in economy and supply-chains, advances in technology, rapid growth in global population and consumption. Growing complexity of reporting and its narrow focus on financial measures is not keeping pace with the expanded stakeholder expectations. The IIRC indicated that the need for a broader reporting was substantiated by the fact that only a small percentage of market value then explained by physical and financial assets. Today, the market value comprises several other intangible factors; only some of them are explained in financial statements.

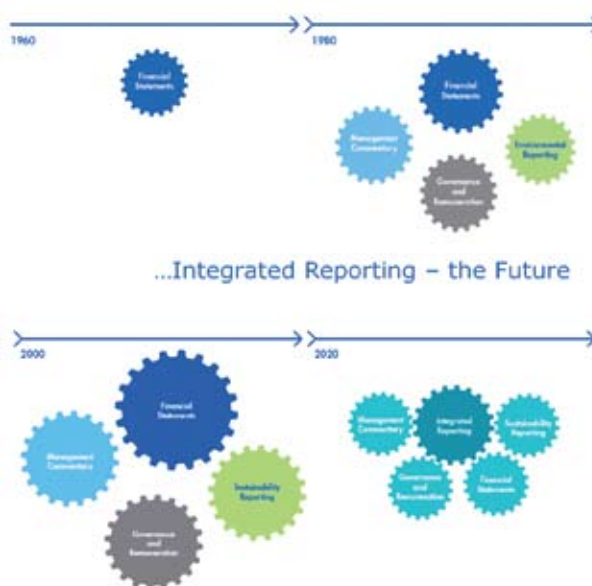
Components of S&P 500 market value



Source: DP of International Integrated Reporting Committee, September 2011

While new reporting requirements have been added over a period of time through a patchwork of laws, regulations, standards, codes, guidance and stock exchange listing requirements, much of the reporting information now provided is disconnected and key disclosure gaps remain. The IIRC is of the view that though there has been evidence that investors recognise the materiality of non-financial factors, they do not feel that the information available to them is adequate for decision-making. However, *it is not enough to keep on adding more information; the connections need to be made clear and the clutter needs to be removed.*

The evolution of Reporting...



Source: DP of International Integrated Reporting Committee, September 2011

Therefore, the IIRC is working to develop an integrated reporting model to broaden the scope of company reporting to ensure that critical interdependencies are made clear; for instance, between strategy and risk, financial and non-financial performance, governance and performance, and between organisations performance and that of the others in its value chain.

What is an Integrated Report?

Integrated reporting brings together the material information about an organisation's strategy, governance, performance and prospects in a way that reflects the commercial, social and environmental context within which it operates. It provides a clear and concise representation of how an organisation demonstrates stewardship, and how it creates value,

An integrated report would address an organisation's stewardship not only of the financial capital, but also of other types of capital that it employs, namely, manufactured (e.g. buildings or machinery), human, intellectual, natural (e.g. air, water) and social, its impact on them and their interdependence. Integrated reporting should result in a broader explanation of performance than traditional reporting. 

now and in the future. This single report would become an organisation's primary report, replacing rather than adding to existing reporting requirements. This report would provide a reference point for other communication such as presentations, detailed financial information, operational data and sustainability information.

Integrated reporting combines the most material elements of information currently reported in separate reporting strands (financial, management commentary, governance and remuneration, and sustainability) in a coherent whole, and, more importantly, shows connectivity between them and explains how they affect the ability of an organisation to create and sustain value in the short, medium and long term. An integrated report would address an organisation's stewardship not only of the financial capital, but also of other types of capital that it employs, namely, manufactured (e.g. buildings or machinery), human, intellectual, natural (e.g. air, water) and social, its impact on them and their interdependence. Integrated reporting should result in a broader explanation of performance than traditional reporting.

The IIRC has noted that many organisations are taking innovative approaches to aspects of reporting that often are consistent with the concept of integrated reporting. It notes: *Integrated Reporting reflects what can be called "integrated thinking" – application of the collective mind of those charged with governance (the board of directors or equivalent), and the ability of management to monitor, manage and communicate the full complexity of the value-creation process, and how this contributes to success over time. It will increasingly be through this process of "integrated thinking" that organisations are able to create and sustain value. The effective communication of this process can help investors and other stakeholders to understand not only an organisation's past and current performance, but also its future resilience.*

Format/Content of an integrated report

The main output of integrated reporting is an integrated report, i.e., a single report that the IIRC anticipates will

become an organisation's primary report replacing rather than adding to existing requirements. Such a report enables evolving reporting requirements, both market-driven and regulatory, to be organised into a coherent narrative. An integrated report provides a clear reference point for other communications. There are no standard format and specific disclosure requirements for this report. Instead, the IIRC's DP sets out five guiding principles and six content elements for an integrated report. These have been discussed later in this paper.

Framework

The objective of the DP is to forge a global consensus on the direction in which reporting should evolve. The IIRC intends to develop a framework, which will provide high-level guidance and support the development of reporting over the coming decades, centered on how organisations create and sustain value. In addition, it will provide broad parameters within which consistent regulatory reporting regimes can be developed across different jurisdictions.

- Summary of key differences between integrated reporting and traditional reporting:** In order to help users and preparers understand how Integrated Reporting differs from traditional corporate reporting, the IIRC also contrasts eight differences between current and integrated reporting. A key aspect of integrated reporting is that it addresses those resources (referred to as Capitals) that the business consumes and creates: financial, manufactured, human, intellectual, natural and social.

Thinking:	Disconnected	→	Integrated
Stewardship:	Financial capital	→	All forms of capital
Focus:	Past, financial	→	Past and future, connected, strategic
Timeframe:	Short term	→	Short, medium and long term
Trust:	Narrow disclosures	→	Greater transparency
Adaptive:	Rule bound	→	Responsive to individual circumstances
Concise:	Long and complex	→	Concise and material
Technology enabled:	Paper based	→	Technology enabled

These have been discussed in summary below:

Thinking: Since traditional reporting occurs in silos, it encourages thinking in silos. Integrated reporting, on the other hand, reflects and supports, integrated thinking – monitoring, managing and communicating the full complexity of the value creation process and how this contributes to success over time. Integrated reporting demonstrates the extent to which integrated thinking is occurring within the organisation.

Stewardship: An integrated report displays an organisation's stewardship not only of financial capital, but also of the other "capitals" (manufactured, human, intellectual, natural and social), their interdependence and how they contribute to success. This broader perspective requires consideration of resource usage and risks and opportunities along the organisation's full value chain.

Focus: Annual reporting at present is largely focused on past financial performance and financial risks. Other reports and communications may cover other resources and relationships. But they are seldom presented in a connected way, or linked to the organisation's strategic objectives and its ability to create and sustain value in the future.

Timeframe: Much of the media and regulatory attention in response to the global financial crisis has focused on "short-termism" as one contributory factor. Although short-term considerations are important in many ways, placing them in context is also essential. Integrated reporting specifically factors in short-, medium- and long-term considerations.

Trust: Financial reporting focuses primarily on a narrow series of mandated disclosures. Although an increasing number of organisations are improving their transparency, for example, through voluntary sustainability reporting, in absolute terms that number is still low. By emphasizing transparency, for example, covering a broader range of issues and disclosing the positive with the negative, Integrated reporting helps to build trust.

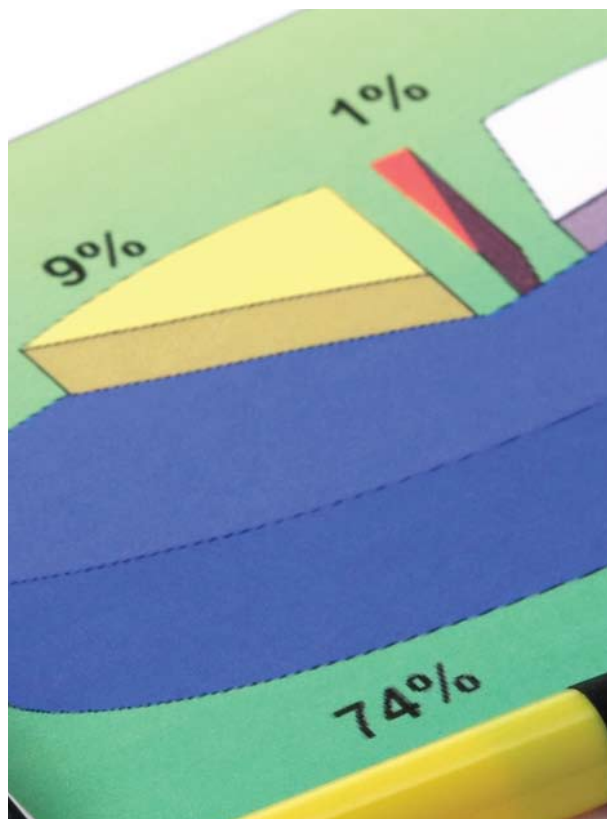
Adaptive: Today's reporting is often said to be too compliance orientated, reducing the scope for organisations to exercise an appropriate amount of judgement. While a certain level of compliance orientation is necessary to ensure consistency and enable comparison, Integrated reporting offers a principles-based approach that drives greater focus on factors that are material to particular sectors and organisations. It permits an organisation to disclose its unique situation in clear and understandable language.

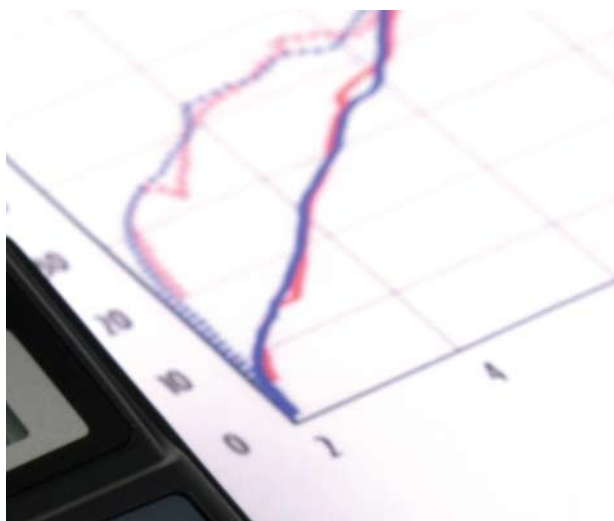
Concise: Long and complex reports are often impenetrable for many readers. A key objective for Integrated reporting is to de-clutter the primary report, so that it covers concisely only the most material information.

Technology enabled: While the Internet and XBRL are introducing elements of technological innovation, many corporate reports are still presented as if they were entirely paper-based. Integrated reporting takes advantage of new and emerging technologies to link information within the primary report and to facilitate access to further detail online where that is appropriate.

Source: DP of International Integrated Reporting Committee, September 2011

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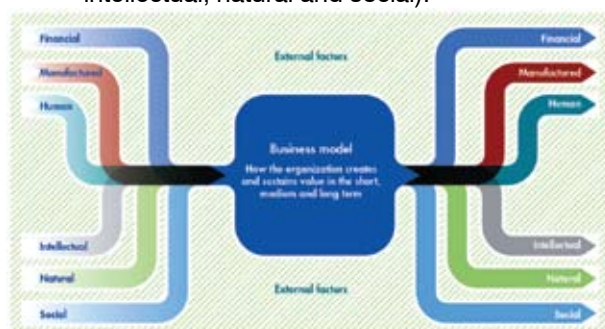




2 Discussion of central importance of an organisation's business model and of value-creation:

As per the DP, central to integrated reporting is the organisation's business model. A business model is often seen as the process by which an organisation seeks to create and sustain value. An organisation determines its business model through choices that typically recognise that value is not created by or within the organisation alone, but is:

- influenced by external factors (including economic conditions, societal issues and technological change) that present risks and opportunities, which create the context within which the organisation operates,
- co-created through relationships with others (including employees, partners, networks, suppliers and customers), and
- dependent on the availability, affordability, quality and management of various resources, or "capitals" (financial, manufactured, human, intellectual, natural and social).



Source: DP of International Integrated Reporting Committee, September 2011

Integrated Reporting therefore aims to provide insights into significant external factors that affect an organisation, the resources and relationship ("capitals") and how the business model interacts with external factors. The DP elaborates the relationships of these factors with an organisation's business model and its capital.

3 Guiding principles for developing an integrated report:

The DP includes guiding principles and elements, which should be applied in determining the content of such reports. The principles should be applied in determining the content of the report. The elements set out are *organisational overview and business model, operating context, including risks and opportunities, strategic objectives and strategies to achieve those objectives, governance and remuneration, performance, and future outlook.*



Source: DP of International Integrated Reporting Committee, September 2011

The guiding principles are:

- **Strategic focus:** An integrated report provides insight into the organisation's strategic objectives, and how those objectives relate to its ability to create and sustain value over time, and the resources and relationships on which the organisation depends.
- **Connectivity of information:** An integrated report shows the connections between the different components of the organisation's business model, external factors that affect the organisation, and the various resources and relationships on which the organisation and its overall performance depend.
- **Future orientation:** An integrated report includes management's expectations about the future, as well as other information to help report users understand and assess the organisation's prospects and the uncertainties it faces.
- **Responsiveness and stakeholder inclusiveness:** An integrated report provides insight into the

The IIRC intends to continue developing the international integrated reporting framework and draw on the pilot programme experiences. Additionally, it intends to work with others on measurement and reporting relevant to integrated reporting, explore with regulators, etc., for opportunities to harmonise reporting requirements within and across jurisdictions, conduct regional roundtables and other engagements and communications activities, and engage in public consultation regarding the ongoing governance of integrated reporting.

organisation's relationships with its key stakeholders and how and to what extent the organisation understands, takes into account and responds to their needs.

- **Conciseness, reliability and materiality:** An integrated report provides concise, reliable information that is material to assessing the organisation's ability to create and sustain value in the short, medium and long term.

These elements would be guided by a strategic focus, connectivity of information, future orientation, responsiveness and shareholder inclusiveness. The desired qualities of an integrated report include conciseness, reliability and materiality.

What are integrated reports intended to mean for the interested parties?

There are several users of financial statements. The DP outlines the main benefits and challenges with respect to Integrated Reporting for reporting organisations, investors, policy-makers, regulators and standard-setters and other stakeholders.



Source: DP of International Integrated Reporting Committee, September 2011

Future Directions

The IIRC intends to continue developing the international integrated reporting framework and draw on the pilot programme experiences. Additionally, it intends to work with others on measurement and reporting relevant to integrated reporting, explore with regulators, etc., for opportunities to harmonise reporting requirements within and across jurisdictions, conduct regional roundtables and other engagements



and communications activities, and engage in public consultation regarding the ongoing governance of integrated reporting.

Program milestones set out by the IIRC are:



While integrated reports are intended to meet the needs of a broad range of stakeholders, initially the IIRC intends to focus the development of framework on the needs of investors in debt and equity instruments in capital markets. The initial focus is on reporting by large companies. However, the IIRC expects that the concepts underlying integrated reporting will be applicable equally to small- and medium-sized entities, the public sector and non-profit organisations.

The IIRC has been conducting a two-year pilot programme commencing October 2011, to test and further develop the framework. As mentioned earlier, several organisations around the world have signed for this programme, which explores the principles and practicalities of integrated reporting. ■

IFRS 9: A Standard on Financial Instrument Accounting



(IFRS) 9 has come as a replacement to International Accounting Standard (*IAS*) 39. *IAS* 39 has been considered as very complex and difficult to apply across countries, thus various accounting bodies urged the International Accounting Standard Board (IASB) to come out with reduced complexity of the accounting standards for financial instrument and provide a single set of high quality standard. The IASB project plan for the replacement of *IAS* 39 consists of three main phases. Phase 1 includes *Classification and Measurement* of financial assets and liabilities; Phase 2 includes *Amortised Cost and impairment* of financial assets; and Phase 3 involves Hedge accounting. Read on...

Applicability

IFRS 9 applies to financial statements for annual periods beginning on or after 1st January 2015, though early adoption is permitted as per the Exposure Draft issued on 4th August, 2011

Current Status

The IASB has published in November 2009 *IFRS 9 Financial Instruments*, which covered the classification and measurement of *financial assets*. In October 2010, the requirement for classifying and measuring *financial liabilities* were added to IFRS 9, which completes entirely the Phase 1 of IFRS 9.

The IASB has completed the Supplementary documents for Phase 2 and Phase 3 by adding the impairment and hedge accounting requirements to IFRS 9 and thereby replacing *IAS* 39 in its entirety. However, the redeliberations are in progress.

Phase 1: Classification and measurement

Meaning of Financial Asset: Financial asset consist of Debt and Equity Securities, Trade Receivables and Derivative Financial assets.

Treatment of Financial Assets under IFRS 9 (Phase 1): IFRS 9 replaces the multiple classification and measurement models in *IAS* 39 with a single model that has only two classification categories:

- Amortised cost
- Fair value



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Classification under IFRS 9 is driven by the entity's Business Model in order to manage the financial assets and the contractual characteristics of the financial assets.

Business Model Test:

- Business model test is a new accounting concept. There can be more than one business model defined for an entity.
- Assessment is based on how key personnel actually manage the business, rather than management intent for specific financial assets and also the assessment shall not be at an individual instrument level, but at the portfolio level.

Current Approach by Companies: Companies at inception establish the nature and risk of the asset and accordingly classify the category.

Proposed Approach in the Standard by Companies: First to assess the nature of business and then allocate the financial asset.

IFRS 9 requires companies to focus on how risky the business strategy behind an entity's portfolio of asset and then concentrate on how risky the asset is. Companies need to accumulate more historical analysis to have clear understanding of its business and investment in financial asset when defining its business model.

Concept of Cash Flow Characteristics Test: Instruments with contractual cash flows of principal and interest on principal would qualify for amortised cost measurement.

Also, interest is consideration for the time value of money and credit risk associated with the principal outstanding during a specific period.

Therefore, an investment in a convertible debt instrument would not qualify because of the inclusion of the conversion option, which is not deemed to represent payments of principal and interest.

The cash flow characteristics criterion is met when the cash flows on a loan are entirely fixed or floating and also when interest is a combination of fixed and floating.

Measurement at Amortised Cost: A financial asset is measured at amortised cost if two criteria are met:

- a) Objective of the business model is to hold the financial asset for the collection of the contractual cash flows,
- b) The contractual cash flows under the instrument solely represent payments of principal and interest.

Concept of Amortised Cost: Amortised cost is the cost of a security adjusted for the amortisation of any premium or discount.

For example, if a debt instrument with a par value of 100 is purchased at a price of 110, it will be initially

recognised at 110 but the difference between 110 and 100 (par value) is amortised over the life of the asset, so that the cost of the instrument will gradually move from 110 to 100.

Financial instruments not eligible for amortised cost are measured at fair value, with gains and losses recorded in net income.

An exception is allowed, however, for equity instruments that can be accounted for at fair value through other comprehensive income.

Concept of Fair Value: Under IFRS, the significant percentage of the balance sheet would have to be presented at fair value as compared with the current practices of carrying the assets and liabilities in the balance sheet at historical cost for the banking book and lower of cost or market value for trading book.

This may result in significant volatility in the income statements of the bank.

Definition of Fair Value (existing): "The amount for which an asset could be exchanged, a liability settled or an equity instrument granted could be exchanged, between knowledgeable, willing parties in an arm's length transaction"

IASB has issued exposure draft as "Fair value measurement," and under that fair value has been defined as "Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (current exit price)."

Total Comprehensive Income: Comprehensive Income includes the following:

- Profit/Loss for the year from Continuing Operations
- Profit/Loss for the year from Discontinuing Operations

Other Comprehensive income (OCI):

- Exchange differences in translating foreign operations
- Gain/Loss on fair value changes in AFS financial instruments, Cash Flow hedges
- Actuarial Gain/Loss on defined benefit pension plans
- Share of other comprehensive income of Associates
- Income tax relating to items of other comprehensive income

Reclassification:

- Reclassifications between Fair Value and amortised cost of financial assets are expected to be few as they are only permitted when there is a change in the entity's business model objective for its financial assets.

- Additionally, reclassifications are not permitted where the entity has designated equity as fair value through other comprehensive income (FVTOCI) or where the FVTPL options have been exercised.
- Eventually it means that for debt instruments, reclassification is required between FVTPL and amortised cost or vice versa, if and only if the entity's business model objective for its financial assets changes so its previous model assessment would no longer apply.
- If reclassification is appropriate, it must be done prospectively from the reclassification date. An entity does not restate any previously recognised gains, losses, or interest.

Equity Instruments:

- All equity investments are measured at Fair Value through Profit and Loss Account (FVTPL).
- If an equity investment is not held for trading, then an entity can choose irrevocably to classify into fair value through other comprehensive income (FVTOCI); however, dividend income can be recognised in profit or loss.
- This FVTOCI option is only available for equity instruments.
- Under IAS 39 there was an option that unquoted equities can be taken at cost; however, under IFRS 9, it has been eliminated and all equity instruments shall be recognised at Fair value.
- Despite the fair value requirement for all equity investments, IFRS 9 includes on limited circumstances, where the cost of an equity instrument will be considered as appropriate estimate of fair value.

Derivatives:

- All derivatives, including those linked to unquoted equity investments, are measured at fair value. Value changes are recognised in profit or loss unless the entity has elected to treat the derivative as a hedging instrument in accordance with IFRS 9 – Hedge Accounting, in which case the requirements of IFRS 9 apply.

Loans and Receivable:

- Under IFRS 9, loans and receivable portfolio are accounted on amortised cost basis, provided these loans do not contain any exotic embedded derivatives.
- Basic embedded derivatives, such as caps and floor or normal prepayment or extension terms, do not taint amortisation accounting.
- A loan with a convertible option is also not eligible for amortisation accounting and will have to be

accounted for on a fair value basis with changes taken to the income statement.

- Loan portfolio is accounted for on a fair value basis in cases where banks transfer/securitise their loan portfolio.
- Amortisation accounting is also not allowed for certain non-recourse loans. For example, when a loan to a real estate developer states that the principal and interest on the loan are repayable solely from the sale proceeds of a specific real estate. In such cases, the 'contractual cash flow characteristics' is not met and hence, such loans are accounted on a fair value basis.

Summary of PHASE I

2 measurement categories in IFRS 9 instead of 4 in IAS 39

IAS 39	IFRS 9
1) <i>Financial Assets at Fair value through Profit and Loss</i>	1) <i>Financial Assets measured at Amortised cost</i>
2) <i>Loans and Receivable</i>	2) <i>Financial assets measured at Fair value</i>
3) <i>Held-to-maturity investments</i>	
4) <i>Available for sale Financial assets</i>	

Classification depends on the entity's business model for managing financial assets and on the characteristics of the financial asset in terms of cash flows

A **financial asset** is measured at amortised cost if both of the following conditions are met:

- the objective of the business model is to hold assets in order to collect contractual cash flows
- the contractual terms give rise on specified dates to cash flows that are solely payments of principal and interest on the principal outstanding

All other financial assets (in particular, equity instruments) are measured at fair value with changes recognised in P&L; but option for recognition in other comprehensive income available for equity investments

ED on Fair Value Option for Financial Liabilities

The Board has decided to retain an existing requirement for classifying and measuring financial liabilities of IAS 39, except for a particular requirement related to the fair value option.

What does it mean by change in entity's own credit risk and how it can be accounted?

When entities creditworthiness deteriorates, the fair value of its own issued debt decreases due to higher discount rates applied to contractual cash flows, resulting in recording the gain in income statement. Recording such type of gain was not found useful to many investors. Thus, ED has proposed the two-step approach for measuring the financial liability at fair value.

- The total fair value changes of these liabilities would be separately shown in Profit and Loss account.
- At the same time portion of change attributable to changes in liabilities credit risk would be reclassified from Profit or Loss to Other Comprehensive Income.
- The amount presented in Other Comprehensive Income would never be taken to Profit and Loss account.
- In a nutshell, it means that effect of change in liabilities credit risk would not impact reported net income.

Changes in credit risk component of financial liability will not impact profit and loss, except when the financial liability is held for trading, rather it will be presented in Other Comprehensive income.

Phase 2: ED on Financial instruments: Amortised Cost and Impairment

- The International Accounting Standard Board (IASB) proposed standard on Impairment of loans is looking at a model that is based on expected losses, rather than incurred losses.
- In other words, the proposed standard requires estimated credit losses to be included in the determination of the effective interest rate, for purposes of amortisation accounting.
- It will lead to significant increase in subjectivity and judgment.
- Estimation of future cash flows, after adjusting for credit losses, would be operationally challenging

FRS 9 requires companies to focus on how risky the business strategy behind an entity's portfolio of asset and then concentrate on how risky

the asset is. Companies need to accumulate a more historical analysis to have a clear understanding of its business and investment in financial asset when defining its business model.

ASB has issued exposure draft as "Fair value measurement," and under which fair value has been defined as "Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (current exit price)."

and would need significant modification to IT systems.

Expected loss model: A model that recognises expected losses and changes in expected losses on an existing financial asset portfolio.

Incurred Loss Model: A model that recognises credit losses after it is "incurred," that is, there is evidence that losses are probable and measurable.

Treatment of Credit Loss: Credit losses are viewed differently in both the Expected Loss model and the Incurred loss model.

Under Expected Loss model, initial expected credit losses are allocated to the period when the revenue is recognised for the financial asset.

Under Incurred Loss model, losses are allocated to a period when the loss is incurred.

Defining Expected Losses: Estimation of expected loss requires a historical loss experience. A historical loss experience shall be adjusted to reflect effects of conditions that did not affect the period in which the historical loss experience is based and to remove the effect of conditions in the historical period that do not exist at the reporting date.

Entities with insufficient experience or no entity specific credit loss experience may use peer group experience of comparable portfolios.

Treatment of Revenue: Under Expected loss model, Revenue is reduced to reflect expected future credit losses at inception, wherein under Incurred loss model, the revenue is recognised in full without considering expected credit losses, which are separately recognised as impairment charges at the time when it actually occurs.

Income under both the models would be same over the life of the asset.

The Expected loss model provides consistency with interest revenue recognition. Under this model, initially expected credit losses are reflected over a period of loan.

Expected Cash flows: Expected cash flow is estimated either of the following:

- Portfolio basis
- Individual basis

Individual basis: Banks and financial institutions maintain a low amount of loans on the portfolio

The International Accounting Standard Board (IASB) proposed standard on Impairment of loans is looking at a model that is based on expected losses, rather than on incurred losses. In other words, the proposed standard requires estimated credit losses to be included in the determination of the effective interest rate, for purposes of amortisation accounting. ☺☺

basis; there would be certain loans maintained by exception at the individual basis as well based on the characteristics suitable to the type of loan.

The Expected loss model can be applied to individual loans like portfolio loans, but it will be difficult to arrive at an accurate estimate of expected cash flows as changes are less likely to be recognised until evidence of such changes become apparent.

Portfolio basis: The Portfolio of financial asset is an important element when applying to both incurred and expected loss models. The Expected loss model can be more accurately determined under a homogeneous portfolio basis than an individual financial asset.

For instance: When the lender issues a loan to the borrower, it does so in expectation that the borrower will pay both Principal and Interest. Suppose the lender has issued 50 such similar loans, and it has historical evidence that 5 loans out of 50 will be default.

This shows that lender is able to estimate the loss more accurately the on portfolio basis than on individual loans.

Does Expected Loss Model provide More Useful Information?

The Expected loss model provides more relevant information, since it treats credit loss on a consistent basis, thus reflecting the current economic condition at the reporting date.

For Instance: Suppose a financial product involving repayment over a 5-year period, priced at 15% and 3% losses would be incurred based on the historical experience.

If from the past experience a similar type of financial product always has a low incidence of loss in year 1, 2 and 3 with losses bunched in year 4 and 5, and then it would overstate the income in years 1, 2 and 3, thus failing to provide correct information to investors.

However, the operational difficulty needs to be assessed by preparers in applying the Expected loss model, as it may outweigh the benefit associated with the same.

Also, it gives far more importance to management judgment in estimating the expected cash flow and may make the audit difficult in such a situation.

The Exposure draft has proposed to replace the incurred loss approach with the approach based on expected losses (i.e. expected cash flows)

The Expected loss model recognises expected losses and changes in expected losses on existing financial asset portfolio, whereas the Incurred loss model recognises credit losses after it is "incurred," that is, there is evidence that losses are probable and measurable.

The Expected loss model provides more relevant information, since it treats the credit loss on a consistent basis, thus reflecting the current economic condition at the reporting date. The methodology is based on the "expected loss over the life of each portfolio".

Advantage/Disadvantages of Expected loss Model vs. Incurred loss Model

Advantages:

- Prevents artificially high profits being booked upfront and delayed loss reporting
- Clearly reflects expected losses expected across a portfolio

Disadvantages:

- Inherent complexity and volatility
- Increased use of management expectations

Phase 3: ED on Hedge Accounting

IFRS is principle-based accounting, whereas IAS 39 has been criticised on the basis of rule-based accounting for testing hedge effectiveness, and also it was difficult to understand and interpret, which was defeating the very purpose for companies to apply. The Exposure Draft on Hedge Accounting mainly focuses on linking hedge items to the risk management approach adopted by an entity.

There are important improvements relating to assessing the hedge effectiveness and the possibility

IFRS is principle-based accounting, whereas IAS 39 has been criticised on the basis of rule-based accounting for testing hedge effectiveness, and also it was difficult to understand and interpret, which was defeating the very purpose for companies to apply. The Exposure Draft on Hedge Accounting mainly focuses on linking hedge items to risk the management approach adopted by an entity. ☺☺

The International Accounting Standards Board (IASB) has deferred the mandatory effective date from 1st January, 2013 to 1st January, 2015. However, an early application of IFRS 9 is still permitted. It also provided relief from the requirement to restate comparative financial statements for the effect of applying IFRS.

to apply hedge accounting to components of non-financial items.

Meaning of Hedge: Under hedge, investments are made to reduce the risk of adverse price movements in an asset. Normally, a hedge consists of taking an offsetting position in a related security.

Companies do perform hedging activity in order to mitigate or offset the risk that arises from fluctuation in interest rate, currency, and equity and commodity price.

Objective of Applying the Hedge Accounting: ED clearly comes out with the objective of applying the hedge accounting, describing: "in the financial statements the effect of an entity's risk management activities that use financial instruments to manage exposures arises from particular risks that could affect Profit and Loss, whereas Under IAS 39, the objective was not clearly spelt out; it was based on certain rules and restrictions as to the circumstances to which the hedge accounting shall be applied.

Hedge Effectiveness: We shall consider the meaning of the Hedge effectiveness: it is a degree to which changes in fair value or cash flow of the hedged item that are attributable to hedged risk are offset by changes in fair value or cash flow of the hedging instrument.

Under IAS 39, the hedge is expected to be highly effective, and 'highly effective' has been defined as a bright line quantitative test of 80-125%.

This was considered as Rule based, and it means that when hedge effectiveness is in range of 80-125%, then only it will qualify for Hedge Accounting

The Exposure draft has replaced this requirement for the hedge to be designated as neutral and unbiased, and minimises the expected ineffectiveness.

It has moved to Principle based, and the only criterion is the hedging relationship shall meet the objective of hedge effectiveness as per risk management policy laid down by an entity.

Designation of the Risk Component as hedged item: Under IAS 39, an entity can designate as hedged item if the risk can be separately identifiable and reliably measurable for the Financial item, whereas for Non-Financial item, an entity can designate as hedged item

for the risk component limited only to foreign currency risk.

The Exposure draft focuses on entity designation as hedged item if the risk component can be separately identifiable and reliably measurable, irrespective of the Financial or Non-financial item.

This also enables the Hedge accounting to be closely related to the risk management strategy of an organisation.

For Instance:

Consider the following example, where an entity buys fuel for aircraft from a supplier. The supply contract for the aircraft fuel is a variable price contract with a pricing formula that includes an indexation to the crude oil prices and other cost.

Aircraft fuel = Crude price + (Other costs + Inflation index)

As per the ED, an entity can apply hedge accounting for the crude component if it uses crude derivatives to hedge variation in the price from changes in crude price under a contractual pricing formula, **whereas**

Under IAS 39, an entity has to compare change in fair value of the crude derivative with the entire price change of the supply contract, i.e., including the variable other costs. The results of this, combined with 80-125% hedge effectiveness assessment test, are that the hedge accounting is not possible at all.

The hedge accounting portions of IAS 39 do contain certain rule-based criteria for testing hedge effectiveness. The proposal in the ED seeks to move away from this by making this principle-based.

The ED proposed model for hedge accounting combines a management view, which aims to use the information produced internally for risk management purposes, and an accounting view that addresses the timing of recognition of gain and losses.

If a risk component can be identified and measured, then it has to be recognised as contrary to determining what can be hedged by the type of item.

Transition Effective Date for All Three Phases

- The International Accounting Standards Board (IASB) has deferred the mandatory effective date from 1st January, 2013 to 1st January 2015. However, an early application of IFRS 9 is still permitted.
- It also provided relief from the requirement to restate comparative financial statements for the effect of applying IFRS.
- Instead, additional transition disclosures will be required to help investors understand the effect that the initial application of IFRS 9 has on the classification and measurement of financial instruments. ■

Three-Dimensional Accounting System



Double entry system of accounting and the financial statements generated from the books of account maintained on such system have inherent limitations. One of the important limitations of double entry system is the omission of non-financial transactions. In the present scenario there is a need to have a superior system of accounting which will consider not only such non-financial transactions but will also consider the other quantifiable data which will make these financial statements more meaningful. In this article, an effort has been made to discuss a potential new system of accounting, which can be called 3-dimensional system of accounting which will consider all three types of transactions namely; Category I - Transactions having only monetary effect; Category II - Transactions having monetary as well as quantity [3D] effect; Category III - Transactions having only quantity [3D] effect. The article also deals with a number of such areas where the presentation of financial statements will become more reliable and compliant with statutory requirements by applying the new method of accounting.

Introduction

Presently we follow "Double Entry system of book keeping" for financial accounting. The double entry system is like 2-dimensional system, where we look at the transactions only from monetary angle and apply the accounting rules of Real, Personal and Nominal Accounts. In fact, many transactions actually have three dimensions, except some transactions involving pure cash flows. The 3rd dimension of these transactions is some other quantifiable effect which gets omitted from being recorded.

With the help of accounting standards, ERP systems or other measures, in some cases we overcome this limitation while recording transactions and then while presenting financial statements. Can an effort be made to improve the accounting system itself which will automatically generate the necessary data for presenting the same in the financial statements? If



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the basic principles of accounting are suitably amended and the 3rd dimension is allowed to be recorded in the books, can the desired result be achieved?

Limitation of Financial Accounting

Traditionally we have been recording only those accounting transactions which can be measured in monetary terms. We overlook the non-monetary transactions which have other quantifiable angles and we will find a number of important quantifiable transactions which are not reflected in the financial statements merely because they have no monetary value.

Since these transactions are not recorded in the books of account, they do not get reflected in the financial statements generated out of these books of accounts. We have a number of accounting standards which take care of such omissions. But since the transactions are omitted from books of accounts, separate records need to be kept, leading to increased work and also leaving a possibility of omission of some important data.

What are Other Quantifiable Dimensions?

Stock items have this measurable dimension as 'kgs.', 'litre', 'meter', etc. Investments have number of 'shares' or 'units', and shares or debentures of the company (shown under Share Capital/Secured Loans) have 'number' as the third dimension. Land & Building has 'area' as the third quantifiable dimension. Plant & Machinery can be presented in production capacity or power, Furniture in area or storage capacity, Vehicles in cubic capacity or mileage, etc. Assets measured from this angle will definitely add value for the reader. Land purchased 30 years back and land purchased now will have same benefits but the cost will vary drastically. If a balance sheet shows one acre of land acquired 30 years back at ₹10,000 and another acre of land purchased recently for ₹50,00,000 separately, will definitely give better picture about the market value of the assets.

Balance Sheet Assets side (now)

Particulars	Amount (₹)
Land	50,10,000

Balance Sheet Assets side (what should appear)

Particulars	Qty.	Amount (₹)
Land	1 Acre	10,000
	1 Acre	50,00,000

(Here, we are not touching the historical cost concept but just segregating the assets according to its acquisition time, place, etc.)

Traditionally we have been recording only those accounting transactions which can be measured in monetary terms. We overlook the non-monetary transactions which have other quantifiable angles and we will find a number of important quantifiable transactions which are not reflected in the financial statements merely because they have no monetary value. ”

Nominal accounts can also be quantified wherever possible. Number of employees, quantities of materials consumed, number of units for power consumption, area occupied for Rent, Rates, Taxes, etc. are some examples which if shown in Profit and Loss Account will add value.

For example, electricity rates differ for different types of connections or from state to state. With the data of units consumed, one can find out the extent of variation in expenses on account of consumption and on account of rates. You will appreciate that consumption is controllable whereas, rate is not. Necessary data is available in the electricity bill received from the electricity supply company but is not recorded and thus does not become part of books of account.

Take example of earned leave granted to employees. As per the service rules particular number of days leave is credited to employees account on the first day of the year, which he can avail anytime during the year and the un-availed leave is carried forward subject to certain limit. On the balance sheet date such un-availed leave days are not reflected on the liability side. We make a provision for leave encashment but it does not show the number of paid man-days the company is going to lose in future.

This is just a sample list of items. You will find many more items where the 3rd quantifiable effect can be recorded.



Types of Transactions (Monetary As Well As Non-Monetary)

After having understood the 3rd dimension for a number of transactions, we can now group various transactions into three categories, namely:

- Category I - Transactions having only monetary effect;
- Category II - Transactions having monetary as well as quantity [3D] effect;
- Category III - Transactions having only quantity [3D] effect.

In the traditional double entry system of book keeping, we record only the transactions in the first category in the books of account.

Transactions in the second category are recorded only to the extent of their monetary effect. We, however, in some cases like stock, do record the third effect as separate costing records.

However, the transactions in the third category, how-so-ever important, are not recorded in the books of account merely because they have no monetary value.

In the proposed new system of accounting (let's call it 3-dimensional accounting system) an effort is made to recognise the transactions in Category II and III. Once recorded in the books of account, it would be possible to reflect the same suitably in the financial statements namely Balance Sheet and Profit and Loss Account.

Implementing 3-dimensional system in phased manner will facilitate its smooth transition over double entry system. Again, the extent to which the 3-dimensional system to be implemented may differ from organisation to organisation.

While proceeding further with the 3-dimensional method of accounting, you will recollect many Category II and III transactions worth recording. We can deal with each one of them as we progress further with this method. Let us quickly see some examples where that third dimension remains unrecorded.

In the proposed new system of accounting an effort is made to recognise the transactions in Category II and III. Once recorded in the books of account

it would be possible to reflect the same suitably in the financial statements namely Balance Sheet and Profit and Loss Account. Implementing 3-dimensional system in phased manner will facilitate its smooth transition over double entry system.

Category II Transaction

When we purchase goods, we debit "Purchase Account" (a nominal account) and the same ultimately is shown in the Profit and Loss Account. Actually, when we purchase goods it should be reflected as Stock (Real Account) in the Balance Sheet and should be debited to Profit and Loss Account only when and to the extent consumed.

When we fill petrol in vehicle, we debit "Petrol/Conveyance Account" (nominal account) when there is no expense but an asset (Cash) is replaced by another asset (Petrol, quantifiable in litres). The real expenditure occurs only when we consume that fuel. One may argue that it fits into materiality concept and continue to follow the present accounting treatment. It will be very difficult to actually calculate the consumption of fuel on daily basis and charge to expense account. Effort here is just to point out the real nature of transaction and accounting convenience that is followed while recording the transactions.

When we recharge our prepaid mobile, we debit the Telephone Expenses Account (Nominal Account). Actually we are buying 'talk time' by making payment in monetary terms. The asset (cash) changes to an intangible asset 'talk time' (quantifiable in hours). The real expenditure occurs when we use that 'talk time'. One may again ignore the same from materiality point of view.

But when we debit Purchases Account (nominal account) when we are actually purchasing Stock (real account), it is worth considering seriously. Our present double entry system ignores all the important



A

ssume a case where an asset gets fully depreciated or stock is written off but we continue to hold the same physically. In the present double entry system

these items neither appear in the Balance Sheet nor get carried forward to next year (as there is no amount), unless we retain some value of such asset as ₹1/- or so. Further, question arises as to how to monitor such assets in future and to know when they are later on sold or otherwise disposed off? ”

transactions of transition from raw materials to finished goods and directly records the final transaction of sales. Due to this, we need to value stock at the end of the financial year so that it can be shown in the Balance Sheet assets side by, credited to Trading Account. Showing opening stock and purchases on debit side and closing stock on credit side gives the net effect of materials consumed. What should actually be recorded is the consumption of materials generated out of books of account. When we calculate the closing stock, excess, shortage, pilferage, etc. can accordingly be recorded. Presently, some accounting software allow such type of recording. But the effect in Profit and Loss Account and Balance Sheet is given as per the traditional double entry system.

Category III Transaction

When a company issues bonus shares, no accounting entry is passed in the books of the investor as no monetary transaction is involved.

When an employee avails earned leave of one day, the employer actually is put to loss of the output of that employee for that day. But transaction is not recorded in the books of account. What is recorded at the end of the year is a provision for Leave Encashment. When we will start recording these transactions in the books of account, an authentic data will be readily available in the books itself.

In case of demerger of company, both split companies may issue shares to the shareholders without involving any financial implication. This transaction cannot be recorded in the books of account of the investor merely because there is no financial implication. While showing investments in the Balance Sheet, one will have to give special attention to such transactions as the same do not emerge out of books of account. Those who audit the accounts of brokers and sub-brokers or investor having huge investments will appreciate that it becomes very difficult to reconcile the share balances as appearing in the books that with the demat account.

How can Category II and Category III Transactions be Recorded in the Books of Account?

Initially, 3-dimensional accounting system can be implemented by inserting some additional fields without disturbing the present structure.

Format of Journal Book

Date	Particulars	L.F.	Debit		Credit	
			Qty.	Amount	Qty.	Amount

Format of Ledger Account

Dr.				Cr.			
Date	Particulars	JF		Date	Particulars	JF	
			Qty. Amount				Qty. Amount

Consequently, Balance Sheet and Profit & Loss Account also shall have additional quantity column.

Entries under Category I will continue to get recorded in the same manner, with the quantity column remaining blank.

Entries in Category II will be recorded in both quantity as well as Rupees columns.

Entries in Category III will be recorded only in quantity column, leaving the amount column blank. Thereby, these entries will start finding place in accounting, which are omitted so far in double entry book keeping.

The ledger accounts thus get accordingly posted with the amount and quantity wherever necessary. The ledger account will not be closed unless both quantity and amount columns are closed. Thus, the important non-financial items will start finding place in the Balance Sheet and Profit and Loss Account.

Let us take some simple sample transactions and see how the same would be recorded in the new system, posted to the ledger accounts and their reflection in the financial statements.

Category II Transaction: ABC Ltd. purchases raw material P (quantity of 100 kgs. @ ₹10/- per Kg), amounting to ₹1,000/- on 29-03-2011 from supplier S. Journal entry on receiving invoice from supplier S on 29-03-2011.

Date	Particulars	LF	Debit		Credit	
			Qty.	Amount	Qty.	Amount
29-03-11	Material P A/c. Dr.		100	1,000		
	To S A/c.					1,000
	(suitable narration)					

Here, instead of debiting Purchases Account, Material P A/c. will be debited and the same will appear in the Balance Sheet and not in the Profit and Loss Account under Purchases A/c.

Here a simple transaction is considered without considering the effect of taxes such as Excise duty and VAT.

The 3-dimensional system, if brought in place, can improve the accounting system to bring it at par with the changing scenario; improve the presentation of the financial statements to give a holistic view to understand the true assets and liabilities whether having monetary value or otherwise; will facilitate better understanding of the accounting records and financial statements not only from financial angle but from various angles. ”

The major change in the method of accounting will be in relation to material consumption and recording of Sales, Purchases and Consumption for a manufacturer as well as a trader.

Category III transaction: XYZ Ltd. issues Bonus shares in the ratio of 1:1. Demat account was credited with 100 shares on 30-03-2011. Investments A/c has opening balance of 100 shares purchased at Rs.200 per share.

Journal entry on receiving intimation of credit of bonus shares to Demat Account on 30-03-2011.

Date	Particulars	LF	Debit		Credit	
			Qty.	Amount	Qty.	Amount
30-03-11	Investments A/c. Dr.		100	0		
	To Profit & Loss A/c.				100	0
	(suitable narration)					

Here the credit effect being in the nature of profit/gain is given to Profit & Loss Account quantity column.

The Investment Account would look as follows.

Investment Account

Date	Particulars	JF	No of shares	Amount	Date	Particulars	JF	No of shares	Amount
01-04-10	To Bal b/d.		100	20,000					
30-03-11	To P & L A/c.		100	0					
					31-03-11	By Bal c/d.		200	20,000
			200	20,000				200	20,000

The Profit and Loss Account will have one additional entry on the credit side with zero amount of 100 shares received as bonus shares. Similarly, in the Balance Sheet under Investments, the no. of shares of XYZ company can be shown as 200 in the Qty. column while amount column will continue to show a figure of ₹20,000/-.



Balance Sheet Assets side (extract)

	Particulars of Qty.	Qty.	Amount
Shares in XYZ Ltd.	No. of shares	100	20,000
		100	0
Total		200	20,000

Profit and Loss Account Credit side (extract)

	Particulars of Qty.	Qty.	Amount
Shares in XYZ Ltd.	No. of shares	100	0

(An asset is generated without paying any cost, hence credited to Profit and Loss Account)

The entry can be made even when no amount is involved but some other quantifiable data is involved. In the present computerisation era maintaining such record should not really be a problem.

Assume a case where an asset gets fully depreciated or stock is written off but we continue to hold the same physically. In the present double entry system these items neither appear in the Balance Sheet nor get carried forward to next year (as there is no amount), unless we retain some value of such asset as Re.1/- or so. Further, question arises as to how to monitor such assets in future and to know when they are later on sold or otherwise disposed off?

Benefits of 3-Dimensional Method of Accounting

The 3-dimensional system, if brought into place, can -

- improve the accounting system to bring it at par with the changing scenario;
- improve the presentation of the financial statements to give a holistic view to understand the true assets and liabilities whether having monetary value or otherwise;
- will facilitate better understanding of the accounting records and financial statements not only from financial angle but from various angles. ■

Paradigm Shift in Taxing Services



Every once in a while the lion has to show jackals that the time is not to run but to kill. It can be argued that this is not the best of times, but then there is never a right time to bring in sweeping amendments. Given the GST-times ahead, the negative List of Services may just be the sound of the lion's roar. It is 18 years since taxation of services was introduced for the first time in India. From a mere three services to taxation of almost all kinds of services (barring a few) today, it represents an exemplary shift in the era of services taxation. From a monetary point of view, as per the Finance Minister's estimate, it would contribute over ₹100,000 crore in the current financial year.

With GST looming on the horizon, it was essential for service tax to move from the current regime of taxation of specified services to an era where little differences would exist on what service is taxed and what is not. Consequently, a study was initiated last year to examine the modalities for a new regime, which has now resulted in taxation of services on the basis of a negative list. But before we jump into any conclusions, it is essential to bear in mind that notwithstanding the dramatic change and the attempt to adopt "...a paradigm shift in the way services are proposed to be taxed..." it will do little to abandon 18 years of experience and understanding of transactions involving services. That apart, before we start to dissect and analyse the new regime, we must remember that though over the years we have had ample opportunities to bemoan the unwieldy tax structure that has come to represent service taxation, within a year of its implementation, we will all be talking about the 'negative list' approach without a single emphatic expression.

The "Negative List of Services" based approach is contained in the following amendments proposed:

Section 66B – charging section which levies tax on all services (as defined)

Section 66C – authorising the Government to prescribe rules for determining the situs of the service

Section 66D – specifying the negative list of services that will not be taxed

Section 66E – specifying the 'declared services' that will be taxable without entertaining any debate

Section 66F – specifying interpretation principles on bundled-services



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The “Negative List of Services” based approach is contained in the proposed amendments of Section 66B, Section 66C, Section 66D, Section 66E and Section 66F. Taxation on the basis of a Negative List of Services would essentially mean charging tax on all services to the exclusion of a few that are not taxable or if ordinarily taxable, specifically excluded for taxation purposes. ☹☹

Taxation on the basis of a Negative List of Services would essentially mean charging tax on all services to the exclusion of a few that are not taxable or if ordinarily taxable, specifically excluded for taxation purposes. It is important to note that this negative list neither lends itself to scrutiny nor behaves as specie to allow anyone to extrapolate the exclusions.

It is a truism that tax is a liability that is attracted to the subject matter of levy when the taxing event occurs. While the taxing event is never the object of a commercial transaction or a contract, the law authorises an inquiry into the presence of the taxing aspect in that transaction or contract. And when its presence is established, liability is fastened and someone is designated as the payer.

Service tax, in this new approach, will be applicable when “any activity is carried out by one person for another for a consideration.” From here onwards, there is a considerable shift in the determination of taxable services. From the current scenario, where one had to wade through the different types of services, and see if the service provided fits into any one of the taxable services, the inquiry would shift to sifting through:

- 17 services enshrined in the negative list;
- 34 exempted service categories under a mega notification; and
- 9 exclusions/abatement notifications.

For long, a simple principle stood the test of time - sellers pay VAT, service providers pay service tax and importers pay import duties. But since life is one continuous cycle of learning, we were soon made aware (after much litigation) of another mode of levy when importers of services were called upon to pay service tax under “reverse charge” - a scenario where the recipient of service was being made responsible for payment of service tax. Having tasted success with this new method of collection, the Government has now unabashedly deployed this mechanism all over the new system of levy. So from a situation where this was deployed only to collect tax from people who were rendering service in India but located outside the taxing jurisdiction, we now move to a perhaps more cautious regime where the service receiver is being tasked with

payment of a portion of the service tax due through the reverse charge mechanism when the service provider is either unorganised or fearsome.

The table below is an immediate case in point where to check deliberate non-compliance, citing the pretext that the service provider is not organised (an individual, firm or an LLP), and the recipient is better organised (corporate body), the tax payable is differentially assigned to the service provider and service recipient, namely:

S. No.	Description of Service	Service Recipient	Service Provider
1	Hiring of motor vehicle designed to carry passengers:		
	- with abatement	100%	Nil
	- without abatement	40%	60%
2	Supply of manpower for any purpose	75%	25%
3	Works contract service	50%	50%

Services are taxed in the hands of the person charged with paying the tax, but the levy is based on *situs* of the service that is performed. “Taxable territory” as an expression has been introduced to refer to territories where the Finance Act extends. Services are taxable only when provided in the taxable territory. And as an extension of this analogy, *situs* of a service is established based on the location of the service receiver. If the service receiver is located in a taxable territory, then tax becomes payable.

A Service receiver is a person who carries the underlying contractual obligation to pay the agreed consideration to the service provider. Under the new regime, who pays the consideration is indicative, but who is liable to pay the consideration would be conclusive.

Hence, to sum up:

- Any taxable activity – being any activity that eludes all clauses in the negative list, mega exemption notification and exclusion categories;
- performed for a consideration;
- for another person;
- who is located within the taxable territory; and
- will be liable to service tax.

And:

- The person who is most proximate to the activity (service provider or service receiver);
- such person being situated within the taxable territory; and
- will be responsible for discharging the tax.

The export of services to an overseas customer will be exempted, because the service receiver is situated outside the taxable territory. For similar reasons,

services performed outside India for an Indian customer will still be taxable.

Given the number of services that are liable to tax, there is no motivation to qualify the negative list or the exemptions. With the proposed amendment in Section 66F that “services used for providing services” ought to be viewed as being distinct and separate; if any service becomes non-taxable, then the entire CENVAT chain will have been severed leading to a surge in cost of sales. It would be utter folly to want to qualify the negative list or exemption. With the sweeping coverage of taxes on goods and services, wandering away from the continuum of input-output chain of taxation will cost very dear. With a squeeze on margins being rampant in a shrinking global economy, one can ill afford the loss of tax credits in a business.

Although we are yet to see what changes may come about in the CENVAT Credit Rules, as the situation beckons, we can expect to see a service-specific reference making way for a more liberal yardstick. Definition of inputs, capital goods and input services, and their significance would evaporate, and the nexus theory is *passé* to usher in an era of (near) total pass-through of all credits. However, given the urge to hold back some of the credits, weighted reduction may exist only to remind us about the past.

In a hurry to adopt the new methodology, one must not lose sight of an important fact – new or old, the basic ingredients of a contract under the Indian Contract Act, Sale of Goods Act and mutual exclusivity in the taxing powers (or limitations) under the Constitution cannot be given a go-by. What was contracted for, what does the tax law look for and how to identify its presence will continue to play a central role even in this new approach.

That taxation follows business arrangements to identify the presence of taxing ingredients can be seen yet again in the amendment proposed by sub-section 3 to Section 66F in the expression “naturally bundled in the ordinary course of business.” If taxable and non-taxable services are naturally bundled, then the “essential service” guides taxation and any attempt to artificially bundle services is swiftly met with incremental tax burden.

Unbundling of composite transactions into its constituents is not permissible except in works contracts and catering contracts. Seemingly insightful vivisection of a composite transaction does not have the sanction in law, much less views of an adventurous bench of the Tribunal. “What did the parties have in mind?” is simple, yet profound. Conduct of parties prevails over any presupposition about what they may have had in mind. Observing the conduct of the parties provides the facts necessary to make a

From the current scenario, where one had to wade through the different types of services and see if the service provided fit into any one of the taxable services, the inquiry would shift to sifting through 17 services enshrined in the negative list; 34 exempted service categories under a mega notification; and 9 exclusions/abatement notifications. ”

determination of the “object of contract”, and then the tax law freewheels its way and provides us the answer to taxability. Following principles may be noted as the touch points for ascertaining the taxability of composite transactions:

- Except in two instances, vivisection of composite transactions is not permissible;
- If “severally severable objects” were contracted by the parties, then though a single document may enshrine the agreement of the parties, unbundling is necessary and desirable; and
- Intent of parties to be discerned from the conduct of the parties, which will guide taxability of the whole or the constituents severally.

“Sale” and “service” will be mutually exclusive, unless established otherwise by the above methodology. That some services are provided, while selling goods or some materials are used/used-up in providing services should not pose a predicament in deciding taxability as sale or service. Sure, taxmen will canvass that both VAT and service tax can co-exist. But it is for the discerning to guide compliance by industry and suitably represent to stave-off the avarice of such taxmen.

Verb is an “action word” and “service” is a verb; but not when it is used in the context of “service tax”. If we feel compelled to look for the action in a given service, we may be greatly disappointed saying, “where is the service for a tax to be charged”. Look what happened to “renting of immovable property service”. There is no such “verbal conjugation” that the law submits itself to. Now, under the negative list of services, where service is being defined as an “activity”, it is clear that we ought not to look for the “service” in any taxable service.

If neither the State nor the subject seeks to stretch this legislation (when it becomes one) to undeservedly raise revenue or claim exclusion, compliance will be almost uneventful under this approach. The sheer length of the TRU letter issued on Budget Day shows how unnerving it must be even for the establishment to make such a *paradigm shift*. And while the powerful lions may roar, we professionals walk tall as elephants keeping a watch over the use of that power. ■

Concept of Brand under Indirect Tax Laws



The object of keeping distinction between branded and unbranded goods is neither to protect the owners of the trade mark/trade name nor the consumers from being misled. These are considerations which are relevant in cases relating to disputes arising out of infringement/ passing off actions under the Trade Marks Act. Under Excise Law as well as under VAT Laws, many times there are different tax rates for many of the goods which bear or do not bear a brand name/ trade name. The object of bringing the concept in Indirect tax law is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name. The author in this article analyses some judgments where the courts have defined trade name/brand name.

Use of trademarks, brand names, logos etc. on products fulfils the purpose of indicating a relation between the said product and the logo owner so as to influence the trade. The function of a trade mark is to give an indication to the purchaser, or a possible purchaser, as to the manufacture or the quality of the goods, to give an indication to his eye of the trade source or trade hands through which they pass on their way to the market. Under Excise Law as well as under VAT Laws, many times there are different tax rates for many of the goods which bear or do not bear a brand name/trade name. Under the Excise Law, distinction is made in two fashions. Often exemption from duty is allowed to SSI units. Notification granting exemption generally bear a clause providing that exemption shall not apply to goods bearing a brand name or trade name, whether registered or not, of another person.



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Use of trade marks, brand names, logos etc. on products fulfils the purpose of indicating a relation between the said product and the logo owner so as to influence the trade.

Some times higher rates of tax is prescribed for goods bearing a brand name or trade mark irrespective of type of unit (whether large or SSI) where such goods are manufactured. As VAT is a tax on sale only, wherever VAT Laws intend to distinguish between branded or unbranded goods, this distinction is only by way of higher rate of tax on branded goods.

The object of keeping distinction between branded and unbranded goods is neither to protect the owners of the trade mark/trade name nor the consumers from being misled. These are considerations which are relevant in cases relating to disputes arising out of infringement/passing off actions under the Trade Marks Act. The object of bringing the concept in Indirect tax law is clearly to grant benefits only to those industries which otherwise do not have the advantage of a brand name.

Meaning of 'Brand name' under Central Excise Act

What is meant by brand name or Trade name is not defined under Central Excise Act. Because of this reason every time, whenever a notification or tariff chapter refers concept of Brand/Trade name, its definition is also provided in the same notification or tariff chapter.

Notification No. 8/2003-C.E., dated 1st March, 2003 Provides for exemption from duty of Excise to Small Scale Industrial Units. This exemption is not available, if goods bear a 'brand name or trade name whether registered or not, of another person.' There are certain exceptions to this rule, which are not discussed here. What is meant by 'brand name or trade name' is defined by way of explanation which reads as under:-

'brand name' or 'trade name' means a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

Chapter 61 & 62 of the Central Excise Tariff Act pertain to Articles of Apparel and Clothing Accessories. Articles falling in these Chapters attract Excise Duty if goods bear a 'brand name'.

Word brand name is defined in both the Chapters thus:

"In relation to a product of this Chapter, 'brand name' means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature or invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person."

Concept of brand or trade name is there in several other Chapters and notifications of Central Excise Tariff.

Both these definitions are very wide. Yet uses of words 'that is to say' limit its scope to some extent. Further it needs to be noted that the concept gets invoked only when such use of brand or trade name is 'for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark'.

The concept of brand for the purpose of SSI unit exemption is larger than concept of brand for the purpose of taxation of Articles of Apparel and Clothing Accessories. In the former definition 'trade name' is also included. A trade name can be a name in which or by which a person or body carries on their trade. It would, if the contexts so permits include the name of a company. A trade name can be different from the legal name the business has been registered as, for corporate status. If one goes with literal interpretation, whether it is only 'brand name' or 'brand name' & 'trade name' both, it makes little difference as the definition of word 'brand name' includes a 'name'. Name includes 'trade name'.

In Astra Pharmaceuticals (P) Ltd Vs. Collector of CE [1995] 75 ELT 214 (SC) judgment dated 16th December, 1994 a House mark was distinguished from brand name. Astra was manufacturer of Dextrose injections. It was denied benefit of exemption from duty as on the cover it carried the name 'AP-Astra'. According to the Department, since the medicine was described by a monogram and it established a relation between the manufacturer and the medicine, it was hit by exclusion clause. The Supreme Court quoted from a book on Trade Marks to note that in the pharmaceutical business a distinction is made between a house mark and a product mark. The former is used on all the products of the manufacturer. It is usually a device in the form of an emblem, word or both. For each product a separate mark known as a product mark or a brand name is used which is invariably a word or a

combination of a word and letter or numeral by which the product is identified and asked for. In respect of all products both the product mark and house mark will appear side by side on all the labels, cartons etc. Goods are ordered only by the product mark or brand name. The house mark serves as an emblem of the manufacturer projecting the image of the manufacturer generally. It was held that the 'AP' or 'Astra' on the container or packing was used to project the image of manufacturer generally. It did not establish any relationship between the mark and the medicine. For instance, if the appellant instead of using Dextrose injections would have described it as Astra Injections or Astra Dextrose injections then it could be said that a relationship between the monograph and medicine was established. Use of these words was held to be only a monograph to identify the manufacturer.

In *Commissioner of Central Excise Vs. Grasim Industries Ltd* [2005] 183 ELT 123 (SC) judgment dated 12th April, 2005 the matter pertained to SSI exemption. Product was cement and bag of cement carried following words on it –

'manufactured by Dharani Cements Ltd

A subsidiary of Grasim Industries Ltd'

There was no dispute about the fact that Grasim Industries Ltd was a well known cement manufacturer. It was also undisputed that the purpose of putting the name of Grasim Industries Ltd was to show a connection between the product and Grasim. However the contention of the assessee was that the words 'Grasim Industries Limited' were neither a brand name nor a trade name. It was further contended that mere use of the name of a company does not amount to using a brand name or trade name of some other company. Assessee invoked Astra Pharmaceuticals case (supra) in its favour to contend that benefit of relevant notification is not lost by use of the name of a company. The Court distinguished judgment in Astra Pharmaceuticals case (supra) on two grounds (i) in Astra Pharmaceuticals case the matter under judgment pertained to 'Patent or proprietary medicines' (ii) the concept of brand in Astra Pharmaceuticals case was narrower compared to case in hand as in the case in hand, use of trade name was also included as one of the prohibiting conditions. While holding that use of name of Grasim Industries was hit by the prohibition contained in

notification, the Court went by the theory of intention. The key question was, what was the intention to use the name of Grasim Industries Limited. As noted earlier, there was no dispute about the fact that the purpose of putting the name of Grasim Industries Ltd was to show a connection between the product and Grasim. It was further held that by use of words 'that is to say' in the notification the term 'brand name or trade name' gets qualified by the words which follow. The words which followed were a 'name or mark'. Thus even an ordinary name or an ordinary mark is sufficient.

Use of House Marks is not akin to Use of brand or Trade name

The distinction between 'House mark' and 'trade mark' for the purpose of Central Excise Act was first explained by the Supreme Court in Astra Pharmaceuticals' case (supra). This difference was again noted by the Supreme Court in *Commissioner of Central Excise Vs. Kalvert Foods India Pvt. Ltd.* [2011] 270 ELT 643 (SC) judgment dated 9th August, 2011 by relying on following passage from a book on Law of Trade Marks:

"It is possible that the proprietor may use several trade marks in respect of his goods (known as product mark), besides using a common mark in all its products to indicate the origin of the goods from the enterprise (known as house mark). This practice is more predominant in the pharmaceuticals trade. Though both are trade marks and are registrable as such, each has its own distinct function. While the House mark represents the image of the enterprise from which the goods emanate, the Product mark is the means by which goods are identified and purchased in the market place and is the focal point of presentation and advertisement."

What emanates from above is that if the mark, phrase, symbol etc. is being used on all the products from a production house, with the intention of identification only, it remains out of concept of brand or trade name. In *C. Krishnaiah Chetty & Sons Pvt. Ltd. Vs. Commissioner Central Excise* [2009] 246 ELT 353 (Tribunal-Bangalore) Judgment dated 6th March, 2009 it was held that mere embossing of the initials of the raw material supplier for easy indication cannot be equated with the affixing of brand name. The matter pertained to Jewelry business. The Jewelry was got manufactured on job work basis by supplying Gold to the job worker, manufactured jewelry carried an embossing of words 'CKC'.

In Circular No B-1/3/2011-TRU dated 25th March, 2011 the use of House mark has been held to be out of concept of Brand or Trade name in following words:

Notification granting exemption generally bear a clause providing that exemption shall not apply to goods bearing a brand name or trade name, whether registered or not, of another person.

"Whether a particular name or mark or symbol etc. is a brand name or not is a matter of fact, and can be ascertained from the manner in which it is understood in commercial or trade parlance. The test of goods being branded would be if the buyer seeks to buy the goods because they bear or are sold under a particular brand. As such, a mere mark of identity put by a jeweler or the job worker, commonly known as a 'house mark' shall not be considered a brand name."

Mere alphabets or numerals (unless styled) cannot be registered as a brand name or trademark. Thus, while designing the house mark care should be taken to use only simple form of alphabets or numerals.

Intention is the key

The use of name or mark should be with the intention of indicating, a connection, between the product and the person using such name or mark. From the analysis of above Judgments as well as administrative understanding, it can be safely concluded that intention of putting or using name or mark, on the product is key to decide whether a product can be said to be bearing a brand name or trade name. The question to be answered is whether use of such name or mark was with an intention to indicate a connection between the product and some person using such name or mark.

Intention is a state of mind. No person can make out the state of mind of another person. State of a person's mind can only be determined by deducing facts of a case.

Mere writing of manufacturer's name on packet does not make product branded. In *Tarai Food Ltd Vs. Commissioner of Central Excise* [2006] 198 ELT 323 (SC) judgment dated 26th April, 2006 the assessee was manufacturing and selling 'French Fries' under the brand name 'Inland Valley'. However, it was also selling same commodity without using brand name. Goods sold under brand name were liable for excise duty whereas goods without bearing brand name attracted nil rate of duty. The revenue argued that it is the manufacturer's name which is sufficient to place the second type of packets within the tariff entry pertaining to branded goods. Rejecting the argument, the Apex Court noted that under the Standard Weights and Measures (Packets Commodities) Act, 1977 every packet is required to bear thereon or on a label squarely affixed thereto a definite, plain and conspicuous declaration as to, *inter alia*, the name and address of the manufacturer (see Rule 6 & 10). If the name of the manufacturer were to be a brand name then this would mean, that there would be no unbranded unit container

The concept of brand for the purpose of SSI unit exemption is larger than concept of brand for the purpose of taxation of Articles of Apparel and Clothing Accessories.

at all in law and the distinctiveness between branded and unbranded would be meaningless.

In *Commissioner Central Excise Vs. Bhalla Enterprises* [2004] 173 ELT 225 (SC)/ 2004-TIOL-90-SC-CX the assessee had apprehension that in remand proceedings it may be denied exemption merely because some other traders, at some point of place and time might have used the trade mark. The Supreme Court held that the apprehension of the assessee is unfounded. The notification clearly indicates that the assessee will be debarred only if it uses on the goods in respect of which exemption is sought, the same/similar brand name with the intention of indicating a connection with the assessee's goods and such other person or uses the name in such a manner that it would indicate such connection. Therefore, if the assessee is able to satisfy the assessing authorities that there was no such intention or that the user of the brand name was entirely fortuitous and could not on a fair appraisal of the marks indicate any such connection, it would be entitled to the benefit of exemption. An assessee would also be entitled to the benefit of the exemption if the brand name belongs to the assessee himself although someone else may be equally entitled to such name.

In *Nirlex Spares Pvt Ltd Vs. Commissioner of Central Excise* [2008] 222 ELT 3 (SC) judgment dated 4th January, 2008 use of Hexagonal artistic design on the cartons of goods was held not to be in nature of use of 'Brand name' as (i) no body claimed ownership of that design (ii) intention to indicate a connection between the design and product was not present.

Surnames as brand names

While weighing whether some name, mark or sign will be considered as brand or not, its registrability under Trade Marks Act, 1999 should be examined. Section 9 of the Trade Marks Act, 1999 states the situations when registration under trade marks Act will be denied. As per sub-section (1) the trade marks which are devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of another person shall not be registered. There are no special, stricter rules for assessing the distinctive character of signs which consist of surnames. The question whether a particular surname can be registered as Trademark is to be answered on case to case basis. Surnames have three characteristics

in particular which differentiate them from other word marks. First, individuals generally acquire them at birth (although they may be adopted subsequently). Thus one's surname is generally given so far as the individual is concerned, rather than the result of an exercise of choice. Secondly, they form an important part of an individual's identity. There is thus a strong motivation for individuals to use surnames to denote the origin of goods or services supplied by them (or by companies founded by them). Thirdly, it is inherent in the nature of surnames that they are shared with a greater or lesser number of other individuals. Those other individuals may also supply such goods or services or desire to do so. As a matter of logic, the prevalence or otherwise of the use of surnames is a relevant factor, since if the use of surnames is prevalent a surname is less likely to be distinctive than if the use of surnames is not prevalent. In fact, CBEC has recognised a situation where same name or mark is being used by several units, though there is no person who claims ownership to that mark or name. The Board has clarified those units which are using trade name or brand name, which does not belong to any person, were eligible for exemption of SSI Unit¹.

In *Pethe Brake Motors Ltd Vs. CCE, Pune* [2005] 179 ELT 57 (Tribunal-Mumbai) judgment dated 13th February, 2004 the Tribunal held that use of word

'PETHE' on the metal labels is not a brand name or trade name but only a house mark or family name. As it happens "PETHE" is a surname and anybody having "PETHE" surname can use the same without any restriction².

However in *Commissioner of Central Excise Vs. Kalvert Foods India Pvt. Ltd.* [2011] 270 ELT 643 (SC) judgment dated 9th August, 2011 use of word 'Kalvert' on packets was held to be brand name despite the fact that there was no denying of the fact that 'Kalvert' was a surname. In this case arguments revolved around whether use of word 'Kalvert' is a 'House mark' or 'brand name'. No judgment or circular was cited before the Court to impress that use of that word was in the sense of surname only.

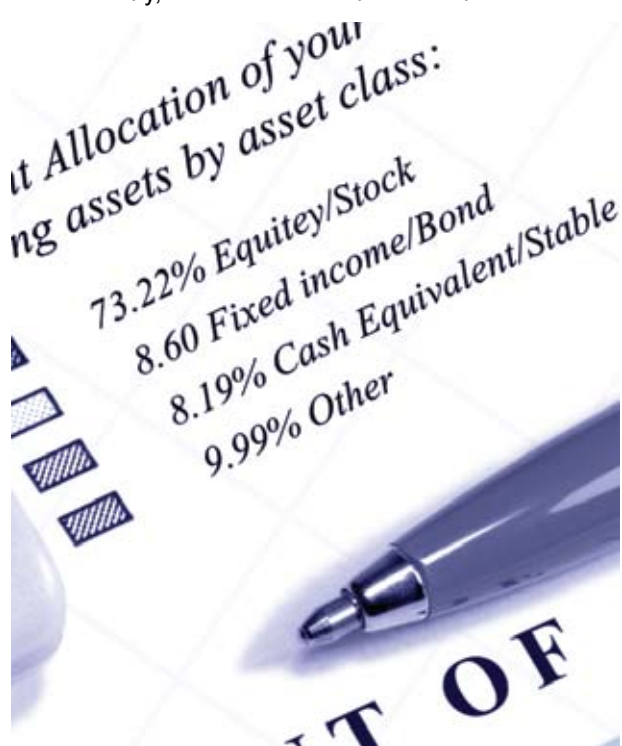
Difference between bearing a brand name and sold under a brand name

Goods falling under Chapter Heading 61 & 62 of Central Excise Act will attract charge of duty if they are 'bearing a brand name' or are 'sold under a brand name.' There is no problem in understanding the concept of 'bearing a brand name'. Here word 'bearing' can be understood as synonyms to 'affixed'. Such affixation can be on the product itself which remain part of the product while in use such as label affixed on the piece of garment or a plate affixed on piece of electronic/electrical article. Such affixation can be through a removable mode such as a tag hanged with piece of garment. However what is the meaning of term 'sold under a brand name' is not clear.

In *Commissioner of Central Excise Vs. Superex Industries* [2004] 174 ELT 4 (SC) judgment dated 3rd November, 2004 relevant SSI unit exemption notification provided that exemption shall not apply where manufacturer 'affixes' the specified goods with a brand name or trade name of another person. Products cleared by the assessee from its factory did not bear name of any other person. However in the invoices, issued to the purchasers, the product 'generating set' was described as 'Kirloskar Generating sets'. It was held that merely because, in the invoices, the set is passed off as a Kirloskar generating set, the benefit of the Notification would not be lost.

In *Connaught Plaza Restaurant P. Ltd Vs. Commissioner of Central Excise* [2003] 154 ELT 187

If the mark, phrase, symbol etc. is being used on all the products from a production house, with the intention of identification only, it remains out of concept of brand or trade name.



¹ Circular No. 52/52/94/CE, dated September 1, 1994 cited in Nirlex Spares Pvt. Ltd v Commissioner of CE (supra).

² Appeal against this Judgment was admitted by Supreme Court and is pending for disposal – [2006] 198 ELT A175 (SC).

(Tribunal-Delhi) judgment dated 29th January, 2003 the assessee was selling frozen desert from the outlets of McDonald. The cup or cone in which such desert was served did not bear any brand name. It was held that merely because the product is sold from the outlets of McDonald, it cannot be claimed that it is bearing a brand name.

In *Cookie Man Foods India P. Ltd Vs. Commissioner of Central Excise* [2006] 197 ELT 425 (Tribunal-Chennai) judgment dated 27th September, 2005 again the sale of unbranded cookies was held not to be hit by prohibition about use of brand name of others merely for the reason that they were sold from an outlet which was brand owned by some body else and invoice for the goods also carried title of that brand.

Both of above two judgments of Tribunals have been appealed against by the revenue before the Supreme Court vide [2003] 158 ELT A72 (SC) & [2006] 201 ELT A130 (SC) respectively. Exact grounds on which appeal is filed are not available. However from the information available in reporting journal, it appears that in the former case appeal has been filed on the issue of classification whereas in the later case appeal is filed on the issue whether goods sold can be said to be unbranded. There is marked difference in facts of these cases. In *Connaught Plaza* case there is finding of the fact that the cup or cone in which such desert was served did not bear any brand. However, in *Cookie Man* case there is finding that cookies were being sold in plastic pouches/containers on which the brand name 'Cookie Man' and the connected logo were printed.

From the above it can be concluded that sale would be 'under the brand name' if the product is stored and displayed in the show room in the container/packet displaying brand. However, if the product is stored and displayed in the shop or area within shop where branded products are also displayed, it will not become branded.

Now comes the question whether goods can be said to be branded, if these are handed over to customer in a carry bag on which the brand name or brand logo is printed. Definition of 'brand name' mandates that use of name, mark etc. should be (i) in relation to a product, (ii) for the purpose of indicating, or so as to indicate, a connection (iii) in the course of trade (iv) between the product and some person. The term 'in the course of trade' means user of the mark in the course of production and preparation of the goods for the market. After the goods have reached the consumer, they are no longer in the course of trade. Carry bags are articles meant for conveyance or packing of goods. Putting of the

Mere alphabets or numerals (unless styled) cannot be registered as a brand name or trademark.”

bought out piece in packing case is post sale activity. A customer's decision for buying does not change merely because in what type of carry bag goods will be handed over to him/her. Whether a shop keeper, who is dealing in both branded and unbranded goods should give two carry bags to customer, one of them necessarily should not have a brand name or logo on it only because otherwise goods will become liable to tax? Here again theory of intention should be applied. Whether any branded good will cease to be 'branded' merely because it is kept in a carry bag which does not contain brand name or logo on it? Answer certainly will be 'no'. In *Commissioner of Central Excise Vs. Electronic Research Ltd* [2005] 187 ELT 495 (Tribunal-Bangalore) judgment dated 28th February, 2005 the Tribunal has mentioned that there are broadly two ways of interpreting law. The first approach would be to go by the grammatical and ordinary sense of the words. In this approach, one sticks to the letter of the law. According to this approach, even if the interpretation gives rise to unjust results, which Parliament never intended, the literal meaning must prevail. If law and rules are interpreted with mathematical rigour, then a computer can be programmed to administer law. There will not be any need for human beings. The law is for the society and society is not for the law. After all procedures are handmaidens of law and not the other way. Another way of interpreting law is, looking into spirit. One has to go into the spirit of the relevant Notification and the Rules and come to a decision. In view of foregoing discussion, it can be concluded that merely use of a carry bag containing brand name or logo on it will not come in way of availing benefit associated with unbranded goods.

Concept of brand under VAT Laws

VAT laws in different states also carry distinct rates of tax for some of the entries based on their status about branding. In the VAT Acts of States of Tamilnadu, Karnataka, Gujarat and Jharkhand³ meaning of branded goods has been given a meaning with reference to the Trade Marks Act, 1999. According to definition of branded goods in these States, 'branded' means any goods sold under a name or a trade mark registered under the Trade Marks Act, 1999 (Central Act 47 of 1999). State of Rajasthan has adopted similar meaning through a circular⁴ providing that wherever different tax rates are provided for branded or unbranded goods, rate of tax applicable

³ Tamilnadu S. 2(9); Karnataka S. 2(5-B); Gujarat entry 48 of Sch II; Jharkhand S. 2(vii).

⁴ 16(466)Tax/VAT/Commissioner/08/933 dated September 12, 2008.

Intention of putting or using name or mark, on the product is key to decide whether a product can be said to be bearing a brand name or trade name.

to branded goods would apply to only those goods which are registered under "The Trade Marks Act, 1999". However under the Maharashtra VAT Act, brand is defined in wider terms and is almost similar to definition as contained in Chapter 61 & 62 of Central Excise Act.

Section 2(3-A) of MVAT Act defines brand name as "brand name" when used in the schedule means a brand name, (whether registered or not), that is to say, a name or a mark such as symbol, monogram, label, signature or invented words or any writing which is used in relation to a product for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

There is a marked difference between concept of brand for SSI unit exemption under Excise Act *vis-à-vis* Excise Tariff Chapters & Maharashtra VAT Act. Concept under SSI unit exemption scheme prohibits use of 'brand name' and also 'trade name' for being eligible to benefits associated with unbranded goods. However, use of words 'Trade name' is absent in definition of 'branded' in Excise Tariff Chapter definitions and Maharashtra VAT Act definition.

Now let us examine status of goods in packet carrying following information on it —

Manufactured in India by
Nipa Chemicals Ltd.,
In Collaboration with
Nihon Parkerizing Co. Ltd., Japan.
Cathedral Road, Chennai-600086.
Marketed in India by
Goodlass Nerolac Paints Ltd.,
FOR INDUSTRIAL USE ONLY

In *Nippa Chemicals P. Ltd Vs. Collector of Central Excise* [1998] 100 ELT 490 (Tribunal-Chennai) judgment dated 11th September, 1997 above writing was held to be out of ambit of expression 'brand name' or 'trade name' used in SSI unit exemption Notification. This decision was overruled by the Supreme Court in *Grasim Industries Ltd case* (supra). However, while overruling, the Supreme Court observed that 'Of course this being a Notification under the Excise Act,

the connection must be of such a nature that it reflects on the aspect of manufacture and deal with quality of the products. No hard and fast rule can be laid down however it is possible that words which merely indicate the party who is marketing the product may not be sufficient. As we are not dealing with such a case we do not express any opinion on this aspect. Thus the question whether only words indicating the party who is marketing the product would come in the way of being eligible for benefits available to unbranded goods remains open with balance in favour of tax payer.

Now let us examine above example in the light of definition of 'brand name' in Maharashtra VAT Act for goods manufactured in India with technology available in India. The packet would have look as —

Manufactured by: Nipa Chemicals Ltd.,...
<address>
Marketed by: Goodlass Nerolac Paints Ltd.
In case of any complaint please contact:
<Goodlass Nerolac Paints Ltd, address,
e-mail id and phone number>

Rule 6(1)(a) of The Legal Metrology (Packaged Commodities) Rule, 2011 mandates that in case of packages intended for retail sale, the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer shall be mentioned on the package. Rule 6(2) mandates that every package shall bear the name, address, telephone number, e-mail address, if available, of the person who can be or the office which can be, contacted, in case of consumer complaints. If the package contains food articles, requirement of the Prevention of Food Adulteration Act, 1954 and the rules made thereunder also apply. Rule 32(c)(i) of Prevention of Food Adulteration Rules, 1955 requires the name and complete address of the manufacturer and the manufacturing unit etc to be carried on the prepackaged food.

As per decision from Apex Court in *Tarai Food Ltd* (supra) mere writing of name of manufacturer on packet as required under Standard Weights and Measures (Packets Commodities) Act, 1977 will not

Sample would be 'under the brand name' if the product is stored and displayed in the show room in the container/packet displaying brand. However, if the product is stored and displayed in the shop or area within shop where branded products are also displayed, it will not become branded.

make product branded. Similar logic applies to contact details for consumer complaints.

Now the question remains whether information about name of the organisation which is marketing the product makes goods branded. Apex Court in *Grasim Industries* case (supra) has already indicated that use of words which merely indicate the party who is marketing the product may not be sufficient to say that product is branded. However such indication was qualified by the reasoning that excise being tax on manufacture, the connection must be of such a nature that it reflects on the aspect of manufacture and deal with quality of the products. Whether view of the court would have been different, had this dispute was under VAT Act? VAT is a tax on sale. However merely writing the name of marketing agency does not give any assurance about quality of the product. Quality of the product is decided at the time when it is manufactured. It is true that in trade, manufacturing of several commodities is outsourced and marketers ensure that goods which are being sold through their outlet confirm to minimum quality parameters. But such inferred or implied assurance has no value in the eyes of law. In fact the Apex Court in *Grasim Industries* case (supra) itself has discussed a situation when use of a third party name amounts to assurance about quality. Overruling decision in the case of *Commissioner of Central Excise, Hyderabad Vs. Sarat Electronics* [2004] 167 ELT 404, the court held that expression 'A quality product from ITL group' indicated that the quality of the product was the same as that of a product of ITL group. The court exclaimed 'if use of such words did not disentitle a party from the benefit of the Notification, we fail to understand what sort of words would disentitle a party.'

There is another aspect to this matter. Concept of brand as used in Chapters of Central Excise Act and Maharashtra VAT Act is different from the concept in SSI unit exemption notification under Central Excise. Under SSI unit exemption notification what is prohibited is use of both 'Brand name' and 'Trade name' of others. However in Chapters of Central Excise Tariff as well as Maharashtra VAT Act, word used is 'brand name'. Reference of 'Trade name' is consciously absent. The Apex court, in *Grasim Industries* case (supra) while distinguishing its earlier ruling in *Astra Pharmaceuticals* case (supra) has noted this fact in following words "Further, the Explanation to Tariff item 14 E nowhere uses the words 'trade name'. As is commonly known, a trade name can be a name in which or by which a person or body carries on their trade. It would, if the context so permits, include the name of a company. In the context of a 'trade name' the words 'a name' and 'or any writing' would cover the name of a company so



long as it is used in relation to the product and is used for the purpose of indicating a connection in the course of a trade between the product and other person." In *Grasim Industries* case (supra) both brand name & trade name were prohibiting words.

Now question is why seller wants to put information about marketer on the package. This information is being put on the package for the purpose of identification. By putting its name on the product/package, marketer is completing link between manufacturer and the agency to which consumer can raise a complaint if there are any quality issues. Without bringing reference of marketing agency, taking/putting onus of quality in case of consumer complaint will become difficult and create confusion in the mind of consumer. So long the name through which marketer is identified as a legal entity is put on the product/package in simple alphabets, without any claim about quality of the goods, this would not fall under the concept of brand name. Here writing serves purpose of 'house mark'.

The Apex Court in *Tarai Food Ltd* (supra) was dealing with definition of 'brand' worded similar to definitions presently in force. The definition did not include reference to trade name. Negating argument of revenue that it is the manufacturer's name which is sufficient to place the product in the category of branded the court held that the definition of the words 'brand name' shows that it has to be a name or a mark or monogram etc. which is used in relation to a particular product and which establishes a connection between the product and the person. This name or mark etc. cannot therefore, be the identity of a person itself. It has to be something else which is appended to the product and which establishes the link. ■

Secondment Arrangements – PE Exposure

This Article summarises a recent ruling of the Authority for Advance Rulings (AAR) in the case of *Centrica India Offshore Pvt. Ltd.* (Assessee) on the issue of taxability of payments made to overseas group companies under a secondment arrangement. The AAR held that the personnel seconded to the Assessee, a group company in India, did not become its employees in the absence of an obligation undertaken by the Assessee to pay employment costs of such personnel. This was held despite the fact that the Assessee exercised control and supervision, and was also responsible for the work of the personnel. Further, presence of such personnel in India, rendering managerial services to the Assessee on behalf of the overseas entities, created a service permanent establishment (Service PE) of the overseas entities under the India-UK Double Taxation Avoidance Agreement (UK DTAA) and India-Canada Double Taxation Avoidance Agreement (Canada DTAA). Accordingly, the payments made by the Assessee to the overseas group entities towards the services of the personnel were taxable in India.

Background

The Assessee, a company incorporated in India, is a wholly owned subsidiary of a foreign company incorporated in the UK (UK Parent). The UK Parent has two other subsidiaries in the UK and Canada (collectively referred to as 'FCos'), which are engaged in the business of supplying gas and electricity across the UK. FCos have outsourced their back-office support functions (such as consumers' billings/debt collections/monthly job reporting) to third-party service providers in India (Vendors). In order to ensure that the Vendors in India work according to the quality guidelines, the Assessee was incorporated in India. A Service Agreement was entered into between the Assessee and FCos, under which the Assessee was required to act as a local interface between FCos and the Vendors in India. For this, the Assessee was compensated on a cost-plus basis. Since the Assessee was newly incorporated, it needed the knowledge of processes and practices of FCos to successfully fulfill its role under the Service Agreement. In this regard and on the same day as Service Agreement, the Assessee and FCos entered into a Secondment Agreement, under which the Assessee requested FCos to provide staff (Assignees) with knowledge and experience of various processes and practices employed by FCos.

The Secondment Agreement included the following terms:

- Assignees to perform duties at the location of the Assessee for a specified period and report to the Assessee.
- The Assessee to designate a position to each Assignee, authorise them to perform specified duties/work and integrate them into its organisation.
- Assignees are subject to the Assessee's supervision and control, and bound by the instructions and directions of the Assessee.
- All rules, regulations, policies and other practices established by the Assessee for its employees to apply to Assignees.
- FCos would not be responsible for the work or errors/omissions by the Assignees. The Assessee

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

to take all risks/benefits in respect of work of Assignees.

- The Assessee would bear the monthly costs of employment of Assignees, which included Assignees' basic salary, the cost of participation in FCos retirement/social security plans, other compensation and benefits as applicable (employment costs).
- Employment costs to be paid by FCos to the Assignees in their respective countries and FCos would recover actual costs from the Assessee on a monthly basis.
- Either FCos or the Assessee could terminate the Secondment Agreement by giving a written notice to the other party. Additionally, the Assessee had the right to terminate the secondment of an Assignee for non-compliance of work place rules/regulations and policies of the Assessee. However, it had no right to terminate the employment of the respective Assignees with the FCos.

In order to ensure that employment costs were received uninterrupted by Assignees, FCos paid such costs directly into the overseas bank account of the Assignees and, subsequently, recovered the amount from the Assessee on an actual basis.

The Assessee sought a ruling from the AAR on whether employment costs paid by the Assessee under the terms of the Secondment Agreement were in the nature of taxable income in the hands of FCos and, consequently, subject to tax withholding under the Indian Tax Laws (ITL).

Contentions of the Assessee

The contentions of the Assessee are summarised as under:

- The Service Agreement was a contract of service and not a contract for service.
- The Assessee was the economic employer of the Assignees, since they worked under the supervision, control, directions, and instructions and as per the schedule/scope of work specified by the Assessee. Further, FCos were not responsible for any work or

omission in the work performed by the Assignees. The entire risk was borne by the Assessee.

- Amounts paid by the Assessee to FCos were reimbursements of employment costs of the Assignees and there was no income element in it. The initial payments were made by FCos only for the convenience of payment in the respective country (UK/Canada) of each Assignee.
- Being the economic employer of Assignees, withholding obligation was only in relation to payment of employment costs to Assignees, which was duly fulfilled.
- It would be a case of diversion of income by overriding the title and the payments made by the Assessee would not become income of FCos.
- Reliance was placed on the Supreme Court (SC) ruling in the case of Morgan Stanley to support that the presence of Assignees in India would not create a Service PE in India for FCos, as there is no rendition of services through secondment of employees.

Contentions of the Tax Authority

The contentions of the revenue authorities are summarised as under:

- FCos were the employers of Assignees, and the arrangement was a contract of service.
- Services rendered by Assignees were managerial services, and remuneration paid to FCos for seconding such Assignees were in the nature of fees for technical services (FTS) under the ITL, and UK DTAA and fees for included services (FIS) under Canada DTAA. Reliance was placed on the ruling of the AAR in the case of *Verizon Data Services* [2].
- Presence of Assignees in India would result in Service PE of FCos in India under the UK DTAA and Canada DTAA.

Ruling of the AAR

Secondment Arrangement

- The Assessee was incorporated to provide service to FCos under the Service Agreement and to guide the Assessee for this purpose, Assignees were seconded by FCos. The Secondment Agreement was specifically based on the fact of the Assessee's requirement to understand the processes/policies of FCos to enable it to render services to its customers.
- Assignees continue to be the employees of FCos based on following facts and terms of the Secondment Agreement:
 - o Employment costs of Assignees are paid by FCos. Assignees have a right to seek such remuneration from FCos, and they have no recourse to the Assessee for the purpose.

The Ruling of the AAR on the Secondment Arrangement in the case of Centrica India Offshore Pvt. Ltd. said that the Assessee was incorporated to provide service

to FCos under the Service Agreement and to guide the Assessee for this purpose, Assignees were seconded by FCos. The Secondment Agreement was specifically based on the fact of the Assessee's requirement to understand the processes/policies of FCos to enable it to render services to its customers.

- o Obligation to pay employment costs to Assignees rests with FCos. The Secondment Agreement merely ensured that FCos can recover employment costs from the Assessee, and there is nothing to suggest that the obligation to pay such employment costs is undertaken by the Assessee. The Appointment letters given by the Assessee to Assignees are also silent on this aspect. This reaffirms that the Assessee has no economic control over the Assignees.
- o Right to dismissal of Assignees remains with FCos. The Assessee can merely terminate the secondment, but not their employment with FCos.
- Reliance was placed on the commentary by Klaus Vogel to support that merely because the employee performs services for an enterprise or because the enterprise gives instructions regarding his/her work would not qualify the enterprise as an employer. There may exist two work relationships and in such cases, the one responsible for the remuneration would be determined as the employer.
- In the present case, the work done by Assignees while of secondment with the Assessee is not unconnected with the activities of FCos; on the other hand, it is a part of FCos activities. Hence, even if two work relationships are postulated, FCos would be the employers who are responsible to pay employment costs of the Assignees.
- The obligation to pay salary to an employee is different from an obligation undertaken to compensate their employer by tendering an equal amount. In the absence of the Assessee's obligation to pay employment costs, its contentions cannot be accepted. The fact that the amounts are recorded as reimbursement of Cost in the books of accounts would not be decisive factors.
- Payments made to FCos by the Assessee cannot also be held to be a case of diversion of income by overriding title in the absence of the Assessee's Obligation to pay employment costs to the Assignees.

Nature of Income and Taxability

- Assignees were rendering managerial services, and there was no material on record to indicate that they were performing technical functions or consultancy functions. Under the UK DTAA and Canada DTAA, the meaning of FTS/FIS does not include managerial services within its scope. The AAR ruling in the case of Verizon Data Services may not be relied on, since the issue was remanded by the High Court of Madras for re-consideration.

S econdment of personnel by a foreign company to its Indian affiliate is a common practice among multinational groups. The tax consequences of such arrangements have been a subject matter of dispute with the Indian Tax Authorities. While many decisions in the past have accepted that there should be no withholding on payments made to the foreign company towards such reimbursement payments, this ruling appears to have taken a different view. In an earlier occasion too, the AAR had given an unfavorable decision based on peculiar facts of the case as interpreted by the AAR. Determination of who is the employer of seconded employees is a vexed issue, and various courts have considered different factors to ascertain the same. The present ruling seems to take an unfavorable view based primarily on the fact that legal obligation of paying remuneration is a decisive test. ”

- The SC, in the case of Morgan Stanley, had only stated that if the employees continue to be on the payroll of the non-resident and have a lien on their jobs in the non-resident multinational, a service PE can emerge if services are rendered in India for specified periods.
- Since it has been found that Assignees continue to be the employees of FCos, and they are rendering services in India on behalf of FCos. This will result in creation of a service PE of FCos in India under the UK DTAA as well as Canada DTAA.

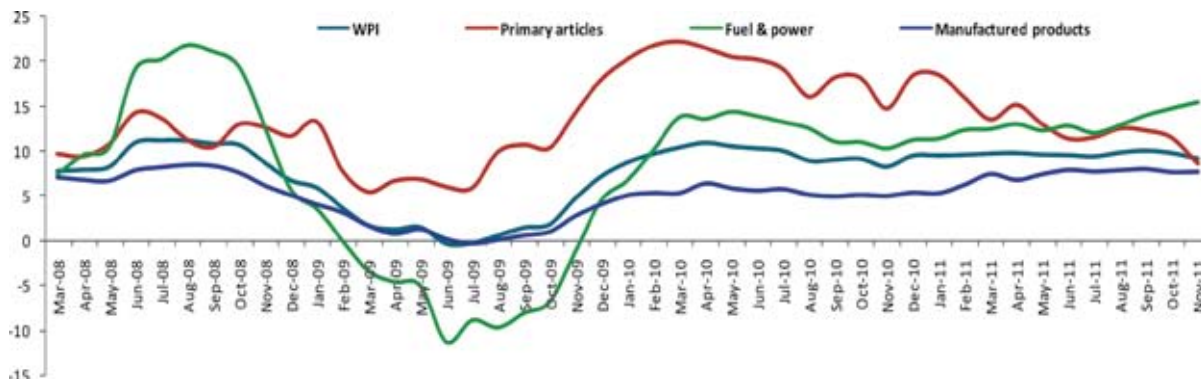
Comments

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Inflation – Macro View

Inflation refers to persistent increase in prices. Wholesale Price Index (WPI) based Inflation – refers to increase in the prices of a representative basket of wholesale goods. India uses WPI changes as a central measure of inflation. It has three broad components – Primary articles, Fuel & power, and manufactured products.

Inflation – Wholesale Price Index (WPI) & its Components



Primary articles consist of food Inflation

May 2008 – July 2009

Genesis of Inflation – The Current Inflation episode began in May 2008 with Fuel and Food Inflation picking up. Reasons for the same are given below:

- **Higher crude prices** – Due to rapid growth of global economy in 2007 and early 2008 there was a huge demand for crude. Also, when stock market started showing weakness across the globe, investors started parking their money in commodities such as Crude.
- **Supply constraint** – Unprecedented drought in Australia and some part of Americas caused shortage of food grains in the global market. India too had a very bad production year and we had to import grains from the global market. This led to increase in general increase in food grains prices.
- **Excess liquidity** – High growth in emerging economies like India attracted huge amount of foreign capital, causing too much money to chase too few goods, leading to inflation.

Sub prime Crisis and Impact on Inflation in India –

With Sub-Prime Crisis hitting the United States (biggest consumer of Crude), the demand for Crude declined significantly leading to a sharp decline in the crude prices by December 2008.

Crude oil (Dubai Fateh 32), \$/barrel (Monthly average)



RBI used monetary policy measures to tame the Initial round of Inflation. RBI had hiked Repo Rate to 9% in July 2008. Due to dropping crude prices and lagged im-

CA. Dipankar Singh

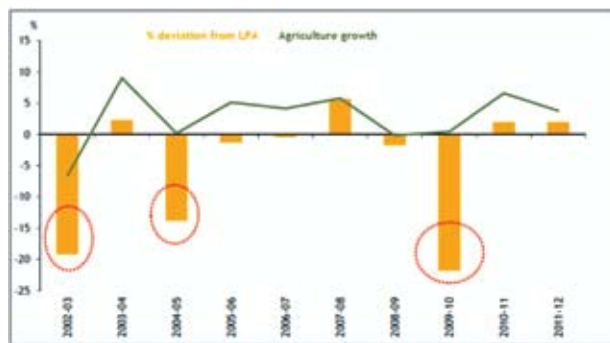
(The author is a member of the Institute. He can be reached at singh.dipankar@gmail.com)

part of monetary policy, Inflation declined to a low of -0.4% in June 2009.

August 2009 – March 2010

Sharp reversal in inflation from negative to positive territory – Food Inflation dragging inflation to 9% range:

- **Drought in 2009-2010:** India is significantly dependant on monsoons for agricultural production. Food price inflation was triggered by a short supply of essentials owing to lower farm production following drought and floods in different parts of the country during 2009-10.



*LPA - Long Period Average

- **Global Commodities Price Rise:** All major global commodities including Crude, Base metals, Agricultural Commodities rose sharply pushing prices upwards to all time high.

April 2010 – March 2012

Inflation becomes broad based and Sticky – Spreading to manufacturing sector: Inflation remained high due to continuing high Commodity prices, structural food price inflation along with supply-side pressures resulting from increases in the cost of production (Rate hike by RBI pushing costs higher), poor governance and an unattractive business climate.

Inflation became broad based i.e. spreading from Fuel and food to Manufacturing sector.

Inflation has been persistently high and the Reserve Bank has hiked key policy rates 13 times since March 2010 to tame inflation.



Although the RBI cut policy rates by 50 basis points recently, the government data showed that the retail price inflation shot up to 9.47% in March 2012, compared with 8.83% in the previous month, primarily due to soaring vegetable prices. While urban areas saw a steep rise in inflation, 10.3% from 9.45% in February 2012, in rural regions, consumer price index (CPI)-based

inflation rose to 8.79% from 8.36% in the previous month. Wholesale price index (WPI)-based inflation fell to 6.89% in March from 6.95% in February, though according to this index, food inflation rose to a five-month high of 9.94%, compared with 6.07% in February and deflation in January 2012. Since the food basket has more weight in the CPI than in the WPI, overall inflation numbers showed a rise in the case of the retail price index.



Meanwhile, according to a recent Reuters' poll, India's economy will pick up this year, though more gradually than previously thought, while average inflation will be slower. Recently, the International Monetary Fund has suggested controlling of inflation as one of the crucial aims to bring India's growth back to potential and ensure its inclusiveness.

Drivers of Food Inflation

Shift in Dietary Patterns: There has been a shift in the dietary habits towards protein foods and a distinct feature of recent food price inflation has been the sustained price pressure in protein rich items (pulses, milk, fish, meat and eggs). Inflation in protein rich items has generally exceeded both headline (WPI) inflation and inflation in primary food articles.

The reason structural changes have triggered inflation in India is that the supply response in respect of most protein items has not been adequate.

With the exception of pulses, other protein rich items are not crop products. This is an important point since it explains the growing disconnect between the performance of agriculture and the trajectory of food inflation.

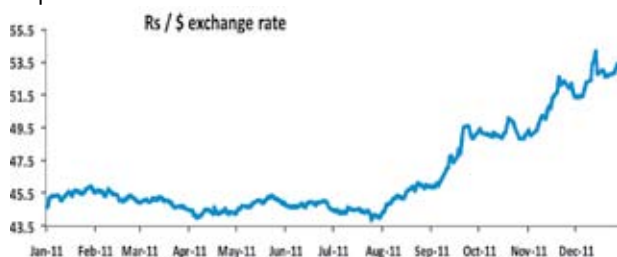
Structural High Primary Product Inflation/Supply Constraints:

Over the last decade, per-capita income levels have gone up nearly four times, while agriculture output has remained stagnant – largely due to a poor investment in agriculture, and fragmentation of land holdings. With rising per capita incomes, per capita consumption of food has also been on an up tick, thus putting pressure on food prices.

High Interest Rates/buoyant demand: have caused manufacturing Inflation to rise and become sticky. Tight Monetary policy has also led to transmission of costs into the economy through increased wages and higher input costs.

Depreciation of Rupee: Rupee Depreciation has further added to woes of Inflation as India is a net importer of commodities. For e.g. every ₹ 1

depreciation against the \$ adds ~\$3.0 bn to India's Oil Import bill.



Recent Trends: Weekly inflation data shows signs of softening commodity prices. Softening global commodity prices along with high base effect in food inflation is pushing the Inflation in to the negative territory. Normal monsoons have produced a bumper crop this year, which is further expected to push down the prices.

Trend of Rate of Inflation	YoY % *							Average
	12-Nov-11	19-Nov-11	26-Nov-11	03-Dec-11	10-Dec-11	17-Dec-11	24-Dec-11	
I. Primary Articles	9.1	7.7	6.9	5.5	3.8	2.7	0.1	5.1
(A) Food Articles	9.0	8.0	6.6	4.4	1.8	0.4	-3.4	3.8
(B) Non-Food Articles	4.1	2.1	1.4	2.1	1.4	0.3	0.8	1.7
(C) Minerals (Iron ore)	18.5	16.3	19.1	19.1	21.4	23.0	23.0	20.0
II. Fuel Index	15.5	15.5	15.5	15.2	15.2	14.4	14.6	15.1

Reversal of food inflation seems to be more of base effect rather than a permanent respite from Inflation.

Conclusion

Inflation being sticky and averaging 9.7%+ for nearly two years, despite effective monetary tightening to the tune of 525bps, is a clear indication that addressing supply-side issues is the key. An acknowledged fact is that this stickiness in inflation is partly a consequence of structural changes, since agricultural production has failed to keep up with rising per capita incomes and dietary changes.

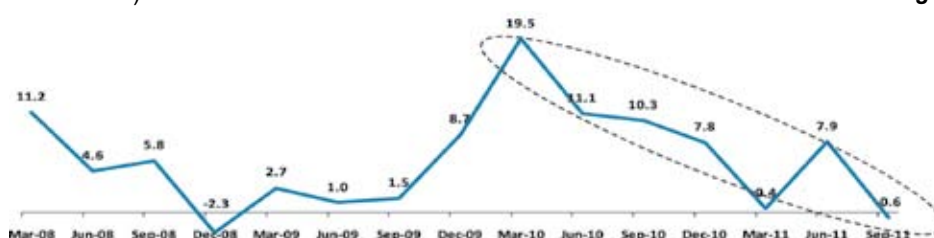
Steps to tackle inflation could include:

- Improving the logistics chain** – transportation, warehousing and cold chain facilities, as almost a third of agricultural produce is wasted due to poor logistical infrastructure;
- Raising productivity by emphasising seed/irrigation and fertiliser related reforms;**
- Unifying markets for agricultural products** within the country

Need to boost Investment Cycle

Policy uncertainty, coupled with restrictively high interest rates, has stifled fixed capital formation.

Gross fixed capital formation trends (Indicator of Investments)



To this end, key to reviving investments would be reforms in:

Power- Two key issues are (a) Addressing the losses of State Electricity Boards either through restructuring or fresh equity infusion by the government. To ensure that this does not become a recurring problem, necessary steps would be to ensure timely tariff revisions and improve operational efficiency. (b) Mechanisms for the passing through of prices of imported fuel. Given the current energy situation, there is a need to use more imported fuel (coal/gas/LNG). However, given the costs of imported fuel, power generated using imported fuel cannot be profitably sold in market on standalone basis currently. Thus, India needs to devise a mechanism which ensures that either cost of imported fuel becomes pass-through in tariff so higher cost imported fuel and cheap domestic fuel is pooled, so that average price of power is reasonable for new projects.

Mining- Thermal coal production has grown at abysmal rates, trailing underlying demand due to (a) delays in environmental/land clearance and (b) Shortages of rakes. Given India's energy requirements, coal production growth should be increased to 5%-10% levels. The coal shortage unfortunately cannot be fully met by imports, given low power tariffs relative to seaborne coal prices and SEB losses. Coal availability issues need to be resolved indigenously by - (i) expediting clearances: environment, forest, land acquisition; (ii) improving rake availability and (iii) allocation of coal blocks through competitive bidding.

Land Acquisition- Although India comprises 2.4% of the world's total area. However, it is also among the most densely populated countries in the world. Rising industrialisation has resulted in a growing struggle for land. A key step towards resolving issues related to compensation and rehabilitation would be the Land Acquisition Bill.

Labor Reforms – Key to avoid a Demographic Nightmare - Several instances of worker unrest seen in 2011, particularly in the autos and mining sectors, have been due to higher wage demands, consequently impacting production and taking a toll on growth. Moreover, due to rigid labor laws (i.e. high severance costs, difficulties in hiring and firing workers), many firms are now opting for contract laborers who fall outside the purview of regulation. However, this in turn is resulting in industrial unrest, as seen with Maruti's Gurgaon plant and other instances. Given that only 6% of India's total workforce of 506m is within the organised sector, calls upon the need to increase the number of formal jobs and a restructuring of the current labor policy.

National Manufacturing Policy aims to create National Investment and Manufacturing Zones (NIMZ) that would function as large autonomous industrial townships. This is estimated to create 100m new jobs and boost the share of manufacturing from 16% of GDP to 25% by 2022. ■

Crisis Management & Infrastructure Financing in India — Role of ‘PPP’



Higher industrial growth has improved our global competitiveness. But, more importantly, of late, there has been a steady growth in industrial production, which has improved the prospect of sustained GDP growth back home. This is reflected in the rise in contribution of the industrial sector to GDP. However, the contribution of the agricultural sector has not been substantial. For an improved GDP, there has to be an overall growth in all infrastructure sectors of the economy. Now the Government is looking at the private sector for greater involvement with investments in physical infrastructure in India, since it does not have the required finance for infrastructure investment for the next 10 years. It is now realised that infrastructure projects need to be developed in partnership with the State entities through the public-private partnership (PPP) model, which has come to be recognised as a bankable model that can enhance timely and requisite returns for developers. A successful PPP model requires participation of both public and private sectors, with an entrepreneurial approach. This will satisfy both sectors, while maximising the benefit for the user public at large. Ultimately, in such a partnership, will and insulation from political parties will be decisive factors in guaranteeing success.



Dr. B.K. Mohanty & Subasish Mohanty

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India has scored well on innovation and sophistication of firm operations as well as in the adoption of technologies from abroad. But its level of fiscal deficit, along with the lack of appropriate infrastructure, is still an area of concern. Infrastructure investments as percentage of GDP has grown from 4.6% in 2003-04 to 5.1% in 2005, and then further increased to more than 6% from 2006 onwards. Despite the recent uptake in infrastructure investments, India lags way behind the most emerging economies and developed economies in absolute terms. China

India has shown an impressive annual average growth in manufacturing, second only to China at 7.1% over the last decade and has increased its share in world manufacturing from 1.1% to 1.8% in the period. ”

spends seven to eight times more on infrastructure vis-à-vis India. Better infrastructure has propelled the Chinese economy ahead of India's.

Most infrastructure projects tend to be on a large scale, which requires huge labour, especially in semi-skilled and low-skilled areas. Given the surplus pool of workforce in the Indian economy, infrastructure projects could help reduce the overall unemployment in the country. To continue the revival in infrastructure investments, the Government faces two key challenges: to be able to generate enough funds (which may be a bit difficult, given the state of the government balance sheet), and to try and attract participation from the local private sector and foreign investors to generate more capital for those sectors. Since the Government is looking at the private sector to become more involved with investments in physical infrastructure of India, it expects Indian companies to bear a significant portion of the burden, as improved infrastructure helps the private sector - whether domestic or foreign - reduces cost, and increases profits and profitability.

India's level of industrialisation is very low, despite its emergence as one of the top ten manufacturers of the world. The country's per capita manufactured value added – a measure of income generated by the manufacturing sector per person – was one-eighth of China's and one-sixth of Brazil's in 2010, the two other developing countries in the group of 10, according to UNIDO statistics.

India has shown an impressive annual average growth in manufacturing, second only to China, at 7.1% over the last decade, and has increased its share in world manufacturing from 1.1% to 1.8% during the period. The MVA per capita growth in India was lower than that in China and Republic of Korea due to relatively higher population growth in India. India's MVA per capita in 2010 was just \$107, which is much lower compared to \$648 in Brazil, \$842 in China and \$4880 in the Republic of Korea.

Although there has been a steady growth in manufacturing, India needs a change in trade pattern and GDP composition to get the kind of acceleration required to make a dent in the overall scheme of things. For four consecutive years, India's GDP has grown at over 8%, expecting to maintain a healthy growth trajectory. Following several years of robust economic growth, the need to improve the country's existing infrastructure has also increased. To sustain growth, we must not only remove existing infrastructure

Table 1: Growth and contribution of Indian Manufacturing Sector

(Average Annual growth in manufactured value added over) 2000-10

Sl. no	Country	MVA Growth % from 2000-10 (10 Years)	MVA per Capita in 2000 (In Dollar)	MVA per Capita in 2010 (in Dollar)
1	US	1.1	5417	5465
2	China	11.4	303	842
3	Japan	0.2	8140	8249
4	Germany	1.4	4768	5497
5	Rep. Korea	5.9	2859	4880
6	UK	(-) 1.2	3876	3293
7	France	(-) 0.2	3218	2999
8	Italy	(-) 1.9	3562	2877
9	India	7.11	63	107
10	Brazil	3.0	552	648

Source: UNIDO (United Nations Industrial Development Organisation)

A commission chaired by Shri C. Rangrajan in 2001 attempted to define infrastructure along six characteristics – natural monopoly, high-sunk costs, non-tradability of output, non-rivalry in consumption possibility of price exclusion and bestowing externalities on society. However, these characteristics were not considered absolute with regard to taxation purposes. ”

bottlenecks, but also lay a healthy foundation for the future. Clearly, India has a long way to go before it catches up with other developed and developing countries, and this gap provides a very attractive long-term investment opportunity.

The following table shows the position of India vis-à-vis some important developed countries in the infrastructure sector:

also lay a healthy foundation for the future. The most important constraint in achieving a faster and effective growth of India's GDP is that the infrastructure that includes roads, railways, ports, airports, communication and electric power, etc., is not up to the mark as compared to its competitor countries.

International Norm of Infrastructure

Defining infrastructure globally has become a tedious task for policymakers. The US and most of the European nations have defined infrastructure sectors for tax purposes. When it comes to defining what constitutes infrastructure, there is no consistency across developed nations. Many of them have also defined sub-sectors, e.g., core infrastructure, social infrastructure, retail infrastructure, urban and rural infrastructure, etc. Besides, these countries are frequently changing the list of infrastructure sectors as per their socio-economic needs.

Table 2: Position of India in some of the selected Infrastructure sector

Name of the Infrastructure Sector	India	US	UK	China
Electronic consumption per capita (KWT)	618 (4)	14240 (1)	6756 (2)	1684 (3)
Roads per million people(Km)	2983 (3)	21443 (1)	6467 (2)	1471 (4)
Steel consumption per capita (Kg)	34 (4)	357 (1)	195 (3)	244 (2)
Rail route per million people(Km)	56 (4)	755 (1)	276 (2)	57 (3)
Petroleum refining capacity per capita (Kg)	131 (4)	2900 (1)	1629 (2)	248 (3)
Petroleum consumption per capita (Kg)	108 (4)	3458 (1)	1467 (2)	287 (3)
Cargo handled at ports per capita (Kg)	572 (4)	7953 (2)	9733 (1)	4265 (3)
No. of passengers handled at Airports per 1000 persons	71 (4)	4780 (1)	3517 (2)	151 (3)

Source: Economic Times 07-01-2008.

() indicates ranking

India remained fourth in most of the infrastructure sectors, except in road infrastructure, where it maintains its third position. Among developed countries, the US is on the top in all except in cargo handled at ports per capita sector, where it is at number two, while the UK is at the top. The UK retained the second slot in all other sectors except in rail route per million people sector, where it is at number three. China has been ahead of India in all sectors except in the roads per million people sector.

India's GDP has grown at over 8% and is expected to maintain a healthy trajectory. Following several years of robust economic growth, the need to improve the country's existing infrastructure has increased tremendously. To sustain growth, we must not only remove the existing infrastructure bottlenecks, but

Need for Precise Definition

A clear understanding of what is covered under the roof of infrastructure is necessary for policy formulation, setting of sectoral targets and monitoring projects to ensure consistency and comparability in the data collected and reported by various agencies over time. Moreover, the emphasis on infrastructure has led to the government extending many sops and tax benefits to infrastructure companies. Without a proper definition, these benefits can be misused.

Definition of Infrastructure in Indian Context

While infrastructure is considered a crucial input for economic development, there is no clear definition of infrastructure according to the current usage of the term in India. Understanding of the term in India is currently

based on a series of observations and reports made by different government agencies and committees.

A commission chaired by Shri C. Rangarajan in 2001 attempted to define infrastructure along six characteristics – natural monopoly, high-sunk costs, non-tradability of output, non-rivalry in consumption, possibility of price exclusion, and bestowing externalities on society. However, these characteristics were not considered absolute with regard to taxation purposes. The Income Tax Department considers companies dealing with electricity, water supply, sewerage, telecom, roads and bridges, ports, airports, railways, irrigation, storage and industrial parks, and SEZs as infrastructure. However, special taxation benefits are also given to sectors such as fertilisers, hospitals and educational institutions, adding to the confusion.

The RBI and IRDA have also tried to define infrastructure and identify sectors. The Ministry of Finance will identify the sectors primarily based on the

characteristics set out by the Rangarajan Committee with some additional requirements. Based on the criteria, the Ministry is likely to notify 25 sectors as infrastructure. Now, this list includes power, roads, ports and telecom. Union Finance Minister Shri Pranab Mukherjee in his Budget 2011-12 proposes to include cold chains and post-harvest storage as infrastructure sub-sectors. The Ministry is now preparing a detailed paper on the potential of viability gap funding (VGF) for infrastructure and is likely to notify its budget announcement of extending VGF to schools. Schools, hospitals, industrial training institutions and skill-development centres are likely to be eligible for VGF. The Ministry is likely to invest ₹500 crore in 2011-12 in the viability gap funding eligible projects.

Cross-Border Infrastructure

There has been a large but uneven investment in infrastructure in developing countries. Over the next few decades, more people would move into urban areas in developing countries than the number residing in cities presently. Several trillion dollars of investment is required for orderly and environmental-friendly urbanisation.

The cross-border connectivity to contiguous countries is also particularly deficient, mainly on account of difficulties of burden sharing in international cooperation and also due to political risks. Since intra-regional trade is going faster than total trade, greater cross-border connectivity is needed, particularly in South Asia, which is the least integrated region in the world. The absorptive capacity of several developing countries, including those in Africa, which have been growing at much faster rates than before, has increased of late. Large infrastructure investments will increase national income and also make higher developing country growth rates more sustainable. This would also help converge national per capita incomes and help bridge the development gap.

Now, a big challenge is the diversion of large savings of developed countries towards investment in the infrastructure sector, because it has been experienced in the past that excess savings were directed towards unsustainable leveraged consumption. With most of advanced countries currently under recession, it is now a big challenge to invest excess savings on the infrastructure sector to overcome the recession. Since most of these excess global savings are generated in developing countries themselves, rebalancing also requires an *enabling environment* for investment, so that these savings are spent on infrastructure and not diverted towards emerging market economies (EMEs), where most of the money is kept under the custody of the central banks. The surplus money is



The civil aviation sector was allotted ₹11,104 crore in 2009-10, but the revised estimate in 2010-11 reduced it to ₹6,356 crore. In 2011-12, it was again increased to ₹8,606 crore. This shows that due to constant losses of the sector, the government has been constrained to reduce the budget allocation, and after the reform measures in the subsequent year, i.e., in 2011-12, the allocation has increased. ”

With the completion of projects falling short of the target, the Government has focused on expediting project implementation by setting up more offices across the country. The NHAI has now set up two regional offices and six zonal offices headed by general managers and executive directors to coordinate with state governments on pre-construction activities. ”



not available with the Government and, as a result, infrastructural activities are not properly carried out. It is necessary that public expenditure patterns must shift from subsidies to allocating more taxpayer funds for infrastructure investments.

More private savings need to be attracted to infrastructure through public-private partnerships (PPPs). This would entail a more enabling investment environment and can get greater political support for user charges to facilitate cost recovery for long-term finances invested in the infrastructure sector. Multilateral development banks (MDBs) have a wealth of experience and expertise in the area of infrastructure financing to channelize global surpluses productively into financing infrastructure in developing countries. They can mop up the global savings glut and redirect the resources to infrastructure investment, thereby shifting the utilisation of these savings from leveraged

consumption to leveraged investment. This will require massive recapitalisation of MDBs.

Government Initiative

Table 3: Budget Allocation for some of the Infrastructure sectors (₹ in crore)

Ministry/ department	2009-10	2010-11 (RE)	2011-12 (BE)
Civil aviation	11,104	6,356	8,606
Atomic energy	2,725	1,622	1,750
Telecommunication	8,723	7,700	7,673
New and renewable energy	550	1,007	1,213
Power	6,294	8,551	9,506
Road transport & highways	18,908	25,562	26,437
Shipping	2,099	6,143	5,774

Source: Budget Documents, 2011 RE=Revised Estimate, BE=Budget Estimate.

Table 3 represents the budget allocation towards different infrastructure sectors from 2009-10 to 2011-12. The highest amount of budget allocation has been made to the road sector, whereas the lowest has been made to the new and renewable energy sector. The civil aviation sector was allotted ₹11,104 crore in 2009-10, but the revised estimate in 2010-11 reduced it to ₹6,356 crore. In 2011-12, it was again increased to ₹8,606 crore. This shows that due to constant losses of the sector, the government has been constrained to reduce the budget allocation, and after the reform measures in the subsequent year, i.e., in 2011-12, the allocation has increased. Besides telecommunications and shipping sectors, the budget allocation has increased in all other sectors, which indicates that the government has taken steps towards development of the infrastructure base in the Country.

The focus under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) has clearly shifted to implementation of projects and reforms, which include revamping of procurement/contracting, tendering procedures, standardisation of pre-qualification criteria, etc. In the past, the Urban Development Ministry has conducted many workshops on mega cities, financial institutions and engineering firms. As an outcome of these workshops, several committees have been formed to look into ways to improve procurement procedures, which would consequently help attract FIs to support JNNURM projects.

Table 4: State-wise Approved Projects under JNNURM (as on 06-04-2011)

States	Projects	Value (₹ In Crore)
Andhra Pradesh	31	1956.66
Arunachal Pradesh	2	89.19
Assam	1	35.16
Bihar	1	36.95
Chandigarh	2	56.98
Chhattisgarh	1	303.64
Gujarat	41	2348.29
Haryana	2	134.47
Himachal Pradesh	2	26.13
J&K	2	262.15
Karnataka	14	1188.38
Kerala	6	680.05
Madhya Pradesh	13	987.99
Maharashtra	45	6007.34
Manipur	1	25.8
Orissa	2	504.93
Puducherry	1	203.4
Punjab	2	328.83
Rajasthan	5	399.34
Tamil Nadu	18	1484.12
Uttar Pradesh	5	142.8
West Bengal	18	1263.58

Source: Financial Express, dated 6th April, 2011

The Urban Development Ministry is also putting in place a grading system for Indian cities to guide investors wanting to pump money into urban infrastructure. The concept is inspired from European nations, where cities are branded and graded annually to make them compete with each other. The Ministry constituted a panel comprising senior bureaucrats, credit rating companies and people from the public from outside to grade cities. The cities that have carried out projects on the PPP model will get bonus points under JNNURM. The centre has allocated ₹2,460 crore to select cities in 2006-07. The grading system would not only monitor development of a city on a sustainable manner, but will also help potential investors select cities for investment based on development factors.

Although the government has fixed a target of building 3,165 km of national highways under the National Highway Development Programme (NHDP) in 2009-10, it could build only 2,693 km or 85% of the annual targets. The trend, so far, indicates that the scenario is deteriorating. Even after reduction by the Government in highway construction target under the NHDP to 2,500 km, the progress has been slack with only about 1,322 km, or half the target, completed till January 2011. With the completion of projects falling short of the target, the Government has focused on expediting project implementation by setting up more offices across the country. The NHAI has now set up two regional offices and six zonal offices headed by general managers and executive directors to coordinate with state governments on pre-construction activities. This has helped improve the review of projects both at the headquarters and field units.

Table 5: Construction of Highways under NHDP

NHDP phases	2009-10			2010-11		
	Target	Achievement	% of Achievement	Target	Achievement	% of Achievement
Phase-I	201	140	69.65	94	68	72.34
Phase-II	1785	1635	91.60	1143	519	45.41
Phase-III	1102	793	71.96	985	467	47.41
Phase-V	77	108	140.26	278	252	90.65
Others	--	17	--	---	15	--
Total	3165	2693	85.09	2500	1322	52.88

Source: Ministry of Road Transport and Highways

The main reasons for delays in project implementation arise from many different sources, especially delays in securing forest and environmental clearances, clearance for road over-bridges from the railways, problems with land acquisition and shifting of existing utilities, performance of contractors and the poor law and order scenario in some areas.

Table 6: Foreign and Joint venture companies in National Highway Projects (in 2010)

Country	Contractors	
	Joint venture	Independent
China	13	2
Dubai	3	---
Malaysia	26	10
Iran	1	---
Saudi Arabia	1	---
UK	4	---
Indonesia	2	2
Korea	9	5
Spain	5	---
Taiwan	---	4
Thailand	3	1
Turkey	2	---
Philippines	1	---
USA	1	---
Russia	8	2
Italy	1	---
Total	80	26

Source: Financial Express, dated 6th April, 2011

Most impressive gains have been made on the nuclear power front, where 20,618 MU of power generated in April-January 2010-11 was 113% of the target period. And power generation from nuclear stations has been pushed up by 37.7%, probably aided by the increased availability of fuel after the fuel embargo was lifted by nuclear suppliers. Another segment that has made impressive gains is hydel power, aided by bountiful rains during the year. Numbers till end January show that the 97,721 units of hydel power generated during the period surpassed the full year target, as production increased by an impressive 8.9%, faster than the overall growth of the economy.

The major laggard in the power sector was the thermal power segment. Although the 545,232 MU of power generated from thermal power stations in the first 10 months of the year is an impressive 96% of the total power generation targets set for the period, power production in the segment rose by a mere 3.5%, which was less than half the GDP growth. A major reason for the poor performance of coal-based thermal units was the shortfall in coal supplies in almost all regions, except the north-eastern region, which pulled down power generation by 5.9 BU, because only 85% of the requirements were met. Numbers in January indicated that the coal stock was critical at 27 stations and super-critical at 17 stations.

Concept of PPP

A PPP refers to alliances and joint ventures between the government, NGO and the corporate sector to tackle broad social issues. It can be a powerful catalyst for change solving development changes. The key features of a partnership include voluntary collaboration, mutually agreed objectives and a pooling of resources and risk. True partnership implies equality between different partners, with each contributing its different strengths and, in turn, receiving what they lack when the relationship becomes that of superior/subordinate or principal/agent or master/servant a partnership

Table 7: Power generation and capacity addition (April to January 2010-11)

Category	Power Generation		Capacity Addition (MW)		
	Target Achieved (%)	Growth (%)	Target	Achievement	Target Achievement (%)
Thermal	95.9	3.5	16519	9500	57.51
Nuclear	113.5	37.7	220	220	100
Hydro	100.4	8.9	1009	490	48.56
Total	96.9	5	17748	10210	57.53

Source: Central Electricity Authority

cannot last. Only when partners feel that they are receiving as much as they give, the partnership can be a lasting relationship. The most important requirement for a successful partnership is trust and subordination of personal ego in the larger interest.

Reasons for Private Participation for Infrastructure Sector

India's infrastructure investment in 2002 was a mere 6% of GDP as compared to 20% in China. This needs to be changed rapidly. There is a general consensus now that India should invest a minimum of 10% of GDP in asset creation in infrastructure. Till now, India has achieved only 5% (GCFI) gross capital formation in infrastructure as a percentage of GDP. The gap is high. To get India to reach even 9% in next five years will require an investment to the tune of \$275-300 billion, which cannot be supplied by the State or the Central Government. Hence, we require private capital in infrastructure.

Views of Global CEOs

According to a survey conducted by KPMG and Economist Intelligence unit, executives expressed serious concern over the Government's effectiveness in improving vital infrastructure in the country. Nearly 9 out of 10 respondents in India said the current investment in infrastructure is insufficient to support the long-term growth of their firms. Nearly 90% of executives in India who participated in the survey said poor energy infrastructure burdens their organisations with additional cost. A majority of global CEOs stressed the need for the government to partner the private sector to finance major infrastructure projects. Social services infrastructure was also cited as an area of concern globally. Further, they have opined: *Availability of infrastructure impacts operating cost and is therefore a major factor in strategic planning and decision making.*

According to the survey, most of the executives termed roads and power generation key infrastructure. They also suggested that the Government needed long-term strategies for infrastructure adequately funded and backed by political will. From the international experience, it has been revealed that 10% to 20% of GCFI can be achieved from private capital sources. But for making the private capital efficient, SPVs under a viable PPP format have to be created for receiving such private capital.

Stimulating of infrastructure projects require, on an average, four years from concept of commissioning. It means that there must be a ready-to-invest agency, which should come forward and take the risk for such a long gestation period. The Government does not have

the requisite fund to invest for getting the benefit after a long period of time. So the private sector should play a complementary role for the infrastructure finance. For better operating contracts linked to service delivery standards, the private sector is more efficient than the public sector. A PPP not only brings capital, but also efficiencies as well as best practices into public utilities management. For better managerial performance, it is imperative that the public sector comes forward, and if it does take initiatives, then public utilities can be managed more efficiently and more productivity can be achieved. Successful PPPs have much to do with how a private partner is chosen. One rational criterion should be not to allow the private sector involved in developing the project for bid agreement, because profiteering motive will lead to degradation of the quality of the project. A mutual agreement on a commission between the public and the private sectors in accomplishment of a particular project work will be more fruitful.

Both free market capitalism and dominant state control have been seen in their best and worst forms in the 20th century. The lesson for the 21st century is that public and private capital has to learn to work with each other with more maturity. The public-private partnership in the Latin American context has broadly been achieved by privatisation. If Asian economies follow the same route, private players would be able to deliver better to closed markets.

Table 8: Sector-wise Number of PPP Projects as in March, 2011

Sl.no	Name of the PPP sector	Nos. of projects
1	Roads	371
2	Energy	46
3	Ports	56
4	Urban Development	131
5	Tourism	38
6	Airports	05
7	Education	06
8	Healthcare	03
9	Railways	04
Total		660

Source: The Economic Times, dated 29th March, 2011

Table 8 represents sector-wise PPP projects as in March 2011. The highest number of projects has been approved in the road sector. More than 56% of total

PPP projects have been diverted towards the road sector. The urban sector PPP projects ranked number two. In the healthcare sector, only three PPP projects have been undertaken.

Table 9: Selected State-wise Number of Projects with Project Cost (₹ in crore)

Sl.no	Name of the State	Number of projects	Amount
1	Karnataka	106	44414
2	Gujarat	65	35930
3	Maharashtra	65	40037
4	MP	50	10969
5	Rajasthan	60	14595
6	Andhra Pradesh	83	65564
7	Tamil Nadu	45	18626
8	Punjab	30	3117

Source: The Economic Times, dated 29th March, 2011

Karnataka has undertaken 106 PPP projects amounting to ₹44,414 crore, while at the same time Andhra Pradesh had 83 PPP projects amounting to ₹65,564 crore. The number of projects in Andhra Pradesh remained low as compared to those undertaken by Karnataka, but the higher amount of money has been approved for Andhra Pradesh towards the implementation of PPP projects. Punjab has 30 PPP projects approved amounting to ₹3,117 crore, the lowest among the States as shown in Table 9.

Recommendations and Policy Implementation

1. In a gathering of CEOs in New York in 2005, Dr. Manmohan Singh mentioned that India would need around \$150 billion of foreign investments in infrastructure over the next decade. To attract foreign investments in the infrastructure sector, there is an urgent need to form PPPs, as it has been realised that foreigners are interested to invest in the sectors where they are assured of getting timely and requisite returns, which is only

A major reason for the poor performance of coal-based thermal units was the shortfall in coal supplies in almost all regions, except the north-eastern region, which pulled down power generation by 5.9 BU, because only 85% of the requirements were met. Numbers in January indicated that the coal stock was critical at 27 stations and super-critical at 17 stations. ”



possible through the PPP model. Therefore, the Government of India should take initiatives to form PPPs to meet the long-term financial requirements for investments in the infrastructure sector.

2. Development of the infrastructure sector requires huge labour, especially in semi-skilled and low-skilled areas. To provide employment to the surplus pool of workforce, it is the best possible method where dual purpose, i.e., the problem of unemployment and the economic imbalance of the country can be solved to a greater extent.
3. For road financing the OMT (Operate-Maintenance-Transfer) model is recommended, because in this model, the Government funds the road project, while the contractor operates and maintains. The Government should not take up the maintenance part because of the leakage of the administrative machinery, where there is every possibility that the Government may incur a heavy loss. If the maintenance aspect is handed over to private parties with an agreed fee for a stipulated period of time, it will be a cost-saving method, and after the expiry of the stipulated period the project can be again transferred to the Government by the private caretaker.
4. **Land acquisition:** Land acquisition is a major problem, especially in the case of power and road projects, which are land-intensive. Private operators should not be involved in such problems, as the acquisition of land from private bodies is very

sensitive and sometimes leads to litigations and violence from the side of the public. The Government should interfere in such land acquisition problems and adequate compensatory measures should be provided to private landholders and sometimes, if necessary, some special incentives such as subsidies may be provided to them for acquiring land. If possible, as an incentive, jobs may be offered for the acquisition of land for development of the infrastructure sector in a particular locality.

5. **Regulators:** Our former Finance Minister Shri P. Chidambaram had recommended us to think out of box. There is enough private capital jostling around the world. We will have to change or contemplate to tap these resources. The creation of sufficient attractive investment opportunities to channelize FDI and domestic capital is the *sin-qua-non* for development in the infrastructure sector. The only way to do this is to have PPP initiatives, leading to a large pool of bankable projects. For regulating the progress of various infrastructure sectors, there is an urgent need for setting up multi-sectoral regulators. There should be regulators for sectors such as communications, electricity, fuel

and gas and transport, which will help in building capacity and expertise, in promoting consistency of approach, and in saving costs.

6. The setting of a regulatory body in each and every sector initially would involve a huge expenditure. This may not be supplied at a time by the State government for which the State governments are recommended to establish at least a single regulatory commission for all infrastructure sectors functioning in the state, so that a major portion of the performance appraisal of agencies in the infrastructure sector can be controlled and suggestive measures can be implemented for the future course of action. Monitoring of activities of regulators on a quarterly basis should be taken up with topmost priority.
7. Political and ministerial constraints should be removed in the formulation of regulatory bodies. In order to avoid any unnecessary delay, it is imperative that central and state legislations should be passed for the formation of regulatory bodies for better interest of economic development in the country as a whole.
8. The structure of large-scale projects (such as Rail Freight Corridor, NHDP and Bharat Nirman) involving substantive public expenditure is to be taken up along with the out-of-the-box initiatives to raise savings and resources for the purpose. The resources generated out of such projects can be further channelized for the creation of additional infrastructure projects, which, in turn, can further increase the income generating capacity for the future.

Conclusion

The key ingredient of a successful PPP project is its structuring procedure. One variable parameter has to be chosen as the basic bidding criteria for a BOT project. The others then become fixed parameters and must have constant values assigned to them. A successful BOT project is one where there is full involvement of stakeholders. Non-cooperation of stakeholders may lead to wrong choice of fixed and variable parameters, for which there is every possibility of failure of the project. A successful PPP model requires participation from both public and private sectors and requires a major change in the mindset of the government and its agencies. It requires an entrepreneurial and innovative approach. The basic desire of both sectors can be fulfilled, and eventually maximum benefit will flow towards the public at large. Ultimately, in a PPP, it is the political will and insulation from political interferences that can guarantee success. ■



Using Accounting Ratios to Find Better Investments



With more than 3,500 listed companies, it is like searching for a needle in a haystack. Accounting Ratios can be very useful in finding the good healthy companies and in avoiding financial pitfalls. Using few rules of thumb, the accounting ratios can be quickly calculated at a glance. Setting their benchmark to compare and read financial results can provide spectacular returns in the financial markets. Chartered Accountants are highly capable to read and understand a company's balance sheets and financial results. Read on to know more...



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With more than 3,500 listed and traded companies, finding the right company to invest in can be a little tough. To cut down the screening process and to find the better choices from too many available options, using accounting ratios can be very helpful.

All the listed companies are required to file and publish their quarterly results. These results are published in financial newspapers and can also be accessed from websites of stock exchanges. To analyse and evaluate these results, we can use certain benchmarks to find better investments.

1. Setting out Benchmarks:

"Most individuals know price of everything, but value of nothing." -Philip Fisher

To begin the stock picking process and to find their intrinsic value (which might be different for each individual), we need to set certain benchmarks. The three most important ratios are:

1. Price to Book Value
2. Price to Earning
3. Growth Rate

The average price to book-value of markets is 2.3 times. This means, that on an average, investors pay a premium of 1.3 times their book value. Lesser this ratio, lesser the premium investors pay. The stock gurus including Benjamin Graham and Charlie Munger suggest looking for stocks which trade at around their book value.

Price to earnings (P/E) is the number of times the annual earnings per share we are paying as price. Average price to earnings in market is of 15.3 times, i.e. if a company earned ₹12 per share in last 12 months, then market might price it around ₹180.

However, the above price to earnings ratio is closely linked to growth rate. An investor might value a stock higher and give higher P/E if expected growth rate is higher. To reflect the average growth of markets, we can take growth rate of Indian economy as an indicator which stands at around 8%.

Thus the three benchmarks could be:

Book Value => 2.3 times (lower the cheaper)

P/E => 15.3 times (lower the cheaper)

Growth Rate => 8% (higher the better)

Margin of Safety:

[The scientist who developed the Saturn 5 rocket that launched the first Apollo mission to the moon put it this way: "You want a valve that doesn't leak and you try everything possible to develop one. But the real world provides you with a leaky valve. You have to tolerate how much leaking you can tolerate."] -from Against the Gods

Since we do not know much about the future, we need to get maximum details we can to get our facts. Most of the details can be obtained from the annual reports of the companies. The Chairman's letter provides strong indicators about what the management is expecting, if they are positive or if they have that zeal. It is a must to go through the auditor's report and look out for qualifications, if any.

"If you get interested in a company and you read the annual report, you will have done more than 98% of the people on Wall Street." -Warren Buffett

Markets usually over-react to both, the good news as well as bad news. There can be times when you buy a stock after all the analysis, yet it continues to roll-down. If the fundamentals or the reasons for which the stock was bought originally are still intact, then one should keep the pulse and not be frightened out by such fall. These financial ratios are of high impact and by studying them one can get very good returns over a long run. As a Chartered Accountant, we are highly capable to read and understand a company's balance sheets and financial results. ”

Knowing about future plans of the company, we can adjust the above three benchmarks to arrive at an intrinsic value. Seth Klarman recommends looking for stocks with three times margin of safety in them. Thus we can get more margin of safety if we look for stocks which trade at around their book value, have a P/E of around five to six times and provide a growth of more than 20%. During the times of distress (such as now), we can find many good stocks falling in the above criteria.

2. Quick calculation of Ratios (rules of thumb):

Compounded Growth Rate: Five years compounded growth rate is a good indicator of company's growth. As a thumb rule, if we divide 72 by interest rate, we get number of years in which the sum would double.

Eg: at 8% compound interest, it would take about nine years for the principal to double; at 15% return, the number should double in five years.

Thus at a quick look at five year comparative figures of profit or sales of a company, if the same is doubling over five years, the growth rate is 15%; if it becomes 2.5 times over five years, the growth rate is 20%; if it becomes three times over five years, the growth rate is 25%.

Profit or Sales

Year 1	Year 5	Multiple	Rate
100	200	2	15%
100	250	2.5	20%
100	300	3	25%
100	375	3.75	30%

Another quick way to arrive at an estimate of growth rate of a company is to look at "Quarter on Quarter" numbers, i.e. comparing current quarter numbers (of sales or profits) with those of the same quarter of the previous year.

Book Value: Dividing "reserves & surplus" by "equity share capital" we can get number of times the book value will be over its face value. E.g. If a company has a Reserves of ₹52 Crore and Equity Share Capital of ₹4 crore; we know that book value will be 13 times over its face value. Thus if the face value of share is ₹10, then book value will be $13 \times 10 + 10 = 140$. If face value is of ₹2, the book value will be $13 \times 2 + 2 = 28$.

3. Looking Out for Financial Pitfalls

While going through financials of a company, there are a few financial ratios which can help in avoiding pitfalls.

Debt Ratios:

"A Banker lends you his umbrella when it's sunny and wants it back when it rains" -Mark Twain

While Mark Twain was as usual humorous in saying that, he did caution us to avoid excessive borrowings. Interest Coverage Ratio, i.e. company's earnings before interest (EBITA) upon interest expense, is a good indicator of company's financial strength. Following principle of margin of safety, the earnings should be at least 2.5 times its interest expenses.

Debt to Equity should also be looked at (avoiding companies with debt to equity of more than 2), since in times of distress this can lead to a black hole.

Tax Payout: Often there are companies which show wonderful results but do not pay much tax. Chances are that the reported profits might not be very genuine. Such companies usually do not reward the investors in the long run. It is better to look for healthy companies with strong cash-flows and the ones paying out around 30% of their earnings as tax.

Dividend Payout: Again, there are several companies which show repeated profits, but never reward their investors. A good management is enthusiastic about

While reading results published in financial newspapers is an easy way to keep a track of latest results of companies, there are a few sites which can make the whole approach even more simple. <http://economictimes.com> is a good basic website to read latest financials of a company. For a more mathematical stock screening approach, one can try <http://screener.in>. If one prefers the old pen-paper approach, then Capital Market magazine is also a good source which compiles results of over 1800 companies in a simple table.

expansion, but at the same time it also rewards its investors with regular dividends (paying out at least 20% of the profits as dividend). At current prices, there are many good companies with decent valuations and providing a dividend yield of over 3%.

Return on Capital Employed: How a company applies its funds reflects the efficiency and competence of its management. Maintaining high inventory turnover ratio, keeping the debtors to minimum, investing funds in good securities and paying out excess in dividends; all these improve the return on capital employed. Value investors usually seek return on capital employed of over 20%. Capital employed includes long-term debt and thus for calculating return on capital employed, EBITA is considered.

Keeping the Pulse

"In stocks as in romance, ease of divorce is not a sound basis for commitment. The key to making money in stocks is not to get scared out of them." -Peter Lynch

Markets usually over-react to both, the good news as well as bad news. There can be times when you buy a stock after all the analysis, yet it continues to roll-down. If the fundamentals or the reasons for which the stock was bought originally are still intact, then one should keep the pulse and not be frightened out by such fall. These financial ratios are of high impact and by studying them one can get very good returns over a long run.

As a Chartered Accountant, we are highly capable to read and understand a company's balance sheets and financial results. The best of the investors in markets are also the members of the Institute.

Important Sources

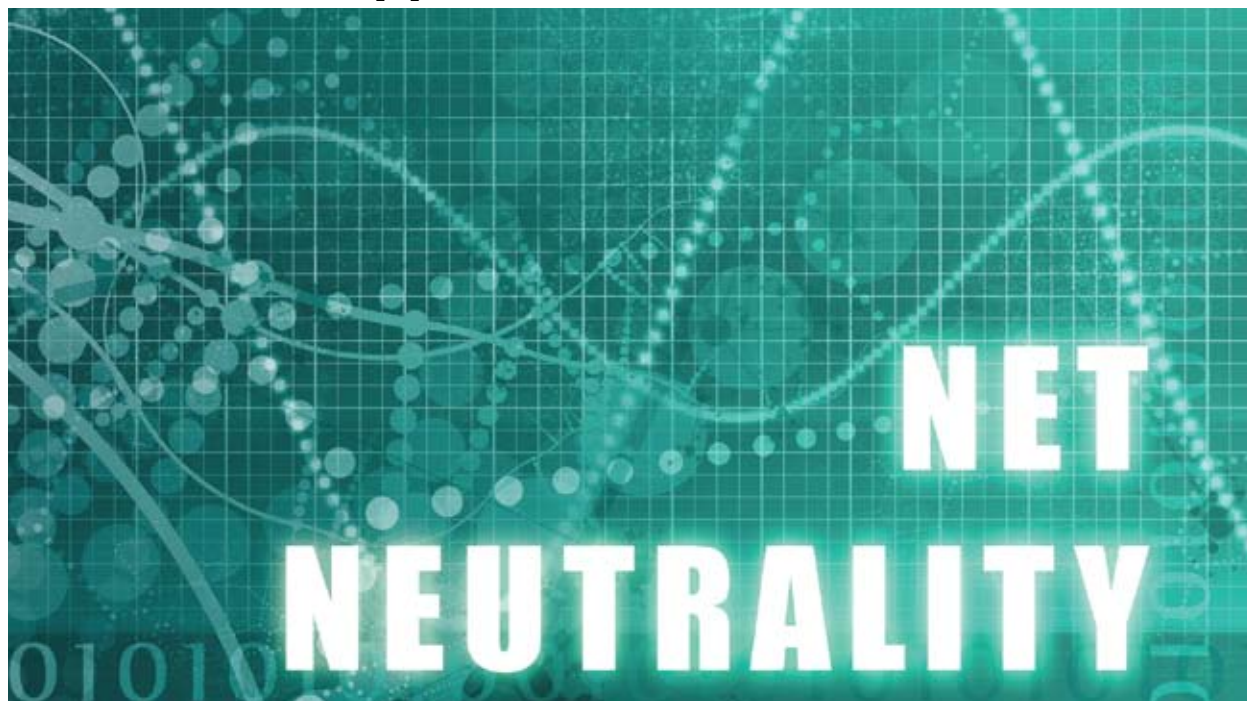
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Happy Investing!!!

Bibliography:

Total number of listed companies exceeds 5,000 on BSE. However the ones active and traded are little over 3,500. This has been calculated from latest BHAV copies available on exchange website. The benchmark figures have been taken from latest newspapers. The relevant quotes have been cited to their original authors in the article.

Advocacy Role of the Competition Commission of India – An Appraisal



Competition advocacy is one of the important pillars relied upon by competition agencies across the World for engendering competition culture and process. The Competition Act, 2002 explicitly assigns the Competition Commission of India a proactive duty to act against anti-competitive forces prevailing in the market. The laudable objective of competition advocacy is to foster conditions that lead to a more competitive market structure and business behavior without the direct penalty loaded intervention of the Competition Commission of India (CCI). Generating awareness of Competition Law and promoting Competition Culture in a traditional economy like India which was hitherto subject to controls and regulations was a formidable challenging task. According to the author the CCI can overcome this challenge by adopting a multi-pronged approach suited to Indian mores and conditions.



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The major elements of any modern competition law are: restrictive trade agreements, dominance and its abuse, regulation of mergers and advocacy. Advocacy¹ involves the ability of the competition authority to influence the policy decisions of the Government and the behavior of the enterprises without resorting to enforcement. Competition advocacy is one of the important pillars relied upon by competition

agencies across the World for engendering competition culture and process. In line with this and the High Level Committee's recommendation², the Competition Act, 2002 (the Act) extends the mandate of the Competition Commission of India beyond merely enforcing the law.

Meaning and Significance of Competition Advocacy

A commonly accepted definition

¹ Advocacy has been defined in Black's law Dictionary as the act of pleading for or actively supporting a cause or proposal.

² The High Level Committee on Competition more popularly known as S.V.S. Raghavan Committee recommended that the mandate of the CCI needs to extend beyond merely enforcing competition law. It needs to participate more broadly in the formulation of the country's economic policies which may adversely affect competitive market structure, business conduct and economic performance. The CCI therefore, needs to assume the role of competition advocate, acting pro-actively to bring about Governmental policies that lower barriers to entry, promote de-regulation and trade liberalisation and promote competition in the market place. There is a direct relationship between competition advocacy and enforcement of competition law. The aim of competition advocacy is to foster conditions that will lead to a more competitive market structure and business behavior without the direct intervention of the competition law authority namely the CCI (see paras 6,4,7 of the report).

A commonly accepted definition of competition advocacy is that it includes all activities of a competition agency that are intended to promote competition apart from those that involve enforcement of the competition law. ”

of competition advocacy is that it includes all activities of a competition agency that are intended to promote competition apart from those that involve enforcement of the competition law³. Thus competition advocacy aims at promoting pro-competition measures in an economy. Khemani and Clark point out that a competition authority must 'participate more broadly in the formulation of its own country's economic policies, which may adversely affect competitive market structure, business conduct, and economic performance⁴. It must assume the role of competition advocate, acting proactively to bring about government policies that lower barriers to entry, promote deregulation and trade liberalisation, and otherwise minimise unnecessary government intervention in the marketplace.⁵ Competition advocacy in broad terms can be understood to encompass all activities pursued by competition authorities to spread a competition culture.⁶ The addressees of advocacy measures can be public stakeholders like

legislators, regulators or judges but also the business and legal community or the public at large.⁷

The content of competition advocacy measures varies hinging on the legal and administrative framework and the degree of importance policy makers attach to the benefits of a sound competition policy at large. The objectives of competition advocacy include raising general awareness on competition issues and concerns amongst regulators, academia, the judiciary, and other public and private stakeholders and to empower the competition agencies to participate in the formulation of a country's economic policies promoting competition friendly legislation and policies.

Depending on the objectives to be achieved, competition advocacy measures may take the form of guidance aimed at improving the understanding and acceptance of the competition rules by the stakeholders. Further, they may also consist in the active involvement of competition agencies in the regulatory impact assessment (RIA) process leading to the adoption of new laws and regulations benign to the fostering of competitive process and markets. Thus competition advocacy is a core instrument to address public as well as private restrictions on competition towards promoting competitive markets.

Origin of Competition Advocacy

The concept of competition advocacy is rather of recent origin having gained its acceptance

and prominence in developed and developing economies with the gradual opening up of the erstwhile state monopolies in sectors such as telecom, electricity, oil, etc. to market economy and when the beneficial effects of free competition started emerging from these sectors. In most countries the concept was linked automatically to the successful implementation of the competition policy⁸ coupled with enforcement of the competition law. Competition law enforcement is much older than competition advocacy. Even though in jurisdictions with a very long enforcement tradition, competition advocacy efforts date back to the early decades of the 20th century, there was a renewed emphasis on competition advocacy in the 1970s, in some jurisdictions.

The Need and Purpose of Competition Advocacy

There is a direct relationship between competition advocacy and enforcement of a competition law and this nexus is especially strong in transition and developing economies, where an appropriate understanding or appreciation of merits of competitive market economic systems is often lacking. Competition advocacy facilitates synergy between government action and competition. Competition process may be affected adversely by private as well as public restrictions on competition.⁹ Hence, removal of public restrictions on competition is as important as removal of

³ Khemani, R Syam, and Johan Clark et al. 1999.

⁴ Ibid.

⁵ Khemani, R Syam, Johan Clark et al. (1999); "Competition Advocacy", in World Bank/OECD p.93.

⁶ ICN Report 'Advocacy and Competition Policy 2002; available at <http://www.internationalcompetitionnetwork.org/>.

⁷ Philip Lowe and Geraldine & Emberger, 2007 "Competition Advocacy and Interface with the Government", in Vinod Dhall (ed) The Competition Law Today, Oxford University Press, New Delhi P1.

⁸ Quite often there are anti-competitive outcomes due to policy distortions. To deal with policy induced anti-competitive outcomes, a competition policy is desirable. Competition policy means the governmental measures that affect the behavior of firms and the structure of the industry, and it is necessary to prevent anti-competitive practices, promote innovation, growth and promote competitive environment in the market. An adequate competition policy can ensure best possible utilisation of available resources, better quality products at lower prices to consumers and check hurdles to fair competition.

⁹ At the State level there are five major policies that are responsible for nurturing anti-competitive policies, namely, procurement policy, excise policy, truck operations, bid rigging in construction and retail services. Manas Kumar Chaudary, 'Mergers & Acquisitions under the Indian Competition Law-A Critical Legal View'.

Competition advocacy in broad terms can be understood to encompass all activities pursued by competition authorities to spread a competition culture.”



private restrictions. In fact, public restrictions are more pernicious than private ones, given the fact that they are sanctified by different agencies of departments of the State. Competition advocacy is a core instrument to address public restrictions on competition and to promote competitive markets.

Tim Muris, the former chairman of the FTC has rightly observed:

“Attempting to protect competition by focusing solely on private restraints is like trying to stop the flow of water at a fork in a stream by blocking only one of the channels.”¹⁰

Governments, very often, in the name of advancing public interest or national security formulate and enforce certain policies and laws, imposing fetters on competition and promoting inefficiency. Therefore, there should be proper checks and balances for obviating the misuse and abuse of enormous powers vested with Governments under the ruse of public interest. Hence, there should be an earnest endeavour for the balancing of interests based on certain cardinal principles.

The competition agencies

through competition advocacy can strive to ensure that competition principles are properly and consistently inserted in the new legislation and regulations, where appropriate, particularly, in fostering competition in regulated sectors, such as electricity, telecommunications, petroleum sectors, etc.

The competition agencies in their role of advocacy can minutely scrutinise the baneful effects of State aids such as subsidies, tax rebates, preferential loans, capital injections, public procurements and other benefits for the selected and privileged market operators on competition and thereby strongly plead for the removal anti-competitive and inefficiency promoting concessions, rebates, remissions, etc. Further, the competition agencies in their role of advocacy can promote and sustain competitive neutrality for ensuring level playing field among various players operating in the market.

The competition agencies can play a pro-active role in building awareness and support for competition policy among the citizens and the business community, especially in transitional and developing economies.

Objectives of Competition Advocacy

- To raise the general awareness about competition issues and concerns amongst regulators, academia, the judiciary and other public and private stakeholders.
- To enable the competition agencies to participate in the formulation of a country's economic policies which may influence and impact the competitive market structures, business conduct and economic performance at large.
- To promote competition

benign legislations with public stakeholders, mainly regulators, legislators at the National and Sub-National levels.

- To foster and sustain competitive markets and culture in the economy.
- To promote that competition principles are at the edifice of economic policies and laws.
- To enhance understanding and acceptability of the competition rules by the stakeholders.
- To promote active involvement of competition agencies in the regulatory impact assessment (RIA) process.
- Involve competition agencies in hearings before sector regulators, parliamentary committees, or as amicus curiae in court proceedings.

Interface between Advocacy and Competition Enforcement

Advocacy and enforcement have a common objective as they strive to ensure that competition is not distorted and undermined. Hence, both are complementary to each other. The effectiveness of advocacy would definitely strengthen the process of enforcement, as it engenders habitual compliance with competition law, leading to least resort to sanctional mechanism.

Competition Advocacy in the Indian Context

In line with the recommendations of the High Level Committee on Competition Policy and Law, the Act extends the mandate of the Competition Commission of India

Competition advocacy is a core instrument to address public restrictions on competition and to promote competitive markets.”

¹⁰ Remarks of Tim Muris before the Fordham Annual conference on 24 October, 2003.

The competition agencies can play a pro-active role in building awareness and support for competition policy among the citizens and the business community, especially in transitional and developing economies.”

beyond merely enforcing law. The Competition Act explicitly mandates the Competition Commission to “eliminate practices having adverse effect on competition, promote the interests of consumers and ensure freedom of trade....in markets in India.”¹¹ Thus, the Act explicitly assigns the Competition Commission a proactive duty to act against anti-competitive forces prevailing in the market. This duty is supported by the mandate to take “suitable measures as may be prescribed for the formulation of competition advocacy, creating awareness and imparting training about competition issues.”¹² Further, the Competition Commission of India, in terms of the advocacy provisions in the Act, is enabled to participate in the formulation of the country’s economic policies and to take part in reviewing laws pertaining to competition at the instance of the Central and State Governments.¹³ The Commission is mandated to proffer its opinion to the Government concerned within 60 days of receiving

the reference.¹⁴ The Commission has been assigned the role of competition advocate, acting pro-actively to bring about Government policies that lower barriers to entry, that promote deregulation and trade liberalisation and to foster competition in the market place.

In a quasi- Federal polity set-up like India, there is every possibility that State Governments may bring about certain policies and laws imposing fetters on competition at the sub-national level, affecting the interest of consumers.¹⁵ In fact, many such competition distortive policies prevail at the sub-national level. Therefore, policies and legislations creating barriers to free entry and thereby impairing and crippling competition needs to be addressed by the Competition Commission. The Parliament had long been grappled with the subject and which obviously explains the reason behind the extension of competition advocacy role of the Competition Commission even to State Governments by amending Section 49 to address competition inimical policies at the sub-national level.¹⁶ Thus, the amended provision¹⁷ certainly facilitates the formulation of competition engendering policies and practices at the national as well as sub-national level and further promotes harmony and convergence between the Central and State policies on the foundation of competition principles.

The opinion tendered by the

Commission under sub-section (1) of Section 49 shall have only persuasive value and therefore, it shall not be binding upon the Central Government or the State Government.¹⁸ Hence, Government concerned is not duty bound to take into reckoning of any opinion tendered by the Commission and which makes the whole process of seeking opinion nugatory and a futile exercise. The author is of the considered opinion that in the event of Government not considering the opinion articulated by the Commission then it must be incumbent on it to give reasons for discarding such opinion. Such a provision in law would definitely bring about openness, transparency and increasing credibility to



The advocacy role of the CCI would also facilitate the integration of competition principles in the policy formulation by the Central and State Governments.”

¹¹ Section 18 of the Competition Act, 2002.

¹² Section 49 (3) of the Competition Act, 2002 as amended by the Competition (Amendment) Act, 2007.

¹³ Ibid, Section 49 (1) of the Competition Act, 2002 as amended by the Competition (Amendment) Act, 2007 provides that the Central Government may, in formulating a policy on competition including review of laws related to competition or any other matter and a State Government may, in formulating a policy on competition or on any other matter as the case may be make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference the Commission shall, within sixty days of making such reference, give its opinion to the Central Government or the State Government, as the case may be which may thereafter take further action as it deems fit.

¹⁴ Ibid.

¹⁵ The Liquor and excise Policy of almost all States in India sheds ample light on the unconscionable fetters created by such policy on the liquor trade hampering severely the competition process and same is the case with procurement policy of Governments.

¹⁶ Section 49 prior to the Competition (Amendment) Act 2007 contained that the Central Government may make a reference to the Commission for its opinion on possible effects of such policy on competition. The amended section provides that both Central and State Governments may make a reference to the Commission and thereby the advocacy role of the Commission has been further strengthened.

¹⁷ Ibid.

¹⁸ Section 4. (9) (2) as amended by competition (Amendment) Act, 2007 provides that the opinion given by commission under sub-section (1) shall not be binding upon the Central Government or the State Government as the case may be in formulating such policy.



the advocacy process apart from minimising the arbitrary, capricious and whimsical functioning of the government in policy formulation. Further, the existence of such mechanism would be helpful in injecting competition principles in the formulation of economic policies and laws at the National and sub-national level.

In order to promote competition advocacy and create awareness about competition issues and also to impart training to all concerned, the Act enjoins the establishment of a fund christened the Competition Fund.¹⁹ The fund will be credited with the fees received for filing complaints and applications under the law, costs levied on the parties, grants and donations from the Government and the interest accrued there on.

Thus, the Act seeks to bring about a direct relationship between competition advocacy and enforcement of competition law. The laudable objective of

A proper understanding and analysis of the market is important for the Commission for discharging its advocacy role effectively and efficaciously.

competition advocacy is to foster conditions that lead to a more competitive market structure and business behavior without the direct penalty loaded intervention of the Competition Commission of India.

Thus, under the scheme of the Act, the CCI's opinion will definitely constitute an important input for the Central and State Governments in formulating economic policies having bearing on competition. Further, the advocacy role of the CCI would also facilitate the integration of competition principles in the policy formulation by the Central and State Governments.

Advocacy Measures Initiated by Competition Commission of India

The Competition Commission of India was established by the Central Government on 14th October, 2003. Since then, the Commission has been doing commendable work in its advocacy role. The Commission has forwarded its comments on competition issues in draft legislations in some sectors such as posts and telegraph, shipping trade practices, broadcasting, petroleum and natural gas and warehousing²⁰. The Commission has also examined the proposed Warehousing (Development and

The CCI has actively initiated advocacy measures and efforts with all the State Governments in India in order to facilitate the promotion of pro-competition measures at the sub-national level.

Regulation Bill, 2005 and the Carriage by Road Bill, 2005 and the Broadcasting Services Regulation Bill, 2006 from competition point of view.²¹ The Commission has also approached the University Grants Commission (UGC) and the National Council for Education Research and Training (NCERT) to include study on competition law and policy in the curriculum of colleges and schools respectively.²²

A proper understanding and analysis of the market is important for the Commission for discharging its advocacy role effectively and efficaciously. Market intelligence and data play a key role in tracking down hard core cartels and trade practices inimical to competition. With this in view, a number of studies have been commissioned to reputed research institutions. Until now 18 studies were commissioned, of which 12 have been completed and 6 are ongoing. Of the 12 completed studies, six are sector specific, covering the manufacturing sector in general and the cement, tyre, pesticides, paints sectors in particular, service sector like road transport, energy sector.²³

The Commission has actively initiated advocacy measures and efforts with all the State Governments in India in order to facilitate the promotion of pro-competition measures at

¹⁹ Section 51 of the Competition Act, 2002 Section 51 (2) (b) provides that fund shall be used *inter alia* for meeting other expenses of the Commission in connection with the discharge of its functions and for the purpose of the Act.

²⁰ As per the information provided by the CCI under the Right to Information Act, 2005, to the present author.

²¹ Ibid.

²² http://www.CCI.gov.in/images/media/advocacy_paper_10407.pdf, accessed on 01-09-2009.

²³ Supra note 19.

The activities undertaken by the Commission in its advocacy role are not adequate and effective to sustain a vibrant competition culture and process in India.”

the sub-national level. As part of these efforts, all states have been requested to appoint an officer of the level of Secretary to Government as the Nodal Officer for competition advocacy. At present 20 State Governments and Union Territories have notified Nodal Department for competition and appointed nodal officer for competition.²⁴ A meeting of National Level Steering committee for advocacy with State Governments was held in New Delhi on 31st January 2006 in which 20 States had participated through their designated Nodal officers for competition advocacy. In the meeting, a unanimous decision was taken for constitution of State Advisory Committees on competition issues in each State.²⁵ Until now, the interaction of the CCI with the State nodal departments has been primarily on the issues of organising seminar/workshops in the state.

The Commission has initiated the following advocacy activities to promote competition culture.

- Organising training programmes for officers of Central and State Governments involved in policy making.
- Organising/seminars/workshops, lectures independently or in collaboration with various stake holders.
- Publication of advocacy booklets on relevant issues of competition. The Commission has already published an appreciable quantity of advo-

cacy literature for generating awareness amongst different stakeholders.

- Internship programme in competition law for students and professionals.
- Research projects/ market studies on competition germane issues and concerns and using the results of the studies for advocacy.
- Awareness building on competition law and related issues with the Central and State Government ministries/ departments and also with State High Courts and business associations and academic institutions²⁶.

It is perhaps too early to appraise the efficacy of competition advocacy being undertaken by the CCI in India, given the short period of the existence of the Competition Act, 2002.

However, the activities being undertaken by the Commission in the pursuit of promoting its duty of competition advocacy are mostly confined to awareness generation amongst stakeholders apart from taking up some interesting market studies and which by any means are inadequate and don't have much impact. What is imperative is sustained efforts of the Commission to prepare an effective and pragmatic road map for taking the advocacy forward for ensuring that competition principles are at the core of the economic policy. For this to achieve, the Commission needs to undertake screening assessment of laws and policies creating fetters on competition for giving right inputs and recommendations to the policy makers. Though competition advocacy has been the foremost priority for the Commission but in the absence of the enforcement of most of the provisions of the

India's new competition law until very recently the real efficacy and impact of competition advocacy could be gauged only in the near future.

Though, the Competition Act contains provisions for promoting and sustaining competition culture in the country, but in reality the sustaining of competition culture would hinge on the proactive and creative role of the Commission aided by the strong political will. The political establishment must have unflinching commitment and unswerving determination to sustain the process of competition. Unfortunately, the lack of a strong political will in the Indian context doesn't augur well for sustaining competition process in the country.

The activities hitherto undertaken by the Commission in its advocacy role are not adequate and effective to sustain a vibrant competition culture and process in India. In fact, the analyses of data procured under the Right to Information Act, 2005 by the present author from the Commission evidently discloses that a preponderance of the activities are merely confined to generation of awareness, conduct of market research studies and policy interventions on its own. Even the awareness generating seminars and workshops organised by the Commission are

The views and opinions tendered by the Competition Commission of India in its advocacy efforts to either the Central Government or a State Government should be given due consideration and weightage.”

²⁴ Ibid.

²⁵ Id.

²⁶ Id.

very limited given the huge size and population of a country like India. In a country like India with the enormous size, population and wider social and cultural diversities resembling that of a continent, the CCI can perform its role of competition advocate when it is insulated from political interference in the discharge of its functions and further endowed with financial autonomy. Further, the Commission should have benches in every state to address the anti-competitive practices galore at the sub-national level. Ultimately, the common man will be able to realise the utility and efficacy of competition law when it makes his life better through the abundant qualitative goods and services at competitive prices. Therefore, it is imperative that the Commission should also focus considerably in addressing the anti-competition practices prevailing at the sub-national level to make its impact at the grassroots. Unfortunately, the nodal departments created at the State level for generating awareness about the competition at the sub-national level have become mere ornamental bodies as their powers and functions have not yet been defined in any manner. It is also quite distressing and

The Commission as a part of its advocacy function needs to identify governmental policies and laws that impede and impair competition for advocating policy and legal reforms at State and National level. ”

disappointing to notice that the Central Government has so far not made any formal reference to the Commission for eliciting its views and inputs in the formulation of any economic policy shedding ample light on the lack of political will to sustain competitive process. The Commission doesn't have financial autonomy to discharge its role as the champion and vanguard of competition advocate. The Commission is also not totally insulated from the political interference as the Central Government enjoys the power to supersede it under certain situations, leaving ample scope for abuse of such power that the exercise of it hinges upon the subjective satisfaction of the government. There is no foolproof mechanism in the Competition Act, 2002 to prevent arbitrary, whimsical and capricious exercise of power

by the Central Government for superseding the Commission. There is pervasive ignorance about the enormous benefits of competition law and its principal concepts among the business community, consumers, policy makers, academia, judiciary, etc. and this ignorance is even more among the common people. Most of the people tend to think that many of the anti-competitive trade practices like, tie in sales, exclusive dealing practices, price fixing agreements resorted by trade associations, etc. are absolutely legally tenable owing to their ignorance and unawareness of the competition law. Hence, the task of promoting competition advocacy assigned to the Commission is indeed formidable warranting the active involvement and engagement with civil society organisations for generating increasing levels of awareness throughout the length and breadth of the country.

Conclusion

Generating awareness of Competition Law and promoting Competition Culture in a traditional economy like India which was hitherto subject to controls and regulations was a formidable challenging task. The Competition



Commission can overcome this challenge by adopting a multi-pronged approach suited to Indian mores and conditions. At the same time the Commission should draw salutary lessons from the vast and varied experience of the developed countries. Further, the Commission should undertake this task through multiple measures and tools such as educational literature, audio-visual material, seminars and workshops, articles in the print media and journals, conducting market studies and surveys and so on. Furthermore, the Commission should effectively use mass media to generate awareness at the grassroots. However, in an economy that has long been used to controls and where benefits of competition are not fully appreciated, the task of spreading the message of competition will definitely take a long time, demanding the combined and concerted efforts of various organisations such as civil society, consumer organisations, professional institutes, trade bodies, business chambers etc. Hence, the Commission should rope in the services of civil society organisations, especially consumer advocacy groups to generate awareness about beneficial effects of competition to the nook and corner of the country and also for procuring authentic information about the state of competition at the grassroots.

The Competition Commission of India should be allowed to participate in the drafting of legislative and policy proposals in particular through Regulatory Impact Assessment (RIA). This will certainly enable the Commission to articulate its views, opinions and

inputs before the policy makers at the earliest stage and which will certainly facilitate a congenial environment for generating a fruitful discussion for further refinement of such proposals. Further, Commission should be provided with adequate resources necessary to engage in competition advocacy with government agencies and sector specific regulators.

The Commission should undertake the task of screening all the prevailing laws and policies on the touchstone of competition principles so as to facilitate competitive process and culture in the economy in consonance with the recommendations of the Raghavan Committee.²⁷ Under the Competition Act, 2002, the views and opinion given by the Commission on any proposed policy or legislation may be discarded by the government without giving any reason whatsoever. This needs to be changed as it renders the task of advocacy assigned to the Commission nugatory and meaningless. The views and opinions tendered by the Competition Commission of India in its advocacy efforts to either the Central Government or a State Government should be given due consideration and weightage. In case, the government discards the opinion tendered by the Commission then the reasons for not considering the same shall be clearly stated by the government concerned by bringing necessary changes to the same effect in the existing law.

The Commission as a part of its advocacy function needs to identify governmental policies and laws that impede and impair

competition for advocating policy and legal reforms at State and National level. This is a gigantic task, requiring the undertaking of detailed case studies and analyses in various sectors entailing huge resources and innovative skills. Hence, the Commission needs to enter into collaboration agreements with accredited Institutions, Universities, trade bodies, civil society organisations to conduct and analyse joint studies to act more effectively against market abusive and distortive trade practices. Further, such studies would definitely be helpful in curbing hardcore cartels having severe baneful effects on competition and consumer interests. The functioning of State Competition advisory Councils should be strengthened and they should be fairly representative of different stake holders apart from injecting transparency in their constitution. Further, the State Advisory Councils should be encouraged to organise studies on anti-competitive trade practice prevailing at the sub-national level to render useful inputs to the Commission. Furthermore, civil society organisation, particularly consumer organisations should be encouraged to address the issues and concerns of competition by raising the capacity building as it would definitely facilitate in creating a congenial environment benign to competition.

The Commission should conduct its advocacy role in an open, transparent and focused manner backed by solid research and supportive data to safeguard its credibility and gain more respectability of the stake holders. ■

²⁷ The High Level Committee on Competition more popularly known as S.V.S Raghavan Committee suggested that Competition Commission of India must develop relationship with the Ministries and Departments of the Government, regulatory agencies and other bodies that formulate and administer policies affecting demand and supply positions in various markets. Such relationships will facilitate communication and a search for alternatives that are less harmful to competition and consumer welfare.

Doing Business in Ireland



As President of the Institute of Certified Public Accountants (CPA) in Ireland (www.cpaireland.ie), I hope to highlight some great benefits of doing business in Ireland in this article. Not only does Ireland have an extremely competitive corporation tax, world-class infrastructure and services, it also has a rich history, culture and people that make it a wonderful place to live. And with Ireland and India's close working relationship, our countries are ideal partners for business in the global market. The international economic downturn has seen many changes to the way business is conducted around the world. Companies looking for new opportunities to boost their profits are now turning their gaze to Ireland, where its low tax rates and educated workforce attract inward investments from around the world. It is especially popular for countries from Asia and the Americas seeking to expand and develop their operations within the EU. The accountancy professions in Ireland and India are already connected, with the signing of the Mutual Recognition Agreement between ICA India and CPA Ireland in 2010.



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India and Ireland

India and Ireland have had a close relationship for years, despite being separated by thousands of miles. While the Ireland-India Business Association (www.iiba.ie) has offices in both Dublin and Mumbai to help businesses in each country, the Ireland-India Council (www.irelandindiacouncil.ie) was set up in 2002 to help strengthen the relationships between Irish and Indian communities, businesses, institutions and universities.

Today, India-EU trade is worth nearly €70 billion, having grown by 27% over the last five years. Trade between Ireland and India alone was worth more than €1.8 billion

between 2008 and 2010.

Accountancy professions in Ireland and India are already connected, with the signing of the Mutual Recognition Agreement between ICA India and CPA Ireland in 2010. Under the agreement, ICA India members' previous qualifications are recognised, and they are provided membership services in Ireland. Similarly, Irish CPAs are awarded the same benefits. To find out more about the MRA or how to become a member of CPA Ireland, log on to www.cpaireland.ie, and simply type India into the search tool.

Founded in 1943, the Institute of Certified Public Accountants in Ireland (CPA) is one of the main

Irish accountancy bodies, with over 5,000 members and students. CPA Ireland is also a member of the International Federation of Accountants (IFAC), the Federation des Experts Comptables Europeens (FEE), and participates in the Edinburgh Group alongside ICAI.

Background of Ireland

Ireland was officially a part of Great Britain until it gained independence when the Irish Free State was established in 1922. It was proclaimed the Republic of Ireland in 1949, after gaining full independence and leaving the British Commonwealth. Ireland joined the EU in 1973, and adopted the Euro currency in 2002.

For many years, the democratic country depended on the agricultural industry. But from the 1980s, it has become a world leader in technology, science, arts and culture. The population of Ireland was recorded at just over 4.5 million in 2011. Currently, the country is experiencing a 'baby boom', with one of the highest birth rates in the EU. The native Gaelic is recognised as the country's official language, but English is commonly spoken.

Doing Business in Ireland

Doing business in Ireland has numerous advantages. Its location alone has earned Ireland the name, the 'Gateway to Europe.' As a member of the European Community, the country benefits from the free movement of people, capital, and goods and services with the other 26 member states, giving it access to a market of over 500 million people worth \$18 trillion.

Ireland has long been recognised for its business know-how and is ranked number 10 in the World Bank's table of countries based on the ease of doing

The accountancy professions in Ireland and India are already connected, with the signing of the Mutual Recognition Agreement between ICA India and CPA Ireland in 2010. Under the agreement, ICA India members' previous qualifications are recognised, and they are provided membership services in Ireland. Similarly, Irish CPAs are awarded the same benefits. To find out more about the MRA or how to become a member of CPA Ireland, log on to www.cpaireland.ie and simply type India into the search tool. ”



business. Despite the recession, the Irish market reported record levels of exports in 2011, with food and drink exports worth €8.65 billion alone.

Working in Ireland and running a business have been made easier by the state-of-the-art infrastructure, widely available broadband and communication services, and excellent public transport. However, the country's greatest asset is without a doubt its people. Known

for their hospitality and humour, and being a permanent fixture in 'Friendliest Nationalities' lists, the Irish are fast gaining a reputation as the best workers in the world.

Around 36% of the Irish population is under 25 years of age, providing multinational companies with a young and well-educated workforce to avail of. Thanks to the history of financial companies in Ireland, there are plenty of older, experienced workers with a wealth of knowledge to choose from as well, giving an ideal combination of both young and old to your staff.

The country's capital, Dublin, is the main financial hub, with the Irish Financial Services Centre (IFSC) housing some of the world's premier financial services institutions, law and accountancy firms and tax advisors. Founded in 1987, the IFSC has played a key role in attracting some of the leading names in the financial services sector to Irish shores. However, operations are not limited to Dublin, as Ireland has a number of other large cities, including Cork, Galway and Limerick.

Tax Benefits in Ireland

Besides the numerous advantages of doing business in Ireland, it has one of the lowest Corporation Taxes in the EU of just 12.5%, which is half that of both China and the UK. There are many other tax benefits, such as a 25% Research and Development tax credit, which is refundable over a three-year period. Moreover, it also has an intellectual property regime, which provides a tax write-off for broadly defined IP acquisitions and patent royalty tax exemptions.

Businesses operating in Ireland also benefit from the EU-approved tax regime, complete with access to the extensive treaty network and EEU directives.

The Irish holding company system has been overhauled

in recent years, with holding companies now able to avail of the following tax package in Ireland:

- A tax exemption on profits from the removal of qualifying shareholdings.
- A pooling and carry forward of surplus foreign tax credits.
- The elimination of capital duty on equity investments.
- Double taxation relief for foreign branch gains.
- Tax exemption on qualifying foreign dividends with the tax rate lowered from 25% to 12.5%.

Other reasons for Ireland's popularity with multinational companies include its political stability, pro-business government policies, a transparent judicial system and cooperative labour relations.

Conclusion

While Ireland is still working through the recession, leading economists have already stated that the country looks set to recover sooner than others in the EU. Optimism about the future is already growing, with a business sentiment survey from accounting and consulting firm, Grant Thornton, showing that 72% of business owners expect profitability, revenue and selling prices to improve in 2012. Recent employment monitors from recruitment agencies also show that hiring is set to rise in Ireland in the coming year.

But do not just take my word for it; the facts below speak for themselves.

Ireland Fact File

- 960 foreign companies are based in Ireland, employing 138,000 people.
- It is home to 8 of the top 10 technology companies, 8 of the top 10 pharmaceutical

If you or your clients are interested in doing business in Ireland and

would like to find out more, log on to IDA Ireland's website, www.ida.ie. IDA will help with everything from finding a suitable location for your business to assisting with possible funding and grants. If you would like to find out more about working as an accountant in Ireland, CPA Ireland would be more than willing to help with any queries. Just visit www.cpaireland.ie to find out more.



companies, 15 of the top 25 medical device companies, and more than 50 per cent of the world's leading financial services firms in the world.

- The total US investment in Ireland is greater than investment into Brazil, Russia, India and China combined.

- Ireland is the third-largest breeder of thoroughbred horses in the world, with 40% of the EU's and 11% of the world's thoroughbreds produced here.
- The thoroughbred equine industry employs 17,300 in Ireland, and its value exceeds €0.9 billion in 2010.
- Ireland produces enough beef each year for 30 million Europeans, with one out of five burgers served in McDonalds across Europe made from Irish beef.
- Ireland exports 80% of its dairy production, producing 15% of the world's infant formula.
- Half of the world's fleet of leased aircraft is managed from Ireland.
- Ireland is fast becoming the hub of the Internet and the online gaming industry in Europe, with international headquarters of Zynga, Popcap, eBay, Facebook, LinkedIn and Google based in the country.
- We employ 16,000 people in forest products. The sector produces €1.9 billion for the economy.
- €1.4 trillion in funds are administered from Ireland.
- Ireland is the largest provider of cross-border life insurance in the EU, with €16.4 billion in premiums in 2009.

If you or your clients are interested in doing business in Ireland and would like to find out more, log on to IDA Ireland's website, www.ida.ie. IDA will help with everything from finding a suitable location for your business to assisting with possible funding and grants. If you would like to find out more about working as an accountant in Ireland, CPA Ireland would be more than willing to help with any queries. Just visit www.cpaireland.ie to find out more. ■



Using COBIT 5 – The Business Framework for the Governance and Management of Enterprise IT¹

Enterprise governance is not only a management requirement but is also mandated by law. Information technology is key enabler of enterprises and forms the edifice on which the information and information systems are built. Implementing internal controls is not only a management requirement but is now a regulatory requirement as well. In India, Clause 49 listing requirements seek inter alia certification of governance, risks and control by auditors. In an IT environment embedding the right level of controls within the information systems, which provides information to users securely and safely and as per business requirements, is critical not only for ensuring business success but is also a key requirement for the very survival of the enterprise. In implementing internal controls in an IT environment, the legacy approach of considering Information Technology and its contents as boxes to be secured by the IT department is fraught with extreme risk. Both from regulatory as well as enterprise perspective, senior management need to be involved in providing direction on how governance, risk and control are implemented using a holistic perspective based on the need for harnessing the power of information and information technology from a business perspective. The annual survey of 2012 by AICPA on the top technology issues impacting CPAs and enterprises highlights the importance of implementing the right level of security and giving adequate importance to this key area. As per COBIT5 released by ISACA recently, Information is the currency of the 21st century enterprise. Information, and the technology that supports it, can drive success, but, it also raises challenging governance and management issues. This article explains the need for using the approach and latest thinking provided by globally recognised framework COBIT5 as a benchmark for reviewing and implementing governance and management of enterprise IT. It explains the principles and enablers of COBIT 5 and how it can be as an effective tool to help enterprises simplify complex issues, deliver trust and value, manage risk, reduce potential public embarrassment, protect intellectual property and maximise opportunities.

AICPA Survey of Top Technology Issues Impacting Enterprises and Practising CPAs

The American Institute of Certified Public Accountants (AICPA) conducts annual survey of top 10 technology issues impacting the profession and enterprises. The 2012 Top Technology initiatives from a public accounting perspective found that securing the IT environment is this year's top business technology priority for AICPA members. The survey revealed that advances in information technology have empowered CPAs to access and manage information just about anywhere, anytime. While CPAs value the benefits that technology has made possible - such as greater flexibility, efficiency and productivity in the use of information - they also are concerned with the increase in risks to information security. CPAs are increasingly being asked to solve information technology problems for current clients and prospective clients. The results of this survey are expected to provide valuable feedback regarding the technology concerns, which are of greatest importance over the next 12-

18 months for CPAs in practice. The findings of the survey are equally applicable to Indian enterprises as the core IT issues are relevant for the Indian scenario also and hence the technology priorities are applicable to practising CAs in India.

2012 Top Technology Priorities, GEIT and COBIT 5

The top technology priorities as per AICIPA survey are given below:

1. Securing the IT environment
2. Managing and retaining data
3. Managing risk and compliance
4. Ensuring privacy
5. Leveraging emerging technologies
6. Managing system implementation
7. Enabling decision support and managing performance
8. Governing and managing IT investment/spending
9. Preventing and responding to fraud
10. Managing vendors and service providers

¹ CA A. Rafeeq: The author, is a fellow member of the Institute. He can be reached at rafeeq@vsnl.com.

It may be seen that governance, risk and compliance (GRC) are at the core of all the above key technology priorities identified in the survey. Implementing effective GRC requires implementing Governance of Enterprise IT as an integral part of enterprise governance so that it meets not only compliance requirements but also adds value to the enterprise by balancing risk and return. Using a comprehensive framework such as COBIT 5 enables enterprises to achieve their objectives for the governance and management of enterprise IT. The best practices of COBIT 5 help enterprises to create optimal value from IT by maintaining a balance between realising benefits and optimising risk levels and resource use. Further, COBIT 5 enables IT to be governed and managed in a holistic manner for the entire enterprise, taking in the full end-to-end business and IT functional areas of responsibility, considering the IT-related interests of internal and external stakeholders. The key advantage in using a generic framework such as COBIT 5 is that it is useful for enterprises of all sizes, whether commercial, not-for-profit or in the public sector. Currently, the COBIT 5 product family includes the following products ready for use:

- COBIT 5 (framework): available as free download at www.isaca.org/cobit
- COBIT 5: Enabling Processes: free for members of ISACA.
- COBIT 5 Implementation guide: free for members of ISACA.

Need for Implementing Enterprise Governance and Governance of Enterprise IT (GEIT)

As per COBIT 5 implementation guide, GEIT is not an isolated discipline but an integral part of enterprise governance. While the need for governance at an enterprise level is driven primarily by delivery of stakeholder value and demand for transparency and effective management of enterprise risks, the significant opportunities, costs, and risks associated with IT call for a dedicated, yet integrated, focus on GEIT. GEIT enables the enterprise to take full advantage of IT, maximising benefits, capitalising on opportunities and gaining competitive advantage. GEIT is applicable globally for all type of enterprises—whether public or private, large or small as criticality of information is a key resource and the fact that IT is a strategic asset and important contributor to success is being increasingly being recognised. This makes it imperative for most enterprises to recognise information and ensure the use of IT as critical assets which needs to be governed properly. Further, the improvement of the governance of enterprise IT (GEIT) is widely recognised by top management as an essential part of enterprise governance. At a time when the significance of information and the pervasiveness of information technology are increasingly part of every aspect of business and public life, the need to drive more value from IT investments and manage an increasing array of IT-related risks has never been greater. Increasing regulation is also driving heightened awareness among boards of directors regarding the importance of a well-controlled IT environment and the need to comply with legal, regulatory and contractual obligations.

Need for Enterprises to Use COBIT 5

Enterprises depend on good, reliable, repeatable data, on which they can base good business decisions. COBIT 5 provides good practices in governance and management to address these critical business issues. COBIT 5 is a set of globally accepted principles, practices, analytical tools and models that can be customised for enterprises of all sizes, industries and geographies. It helps enterprises create optimal value from their information and technology. COBIT 5 provides the tools necessary to understand, utilise, implement and direct important IT-related activities, and make more informed decisions through simplified navigation and use. COBIT 5 is intended for enterprises of all types and sizes, including non-profit and public sector and is designed to deliver business benefits to enterprises, including:

- Increased value creation from use of IT; user satisfaction with IT engagement and services; reduced IT-related risks and compliance with laws, regulations and contractual requirements
- The development of more business-focused IT solutions and services
- Increased enterprise wide involvement in IT-related activities

Integrating COBIT 5 With Other Frameworks

COBIT 5 is based on an enterprise view and is aligned with enterprise governance best practices enabling GEIT to be implemented as an integral part of wider enterprise governance. COBIT5 also provides a basis to integrate effectively other frameworks, standards and practices used such as such as ITIL, TOGAF and ISO 27000. It is also aligned with The GEIT standard ISO/IEC 38500:2008 which sets out high-level principles for the governance of IT, covering responsibility, strategy, acquisition, performance, compliance and human behaviour that the governing body (e.g., board) should evaluate, direct and monitor. Thus COBIT 5 acts as the single overarching framework which serves as a consistent and integrated source of guidance in a non-technical, technology-agnostic common language. The framework and resulting enablers should be aligned with and in harmony with (amongst others) the:

- Enterprise policies, strategies, governance and business plans, and audit approaches
- Enterprise risk management framework
- Existing enterprise governance organisation, structures and processes

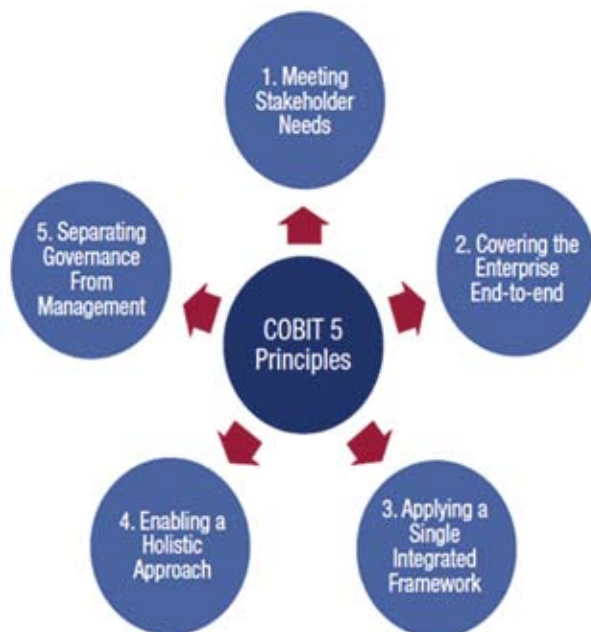
Customising COBIT As Per Need

COBIT 5 can be tailored to meet an enterprise's specific business model, technology environment, industry, location and corporate culture. Because of its open design, it can be applied to meet needs related to:

- Information security
- Risk management
- Governance and management of enterprise IT
- Assurance activities
- Legislative and regulatory compliance
- Financial processing or CSR reporting

Five Principles and Seven Enablers of COBIT 5

COBIT 5 simplifies governance challenges with just five principles and seven enablers. The five key principles for governance and management of enterprise IT in COBIT 5 taken together enable the enterprise to build an effective governance and management framework that optimises information and technology investment and use for the benefit of stakeholders.



Principle 1: Meeting Stakeholder Needs

Enterprises exist to create value for their stakeholders by maintaining a balance between the realisation of benefits and the optimisation of risk and use of resources. COBIT 5 provides all of the required processes and other enablers to support business value creation through the use of IT. Because every enterprise has different objectives, an enterprise can customise COBIT 5 to suit its own context through the goals cascade, translating high-level enterprise goals into manageable, specific, IT-related goals and mapping these to specific processes and practices.

COBIT 5 Goals Cascade

Every enterprise operates in a different context; this context is determined by external factors (the market, the industry, geopolitics, etc.) and internal factors (the culture, organisation, risk appetite, etc.), and requires a customised governance and management system. Stakeholder needs have to be transformed into an enterprise's actionable strategy. The COBIT 5 goals cascade is the mechanism to translate stakeholder needs into specific, actionable and customised enterprise goals, IT-related goals and enabler goals. This translation allows setting specific goals at every level and in every area of the enterprise in support of the overall goals and stakeholder requirements, and thus effectively supports alignment between enterprise needs and IT solutions and services.

Principle 2: Covering the Enterprise End-to-End

COBIT 5 integrates governance of enterprise IT into enterprise governance. It covers all functions and processes within the enterprise; COBIT 5 does not focus only on the 'IT function', but treats information and related technologies as assets that need to be dealt with just like any other asset by everyone in the enterprise. It considers all IT-related governance and management enablers to be enterprise-wide and end-to-end, i.e., inclusive of everything and everyone—internal and external—that is relevant to governance and management of enterprise information and related IT. The end-to-end governance approach that is the foundation of COBIT 5 is depicted below showing the key components of a governance system.



Principle 3: Applying a Single Integrated Framework

There are many IT-related standards and best practices, each providing guidance on a subset of IT activities. COBIT 5 is a single and integrated framework as it aligns with other latest relevant standards and frameworks, and thus, allows the enterprise to use COBIT 5 as the overarching governance and management framework integrator. It is complete in enterprise coverage, providing a basis to integrate effectively other frameworks, standards and practices used.

Principle 4: Enabling a Holistic Approach

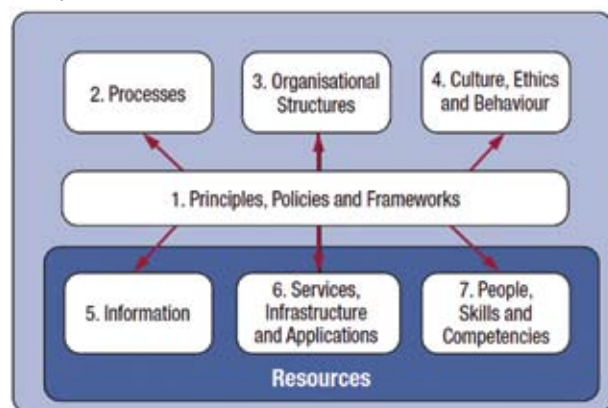
Efficient and effective governance and management of enterprise IT require a holistic approach, taking into account several interacting components. COBIT 5 defines a set of enablers to support the implementation of a comprehensive governance and management system for enterprise IT. Enablers are broadly defined as anything that can help achieve the objectives of the enterprise.

COBIT 5 Enablers

Enablers are factors that, individually and collectively, influence whether something will work—in this case, governance and management over enterprise IT. Enablers are driven by the goals cascade, i.e., higher-level IT-related goals define what the different enablers should achieve. The COBIT 5 framework describes seven categories of enablers:

1. Principles, policies and frameworks are the vehicle to translate the desired behaviour into practical guidance for day-to-day management.
2. Processes describe an organised set of practices and activities to achieve certain objectives and produce a set of outputs in support of achieving overall IT-related goals.
3. Organisational structures are the key decision-making entities in an enterprise.
4. Culture, ethics and behaviour of individuals and of the enterprise are very often underestimated as a success factor in governance and management activities.

5. Information is pervasive throughout any organisation and includes all information produced and used by the enterprise. Information is required for keeping the organisation running and well governed, but at the operational level, information is very often the key product of the enterprise itself.
6. Services, infrastructure and applications include the infrastructure, technology and applications that provide the enterprise with information technology processing and services.
7. People, skills and competencies are linked to people and are required for successful completion of all activities and for making correct decisions and taking corrective actions.



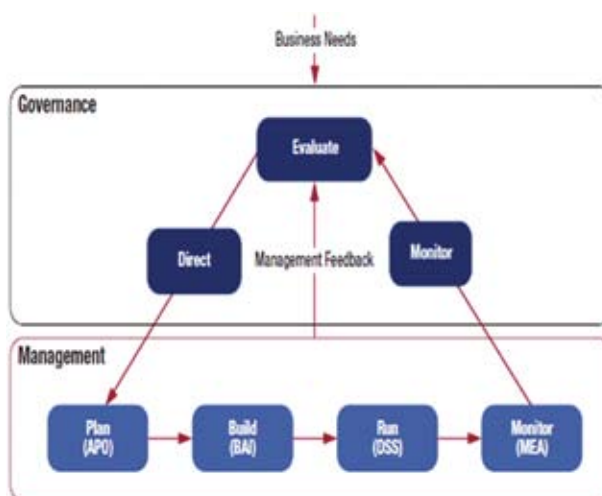
Principle 5: Separating Governance From Management

The COBIT 5 framework makes a clear distinction between governance and management. These two disciplines encompass different types of activities, require different organisational structures and serve different purposes.

Governance: ensures that stakeholder needs, conditions and options are evaluated to determine balanced, agreed-on enterprise objectives to be achieved; setting direction through prioritisation and decision making; and monitoring performance and compliance against agreed-on direction and objectives. In most enterprises, overall governance is the responsibility of the board of directors under the leadership of the chairperson. Specific governance responsibilities may be delegated to special organisational structures at an appropriate level, particularly in larger, complex enterprises.

Management: plans, builds, runs and monitors activities in alignment with the direction set by the governance body to achieve the enterprise objectives. In most enterprises, management is the responsibility of the executive management under the leadership of the chief executive officer.

From the definitions of governance and management, it is clear that they comprise different types of activities, with different responsibilities; however, given the role of governance—to evaluate, direct and monitor—a set of interactions is required between governance and management to result in an efficient and effective governance system.



COBIT 5 Process Reference Model

COBIT 5 includes a process reference model, which defines and describes in detail a number of governance and management processes. It represents all of the processes normally found in an enterprise relating to IT activities, providing a common reference model understandable to operational IT and business managers. The proposed process model is a complete, comprehensive model, but it is not the only possible process model. Each enterprise must define its own process set, taking into account its specific situation. Incorporating an operational model and a common language for all parts of the enterprise involved in IT activities is one of the most important and critical steps towards good governance. It also provides a framework for measuring and monitoring IT performance, providing IT assurance, communicating with service providers, and integrating best management practices.

Conclusion

This article is extracted from the contents of COBIT 5 framework released on 10th April 2012 and adapted from the perspective of CA. The objective of this article was to provide a brief overview of COBIT 5 and highlight the need for using globally accepted framework such as COBIT 5 for implementing GEIT which is the need of the hour. CAs have recognised that there is no escape from the domain of Information Technology as it increasingly impacts how electronic information and related controls are reviewed and accessed for providing compliance, assurance or consulting service for clients. Hence, it is imperative for CAs to update methodologies of how we provide services, ensure that the right tools are used to ensure quality of services to clients. IT is an area which is a constant state of continuous improvement. Hence, it is vital for CAs to keep on updating knowledge and skills sets and explore innovative ways of delivering services using IT and related best practices. Using globally recognised frameworks such as COBIT 5 enables CAs to provide value addition and also results in building brand image of being user of an approach and tool set based on the latest thinking and research. ■

Note: COBIT framework is available as free download from www.isaca.org/cobit. All figures used are courtesy of ISACA.

Report on Campus Placement Programme February-March, 2012

The Committee for Members in Industry organises Campus Placement Programmes for all levels of Chartered Accountants at frequent intervals throughout the year. The Committee for Members in Industry is committed to provide world-class placement services to the Members and the best accounting and finance talents to the industry.

In its endeavor to provide quality Accounting, Finance, Tax, Audit and Management Consultancy personnel to recruiting entities, the Committee has successfully organised one more round of Campus Placement Programme for newly qualified Chartered Accountants at sixteen centres, viz., Ahmedabad, Bangalore, Baroda, Bhubaneswar, Chennai, Coimbatore, Hyderabad, Indore, Jaipur, Indore Kanpur, Kolkata, Mumbai, Nagpur, New Delhi and Pune in February-March, 2012.

A brief summary with a comparison statement of the past placement programme is as follows:

	Feb-Mar, 2012
Number of Candidates Registered	9717
Number of Interview Teams	129
Number of Organisations	76
Number of Jobs Offered	874
Percentage of jobs offered <i>vis-a-vis</i> registered candidates	9.00%

Executive Summary

- Highest salary offered for Domestic posting in the Campus Placement Programme is ₹14.0 lakh per annum.
- Highest salary offered for International posting in the Campus Placement Programme is ₹25.0 lakh per annum.
- The minimum salary paid is ₹4 lakh per annum.
- Around 874 jobs were offered to the candidates who participated in Campus Placement Programme.
- In all 9% of registered candidates were offered jobs.
- 76 entities including the corporate organisations and the Chartered Accountancy Firms have participated during the Campus Placement Programme.
- 129 Interview Panels have participated during this Campus Placement Programme.

Salient features

- Candidates have been given two choices to meet the recruiting organisations. First at bigger cities and second (if the candidates has not been selected at bigger cities) at smaller cities.
- The Committee organised Orientation Programme for candidates to sharpen their soft skills and give updates on the Technical side.
- In this Campus Placement Programme all the candidates have been permitted to attend the Orientation Programme at any of the centres to avoid the requirement to travel to centres chosen for interviews for attending the Orientation Programme.

The following table shows the statistical information of campus interview at a glance*:

S. No.	Campus interview Centre	Total Number of registered Candidates for Interview	Interview Teams	Recruited by Companies
1	Ahmedabad	1443	7	46
2	Bangalore	1240*	16	104
3	Baroda	86	1	2
4	Bhubaneswar	517	3	32
5	Chandigarh	384	6	27
6	Chennai	750*	12	50
7	Coimbatore	104	4	10
8	Hyderabad	376*	7	40
9	Indore	174	3	15
10	Jaipur	1086	6	69
11	Kanpur	174	3	10
12	Kolkata	614*	6	18
13	Mumbai	3407*	19	89
14	Nagpur	151	2	3
15	New Delhi	3330*	26	303
16	Pune	895	8	56
	Total	9717#	129	874

* Indicates the total figure of the candidates after merger from the smaller centres.

The Ernakulam Centre has not been included in the above as no company had participated at this centre. Also, the 73 candidates which had registered from this centre were allowed to participate from the second centre of their choice i.e other centres.

* information is as on 10th April, 2012.■

States Talk 2013 Date for GST Rollout as Centre Agrees to Review CST Payments

Offering a fig leaf to the agitating states, the Centre has offered to review the compensation formula for the central sales tax, brightening prospects for the key indirect tax reform—goods and service tax. “We discussed the entire GST in detail, including the CST compensation.... Union finance minister is very positive and said the chapter of compensation is not closed,” Sushil Modi, Bihar deputy chief minister and chairman of the empowered group of state finance ministers told reporters after his meeting with Finance Minister Pranab Mukherjee. A committee of senior officials from the central government and states will now thrash out the issue of compensation, Modi said. The meeting was considered crucial as the vexatious issue of CST compensation had led to a high-pitched war of words between the Centre and the states. Chief ministers of states, including West Bengal and Tamil Nadu, had shot off letters to the Centre saying its decision to discontinue the compensation was unilateral and arbitrary.

The Centre and state governments had agreed in 2006 to cut CST by 1% every year from 1st April, 2007 and eliminate it by 1st April, 2010 to coincide with launch of GST. But, the delay in implementation of GST, due to lack of unanimity over its structure, and the global financial crisis led to a pause in the phase-out plan. The agreed compensation formula included allowing states to tax some services, removal of additional excise duty on tobacco products and textiles, value-added tax on imports, budgetary support and increase in floor rate of value added tax. A large number of these elements such as removal of additional excise duty from tobacco, budgetary support and transfer of revenues from 33 services to states were implemented. But, the Centre did not bring the agreed new services under tax net or impose VAT on imports. On the other hand, only a few states raised the floor rate of VAT from 4%. State governments are miffed with provision of mere 300 crore as compensation towards CST reduction in the budget 2012-13 as against their overall demand of over 19,000 crore. The Centre has said it could not go on compensating states for CST reduction if they kept delaying finalisation of the structure of GST. Modi said the constitution amendment bill for GST was with the standing committee and the new tax could kick in from 1st April, 2013.

(Source: <http://www.business-standard.com/india/>)

Income Tax Department Sets Up Call Centres

The Income Tax department has got a little more tech-savvy. In an effort to bridge the gap between taxman and the taxpayer, the department has started five call centres across the country to attend to queries from general public. The main centre is in Gurgaon, with regional ones in Jammu, Shillong, Kochi, and Jangipur in West Bengal,

which is also union finance minister Pranab Mukherjee's constituency. The Gurgaon call centre started around three months ago with pilot runs underway. It was made operational on a full-fledged basis only recently. The other centres were also inaugurated recently, said the chairman of Central Board of Direct Taxes (CBDT) Laxman Das. With regional centres, information services will be available in eight regional languages apart from English and Hindi. These centres are expected to cover taxpayers residing in nearby states too, with the set-up in Gurgaon being the main call centre, said Das. The regional languages in which services are available are Assamese, Bengali, Oriya, Punjabi, Kashmiri, Malayalam and Tamil and Khasi, a north-eastern language. The taxpayers can get services by dialling 1961 which is a toll free number and can get a host of basic information about the department. Inquiries can be made about application for a permanent application number (PAN), e-filing of returns, payment of refunds, TDS and other information. Information about the ward under whose jurisdiction a taxpayer comes is also available. Although this would be only the basic information instead of any major advice on tax planning, said Das.

(Source: <http://www.financialexpress.com/news>)

New Income Tax Act: Drive Against Black Money to Set New Hurdles for Expats

The government's zeal to unearth black money could result in thousands of expatriates and their families having to provide details of assets held overseas, a requirement that many experts say could deter foreigners from working in India whose economic growth has attracted global talent in areas ranging from deep-sea engineering to movies. The Central Board of Direct Taxes has brought out new tax forms for the current fiscal that require all “residents” to provide information about assets located overseas even before Finance Bill 2012, which mandates these disclosures, has been passed by Parliament. Under the Income Tax Act, the term ‘resident’ is divided into two categories: ‘ordinary resident’ and ‘resident but not ordinarily resident.’ Most expatriates fall under the second category. Those ‘not ordinarily resident’ do not have to pay tax on their global income, but the new forms may require them to disclose their global assets, a burden some experts say is excessive. A finance ministry official said the disclosures are aimed at resident Indians. The intent of the legislation is that their global income should be taxed in India, he said. The disclosures include details of bank accounts, financial holdings, immovable property, other assets and details of any foreign account in which the taxpayer has signing authority. The family members of expat workers will also need to file I-T returns in India if they own the overseas assets mentioned in the form.

(Source: <http://www.thehindubusinessline.com/>)

India Tops Consumer Confidence in Asia

India has been ranked as the most optimistic nation in Asia in a global consumer confidence survey released in Dubai. At 81.2, in an index which is calculated with zero as the most pessimistic 100 as the most optimistic, India was the leader of the pack in Asia, said MasterCard Worldwide Index of Consumer Confidence.

The index is based on a survey which measures consumer confidence on prevailing expectations in the market over the next six months, based on indicators such as economic growth, employment, stock market, regular income and quality of life.

It involved 12,915 respondents in 25 countries and recorded a three-point rise in Middle East consumer confidence from the previous six month period, bringing the index to (85.7), significantly higher than Africa (73.8) and Asia Pacific (52.1).

Nigeria (96.4) retained the top spot in Africa, followed by Morocco (87.2), said the survey carried out between 5th December, 2011 and 8th February, 2012.

(Source: www.financialexpress.com)

Excise Duty, Service Tax Evasion of Over Rs 13,600 Crore Detected

Revenue department detected central excise and service tax evasion of over ₹13,620 crore in the 11-month period till February of 2011-12 fiscal, the government said. Besides, during the investigation, central excise duty and service tax amounting to ₹972.69 crore and ₹1,182.64 crore, respectively, was realised, the Finance Ministry said in a statement. The Central Board of Customs and Excise (CBEC), responsible for collection of indirect taxes, detected a total central excise evasion of ₹3,333.28 crore and service tax evasion amounting to ₹10,286.73 crore April-February of 2011-12, it said. Of these, the Directorate General of Central Excise Intelligence (DGCEI) officers detected evasion of central excise duties and service tax amounting to ₹973.59 crore and ₹4644.75 crore respectively. "During the (DGCEI) investigation, the central excise and service tax dues amounting to ₹219.49 crore and ₹380.62 crore respectively, have also been recovered," the statement added.

(Source: <http://www.hindustantimes.com>)

Direct Tax Code Implementation from Next April: Report

India will implement the Direct Tax Code (DTC) from 1st April, 2013, Finance Secretary R. S. Gujral told a television channel on Thursday. The code, which will replace existing Indian Income-tax Act 1961, intends to cut tax rates to bring more people and companies under the tax net, phase out profit-linked exemptions for companies and replace them with investment-linked incentives.

(Source: <http://www.economictimes.com>)

Govt Achieves Indirect Tax Mop up Target in FY12

Moderation in growth rate during 2011-12 has not impacted the revenue realisation, with the government achieving 99.6% of indirect tax collection target during the year, a finance ministry official said. "We have achieved 99.6% of budgeted estimates of indirect tax collection target of last fiscal," said a senior official of the revenue department. The government had fixed a target of ₹3.92 lakh crore during 2011-12 for indirect taxes which includes central excise, customs and service tax. The Revenue Department, sources said, has been able to achieve the indirect tax collection despite the moderation in economic growth. The GDP growth, as per the estimates of the Central Statistical Organisation (CSO), has been estimated at 6.9% during 2011-12, down from 8.4% recorded in the previous two fiscals. While the target for collection of Union excise duties was ₹1.64 lakh crore, that for custom duty collections was ₹1.51 lakh crore.

(Source: News Agencies)

Rise in Customs Duty may Open Unofficial Channels

The possibility of the movement of gold into the country through unofficial channels has increased considerably, owing to the Budget proposal to double the customs duty. However, the situation may not be as grave as in the 70s and 80s, when huge quantities of gold were smuggled into India because of curbs on imports. The modus operandi may be quite different now. Though admitting the rise in customs duty from 2% to 4% may lead to some smuggling, officials downplayed the risks. The finance ministry may not roll back the rise in customs duty, aimed at narrowing the current account deficit, as it believes the smuggling of the precious metal has considerably lost its lure now. According to intelligence gathered by the finance ministry, unofficial gold imports would not rise to levels that could compel the government to roll back its decision.

(Source: <http://beta.profit.ndtv.com/news>)

Exports Grow 21% at \$303.7 Billion

Country's exports grew by 21% to USD 303.7 billion in 2011-12 over the previous fiscal, while imports shot up by 32.1%. Imports reached \$488.6 billion, leaving a trade deficit of \$184.9 billion, Commerce Secretary Rahul Khullar said recently. "This is the highest trade deficit and is a serious concern," he said. Khullar also said gold imports, which contributed in increasing the bill, is expected to decline in the current fiscal (2012-13) due to the duties imposed by the government.

(Source: Press Trust of India)

Private Sector Task Force of Regulated Professions and Industries Makes Recommendations to the G-20

The International Federation of Accountants (IFAC), has submitted, on behalf of the Private Sector Taskforce (PSTF), an update to the report *Regulatory Convergence in Financial Professions and Industries* ("2011 Report"), issued to the G-20 Deputies in September 2011. The PSTF strongly encourages the G-20 to implement all of the 15 recommendations presented in its 2011 Report with a strong emphasis on its first two recommendations, encouraging the G-20 to: (i) Continue to focus on regulatory convergence in the financial sector, ensuring that G-20 nations work together to identify and narrow gaps in regulatory practice; and (ii) Discourage nations from implementing unilateral national regulatory reforms that are inconsistent with international standards and that widen—rather than narrow—the convergence gap. In support of these recommendations, the update provides a discussion of matters that have arisen since the report was issued—including examples of where regulatory convergence has moved forward, such as the introduction of Legal Entity Identifiers (LEI), adoption of International Financial Reporting Standards (IFRS), and the adoption of International Standards on Auditing (ISAs). The update also notes examples where international regulatory arrangements have become more fragmented. The update includes additional recommendations regarding public sector financial management and reporting, transparency, and accountability. Over the last year this has been brought into greater focus as a consequence of the sovereign debt crisis, and growing global financial instability. Other important matters are identified which the taskforce suggests will require closer attention by the G-20 in 2013 and beyond. Coordinated by the International Federation of Accountants, the taskforce includes CFA Institute (CFA I); INSOL International; Institute of International Finance (IIF); International Accounting Standards Board (IASB); International Actuarial Association (IAA); International Corporate Governance Network (ICGN); International Insurance Society (IIS); and International Valuation Standards Council (IVSC).

(Source: <http://www.ifac.org/>)

IPSASB Issues Exposure Draft 47-Financial Statement Discussion and Analysis

The International Public Sector Accounting Standards Board (IPSASB) has published *Exposure Draft (ED) 47, Financial Statement Discussion and Analysis*—a proposed new standard. The ED proposes minimum required content while still providing sufficient flexibility for entities to prepare and publish financial statement discussion and analysis that best portrays their specific circumstances. Because of the close link between financial statement discussion and analysis and an entity's financial statements, ED 47 proposes that the guidance be issued as an International Public Sector Accounting Standard (IPSAS) with the same authority as IPSASs concerning

accrual-based financial statements; financial statement discussion and analysis be prepared and presented in conjunction with an entity's financial statements; and the qualitative characteristics governing preparation of financial statements be applied to financial statement discussion and analysis. ED 47 includes implementation guidance and an illustrative example that show how an entity might prepare its financial statement discussion and analysis to comply with the proposed requirements. (Source: <http://www.ifac.org/news>)

Study Questions Accounting for Asset Securitisation

The multi-trillion dollar asset securitisation market continues to have unresolved issues in the aftermath of the financial crisis, including how the assets are accounted for, and the credit risk assessments done by bond markets and credit-rating agencies, according to a new study. The research, in the current issue of *The Accounting Review*, published by the American Accounting Association, probes evaluations of the credit-worthiness of large bank holding companies and finds a marked difference between the way risk was assessed by the bond market on the one hand and a major credit-rating agency on the other. In its assessment of risk, the bond market took into account all asset-based securities issued by the banks in the three categories sampled by the study—those backed by residential mortgages, by consumer loans, and by commercial loans. In contrast, assessments by the credit-rating agency reflected only the small portion of issued securities that the banks retained in their own accounts, and did so only in the case of residential mortgages but not the other two types. The prior research suggests that credit ratings reflect not just considerations of risk but "the incentives of the credit-rating agencies," the study has little to say on allegations that conflicts of interest drove agencies to overrate sub prime mortgage-backed securities, conflicts stemming from the fact that companies being evaluated pay for the rating (generally after having been actively solicited for the business). But, it is being said that whatever the extent of the conflict of interest, the problems of the securitisation market go well beyond that. SPEs can be advantageous to investors as a protection against bankruptcy of the originating firm and as a means of diversifying risk among investors, who can have pay-offs tailored to their needs and their degree of risk aversion. But how asset securitisations should be treated for accounting purposes remains a matter of contention.

(Source: <http://www.accountingtoday.com/>)

Shareholder Resolutions Focus on Environmental and Social Issues

Investors are continuing to challenge corporate boards to further improve their oversight and disclosure around topics such as environmental sustainability and social responsibility. A new study by one of the Big Four accounting firms found that for the third straight year,

environmental and social proposals lead the way among shareholder-sponsored resolutions on corporations' proxy ballots. Such proposals accounted for 40% of all shareholder resolutions on proxy ballots last year, up from 30% in 2010. The proposals are also garnering increased support among shareholders, at 21% of votes cast in 2011, compared to 18% in 2010. The number and types of shareholder resolutions that have been reaching proxy ballots actually represent only a limited aspect of investors' increasing engagement efforts, though. A significant number of proposals that are submitted to corporate boards are withdrawn and never voted upon as companies engage with shareholder groups in an effort to reach agreement ahead of the annual general meeting. The study found that companies are increasingly willing to enter into substantive dialogue with investors and other stakeholders and to take action, including by enhancing their disclosures around key issues. In response to the increasing popularity of shareholder resolutions on issues such as the environment and social responsibility, the firm recommends that members of corporate boards and management consider enhancing their shareholder engagement and improving their disclosure on key issue areas; ensure that directors' skills are relevant to the critical areas of stakeholder concern; and consider the use of sustainability-related measures in executive compensation practices as a way to help support broader corporate sustainability goals.

(Source: <http://www.accountingtoday.com/>)

□ SME Implementation Group Publishes Two Final Q&As

The SME Implementation Group (SMEIG) recently published two question and answer documents (Q&As) on the *IFRS for SMEs*: (i) Application of 'undue cost or effort' -Q&A 2012/01 and (ii) Jurisdiction requires fallback to full IFRSs- Q&A 2012/02. These two final Q&As reflect the input that the SMEIG received on the publication of **five draft Q&As** in September 2011 (comment period closed in November 2011). After considering the public comments the SMEIG has decided not to issue final Q&As on three draft Q&As: (i) General Issue 1 - Application of the *IFRS for SMEs* for financial periods ending before the *IFRS for SMEs* was issued, (ii) Section 3 Issue 2 - Departure from a principle in the *IFRS for SMEs* and (iii) Section 3 Issue 3 - Prescription of the format of financial statements by local regulation. Q&As published by the SMEIG are non-mandatory guidance documents that will help those who use the *IFRS for SMEs* to think about specific accounting questions. They are not intended to modify in any way the application of full IFRSs.

(Source: <http://www.ifrs.org/>)

□ Islamic Finance Called to Join Accounting Mainstream

The rapid growth of Islamic finance is increasing pressure on the industry to enter the accounting mainstream,

by seeking guidance from the International Accounting Standards Board, the global body which sets the tone for bookkeeping in conventional finance. It would be a controversial move; by basing itself on religious principles, Islamic finance seeks to set itself apart from conventional finance. But some experts think the industry is becoming so big that it can no longer sit comfortably outside a trend towards harmonising accounting rules across the world as the whole thing about financial reporting around the world today is the global move towards a single comparable set of high-quality financial reporting standards. Most of the countries in which Islamic banks operate already use the IASB's International Financial Reporting Standards. But these standards have been developed for conventional finance, not Islamic transactions, in which interest and pure monetary speculation are banned and trades must be underpinned by physical assets. So there is the potential for conflict between Islamic finance and conventional accounting rules. For example, in order to earn returns but not contravene the ban on interest, Islamic banks buy an asset such as a house on behalf of a customer and lease it out until the customer is able to acquire ownership. Under current IFRS standards, accountants say, this would probably be treated as a financial lease, requiring the bank to record the lease as an interest-earning loan—in apparent contravention of sharia law. It is said that IFRS is all about substance over form whereas sharia law is very much about compliance with legal form. The solution, some experts say, is to have the IASB introduce standalone guidelines under its IFRS framework that are tailor-made for Islamic finance. These guidelines would ensure a uniform approach across the industry while blending with the IASB's standards for conventional finance.

(Source: <http://www.accountingtoday.com/>)

□ IRS Offers Tax Practitioners Priority Service for Audits

The Internal Revenue Service is now giving tax professionals a priority phone number they can call when their clients are undergoing a Campus Correspondence Examination audit. The IRS said that tax professionals responding to Campus Correspondence Examination calls and correspondence can access the **CCE Practitioner Priority Service**, CCE PPS for short, by calling the **PPS toll-free number** and selecting the Correspondence Examination option. Additional prompts based on the telephone number on the letter that tax practitioners are calling about, will direct the call to the IRS's Small Business/Self Employed Examination or Wage & Investment Examination line. CCE PPS will address up to five clients per call and transfer or refer issues outside the CCE scope to the appropriate IRS functions. The PPS prioritises calls to improve tax professionals' experiences. The IRS cautioned on its Web site that the CCE PPS number is for tax professional use only.

(Source: <http://www.accountingtoday.com/>)

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during March-April, 2012 for the reference of Faculty/Students & Members of the Institute.

1. ACCOUNTING

Accounting Decentralization & Performance Evaluation of Business Unit Managers by Raffi J. Indjejikian & Michal Matejka. *The Accounting Review*, Vol.87/1, 2012, pp.261-290.

The Content of Accounting Standards: Principles versus Rules by Michael e. Bradbury & Laura B. Schroder. *The British Accounting Review*, Vol.44, 2012, pp.1-10.

Forensic Accounting: A tool to uncover the Accounting & financial frauds by Pranav Saraswat. *Chartered Secretary*, March. 2012, pp.323-327.

Proposed Reporting Changes for Superannuation Entities by Dean Arden & Gihan Fernando. *Charter*, March 2012, pp.44-45.

Raising the Bar on Reporting & Disclosure for Financial Services Regulated Entities by Garvan O'Neill. *Accountancy Ireland*, April 2012, pp.14-16.

Sustainable Growth – The Accountant's Role by Sreenivas Garimella. *The Management Accountant*, March 2012, pp.262-266.

2. AUDITING

Auditor Rotation Back on the Agenda by Ramona Dzinkowski. *In the black*, April 2012, pp.70-73.

Helping Small Firms by Martin Quinn & Andrea Crean. *Accountancy Ireland*, April 2012, pp.35-37.

Shareholder Voting on Auditor Selection, Audit fees, & Audit Quality by Mai Dao, etc. *The Accounting Review*, Vol.87/1, 2012, pp. 149-171.

UK Audit Committees & the Revised Code by Lynn Avison & Christopher J. Cowton. *Corporate Governance*, Vol.12/1, 2012, pp.42-53.

3. ECONOMICS

Australian Banks Gear for Basel III by Alexandra Cain. *In the black*, April 2012, pp.55-59.

Basel III: Toning up the Banks' Strength by K. Revathi. *Facts for You*, April 2012, pp.37-38.

Financial Inclusion & Financial Stability: Are they two sides of the same coin? by H. R. Khan. *RBI Monthly Bulletin*, March 2012, pp.553-63.

Impact of Trade Liberalization on India's Balance of Trade: A Critical Evaluation by Rajwant Kaur & Amarjit Singh Sidhu. *Business Analyst*, Oct.2011- March 2012, pp.145-164.

Industrial Sickness in India: Macro Economic Concept by Dilip Kumar Datta. *Chartered Secretary*, March. 2012, pp.328-333.

Shadow Banking System: An Overview by B. Ramachandran. *Facts for You*, April 2012, pp.33-36.

4. EDUCATION

Benchmarking Quality in Management Education through International Accreditation by Raj Agrawal. *University News*, March 05-11, 2012, pp.20-22+25.

Examination Reforms in Higher Educational Institutions by S. Jeelani. *University News*, March 19-25, 2012, pp.1-4.

5. INVESTMENT

Disclosures of Insider Purchases & the Valuation Implications of Past Earnings Singals by David Veenman. *The Accounting Review*, Vol.87/1, 2012, pp.313-342.

Executive Stock Options & Earnings Management: Is there an option level dependence? By Wafa Essid. *Corporate Governance*, Vol.12/1, 2012, pp. 54-70.

The Non-monotonic Governance Effects of Large Shareholdings in Chinese Listed Companies: An Overinvestment Perspective by Jin-Hui Luo & Di-Fang Wan. *Corporate Governance*, Vol.12/1, 2012, pp.3-15.

6. MANAGEMENT

Daily Money Management by Jeff Drew. *Journal of Accountancy*, March 2012, pp.46-49.

Helping CEOs Connect the Dots by Charles Tilley. *Journal of Accountancy*, March 2012, pp.30-49.

Independent Business Review by Alan Geraghty. *Accountancy Ireland*, April 2012, pp.58-59.

Managing Risk by Gundi Jeffrey. *CGA Magazine*, March-April 2012, pp.16-23.

Operational Challenges Post Corporate Restructuring by Kiran M. Chitale. *Chartered Secretary*, March. 2012, pp.302-307.

7. TAXATION & FINANCE

An Assessment of the Revenue Impact of State-level VAT in India by Arindam Das gupta. *Eco. & Pol. Weekly*, March 10, 2012, pp.55-64.

Negative for Positive? Service Tax & Union Budget 2012 by Vikas Khare. *Chartered Secretary*, April 2012, pp. 446-453.

Union Budget 2012: A Step Towards Transparency & Better Governance by N. K. Jain. *Chartered Secretary*, April 2012, pp. 438-445.

Union Budget 2012 & Its impact on Capital Market by Kapil Dev Taneja. *Chartered Secretary*, April 2012, pp.454-455.

War Against Offshore Tax Evasion- Will Tax Information Exchange Agreements Work ? by Ajit Korde. *BCAJ*, March 2012, pp.9-12.

Full Texts of the above articles are available with the Central Council Library, ICAI, which can be referred on all working days. For further inquiries please contact on 011-23370154 or by e-mail at library@icai.org



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Exclusively Structured for Small and Medium sized CA Firms & Small & Medium sized Enterprises (SMEs)

[2nd May-16th May 2012]

The Committee for Members in Industry (CMII) provides opportunity to the employers to interact with newly qualified Chartered Accountants and makes all arrangements at its centres, thereby providing a cost effective mode of recruiting newly qualified Chartered Accountants.

The Committee for members in Industry (CMII) and Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of The Institute of Chartered Accountants of India (ICAI) is pleased to welcome all Firms of Chartered Accountants (CAs) and all leading companies to the forthcoming Exclusively Structured Campus Placement Programme for Small and Medium Sized CA Firms and Small & Medium Sized Enterprises (SMEs). In its endeavor to provide quality Accounting, Finance, Tax, Audit and Management Consultancy personnel to small and medium sized industries and to provide a platform to the newly qualified Chartered Accountants, CMII would be conducting Job Fair as per below mentioned schedule.

Job Fair Schedule

The Job Fair will be organised at various centres viz. Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai, New Delhi, and Pune. The schedule of programme is given below.

Eligibility for Job Fair May 2012

A) All the Chartered Accountants who have taken the membership of ICAI as on 15th April, 2012 and
B) Candidates registered for Campus Placement Programme conducted during Feb-Mar, 2012 and could not be placed are automatically eligible for this Campus Placement Programme and also received their membership number.

INVITATION TO EMPLOYERS

Organisations intending to recruit Newly Qualified Chartered Accountants through the scheme given below are requested to get in touch with Dr. Surinder Pal, Secretary, Committee for Members in Industry, Indraprastha Marg, New Delhi - 110002, Tel. No. (011) 30110430. E-mail: spal@icai.in, placements@icai.org; Fax- +91(11) 30110583 (or) Mr. Ajeet Nath Tiwari, Placement Coordinator at Tel +91(11) 30110450 or log on to www.cmii.icai.org or <http://www.icai.org>.

CA. Rajkumar S Adukia
Chairman, CMII

CA. Pankaj Tyagee
Chairman, CCBCAF&SMP

CA. Pankaj Tyagee
Vice Chairman, CMII

CA. Vijay K. Garg
Vice Chairman,
CCBCAF&SMP

Centres	Last date for Company Registration (Upto 05:00 PM)	Last date for Shortlisting by Companies (Upto 05:00 PM)	Consent sending by Candidates (Upto 11:00 PM)	Interview Dates
Ahmedabad	26 th April, 2012	28 th April, 2012	30 th April, 2012	2 nd May, 2012
Pune	26 th April, 2012	28 th April, 2012	30 th April, 2012	3 rd May, 2012
Bangalore	27 th April, 2012	1 st May, 2012	2 nd May, 2012	4 th May, 2012
Kolkata	2 nd May, 2012	3 rd May, 2012	4 th May, 2012	7 th May, 2012
Mumbai	2 nd May, 2012	3 rd May, 2012	4 th May, 2012	8 th May, 2012
Chennai	3 rd May, 2012	4 th May, 2012	7 th May, 2012	10 th May, 2012
New Delhi	9 th May, 2012	10 th May, 2012	11 th May, 2012	15 th May, 2012
Hyderabad	9 th May, 2012	10 th May, 2012	11 th May, 2012	16 th May, 2012



Commencement of Certificate Course on Indirect Taxes in all Regions

The Indirect Tax Committee wished to facilitate members in industry as well as in practice to gain specialised and updated knowledge in the area of indirect taxes in a systematic manner. Members interest in this area, particularly in service tax especially in cities is a reality. The focus on IDT in the past few budgets and GST in line in a few years has encouraged the Committee to organise the Certificate Course on Indirect taxes at the following locations:

Place	Date of Commencement
Bangalore	6 th May, 2012
Hyderabad	12 th May, 2012
Vasai	12 th May, 2012
Visakhapatnam	19 th May, 2012
Mangalore	26 th May, 2012
Delhi	27 th May, 2012
Guntur/ Vijaywada	May/June, 2012
Jaipur	2 nd June, 2012
Indore	3 rd June, 2012
Ghaziabad	9 th June, 2012
Ernakulam	21 st July, 2012
Baroda	July/August, 2012
Mumbai	Awaited
Thane	Awaited
Pune	Awaited
Jamnagar/ Rajkot	Awaited
Chennai	Awaited
Combiator	Awaited
Erode	Awaited

Eligibility

Members of ICAI

Course Duration

12 days (Saturday and Sunday)

Faculty

Eminent experts of the field and erudite speakers drawn

from all over the country will share their knowledge and wisdom with the participants of this Certificate Course.

Fees for the Course

₹20,000 for Delhi, Kolkata, Chennai and Mumbai

₹15,000 for other cities

[Including fees for the immediate examination to be held after completion of the Course]

Certificate

A certificate will be awarded to the members on successful completion of course and passing the examination.

CPE Hours

70 Hours (50 Structured and 20 Unstructured)

Registration

Members desirous of attending the said Course may convey their interest and deposit the duly filled Registration Form along with the demand draft to-wards the prescribed fee at the earliest to the address given in the announcement for the particular centre.

Demand Draft should be made in favor of '**The Secretary, The Institute of Chartered Accountants of India**' payable at New Delhi. Alternatively, members may register by making online payment of the prescribed fees and sending the hard copy of the duly filled registration form to the address given in the announcement for the particular centre.

For further Details about the course may kindly visit the following link:

http://www.icai.org/post.html?post_id=7382

For further details

Secretary, Indirect Taxes Committee, may be contacted at 0120-3045954, E-mail Id: ccidt@icai.org

Please visit: www.icai.org for further information

Note: The commencement of certification course is subject to the minimum number of participants as prescribed by the Committee. It may be noted that due to limitation of seats, the registration will be on 'first come first serve' basis.





**Committee on Management Accounting
Invites Applications for Visiting/Regular Faculty
for Certificate Course in MBF
[At New Delhi, Mumbai, Chennai, and Kolkata]**

The Institute of Chartered Accountants of India (ICAI) conducts one year Certificate Course in *Master in Business Finance* (MBF) for Qualified Chartered Accountants. The course comprehensively covers expert level of knowledge and practical expertise in Finance. This is a one year course with class room teaching on Saturdays and Sundays with two weeks mandatory Residential Course in ICAI's Centre of Excellence, Hyderabad. The course has 3 Levels with 6 papers. The course content include basic Financial Management, Applied Financial Analysis, Forecasting, Financial Planning, Capital Budgeting, Project Financing, Merchant Banking, Investment Banking, Fund Raising, Business Valuation, Merger and Acquisitions, Portfolio Management, Banking, Forex Risk Management, Treasury Management, Financial Markets, Corporate Structuring, Equity Research and International Finance. Detailed Prospectus is available at www.icaai.org.

The course is currently being addressed by renowned financial and management experts including, professors of IIMs, XLRI, IIT and other Top Management Institutes and Universities, Leading Bankers, Merchant Bankers, CFOs, PE Fund Managers, Highly Experienced Forex & Treasury Managers, Senior Chartered Accountants as visiting Professors.

Expression of interest is invited from leading financial experts in India/overseas for full time / visiting faculty. Please send your detailed profile by email or in hard copy at the address given below. Suitable attractive remuneration/honorarium and travel cost/allowances as per rules on contractual/hourly basis will be paid to the faculty.



**The Institute of Chartered
Accountants of India
Indraprastha Marg, New Delhi**

**SECRETARY, COMMITTEE ON MANAGEMENT ACCOUNTING
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA,
ICAI BHAWAN, A- 29, SECTOR 62, NOIDA—201 309
PH: (0120) 3045905; MOBILE No. 9310542607
E-Mail: cma@icai.org, vinodjainca@gmail.com**

***Indicates level of Expertise and not a Post Graduate Degree.**



Certificate Course on Concurrent Audit of Banks

Delhi	Hyderabad	Mumbai	Chennai	Kolkata
May 4, 5 & 6, 2012	June 22, 23 & 24, 2012	July 13, 14 & 15, 2012	August 24, 25 & 26, 2012	September 21, 22 & 23, 2012

The Internal Audit Standards Board of the ICAI is pleased to offer Certificate Course on “**Concurrent Audit of Banks**” to enable members to understand the intricacies of concurrent audit of banks.

Course Objectives

The Certificate Course on Concurrent Audit of Banks has been designed to help the members:

- To supplement the effort of the banks in carrying out internal check of the transactions and other verifications and compliance with the procedures laid down.
- To improve the effectiveness of concurrent audit system in banks;
- To improve quality and coverage of concurrent audit reports.

Eligibility :

Only the members of ICAI and the student of ICAI, who have passed the CA Final Examination are eligible to pursue this Course.

CPE Hours :

18 hrs (Structured)

Evaluation

Participants who successfully complete the course in line with the evaluation criteria mention below and qualify the evaluation test will be awarded Certificate.

- **Eligibility :** A candidate will have to attend at least 80% of classes failing which, he/ she will not be entitled to appear in the evaluation.

- **Number of attempts:** There is no limit on the permissible number of attempts for the evaluation tests. A candidate will be allowed to re-appear for the evaluation test only after six months of the previous attempt.

Further Details and Registration Form Link

http://www.icai.org/post.html?post_id=8236

The commencement of Certificate Course is subject to the minimum number of participants as prescribed by the Board. It may be noted that due to limitation of seats, the registration will be on ‘first come first served’ basis.

Address for sending the Registration Form :

Secretary, Internal Audit Standards Board
The Institute of Chartered Accountants of India
ICAI Bhawan, First Floor, Research Block
A-29, Sector 62,
NOIDA – 201 309 (U.P.)

Further Details and Assistance

Chairman,
Internal Audit Standards Board
Mob:09820061049,
09323061049
Email: radukia@icai.org

Secretary,
Internal Audit Standards Board
Mob:09310542606,
09350799932
Ph. No: 0120-3045949
Email:cia@icai.org;
iasb.prgam@icai.in



Invitation to Contribute Articles for E-Newsletter – “Internal Audit and Beyond”

The Internal Audit Standards Board (IASB) of the Institute of Chartered Accountants of India issues quarterly E-Newsletter “**Internal Audit and Beyond**” featuring articles, case studies, write-ups, latest updates and other similar material in the areas of internal audit, risk management, internal control, governance and related areas. The first issue of the E-Newsletter is available at the URL

http://www.icai.org/new_post.html?post_id=8142&c_id=241.

The Board invites experts, researchers and writers to contribute articles for publication in the July-September, 2012 issue of its E-Newsletter. If the article is published, honorarium of ₹ 3000/- per article shall be paid. Discretion of the Board regarding publication/ non-publication of the article shall be final and abiding therewith under copyright of the Board. Material of this E-Newsletter may not be reproduced, whether in part or in whole, without the consent of Editorial Board of the Board. Authors may only submit original work that

has not been appeared elsewhere in any publication. A formal signed undertaking in the form of a letter stating that "the article is original and does not infringe any copyright and has not been published elsewhere or has not been sent for publication" should be sent along with the article.

The article (up to 1500 words) may be sent to us latest by 30th June, 2012 in the form of soft copy through mail/ CD or in printed format through post giving details of the subject matter.

Those desirous may please contact at the following address:

Secretary
Internal Audit Standards Board (IASB)
The Institute of Chartered Accountants of India
ICAI Bhawan, A-29, Sector-62
NOIDA - 201 309
DeskTel: 0120-3045 949
Email: cia@icai.org, auditing@icai.org



Invitation for empanelment as Resource Persons for the programmes to be organised by CCBCAF&SMP

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of the Institute of Chartered Accountants of India proposes to organise the following programmes during the year 2012-2013 which are broadly relevant to the Members of ICAI in Practice.

1. **Workshop on Capacity Building Measures of CA Firms & New Professional Avenues**
2. **Seminar/Conference on Capacity Building Measures of CA Firms**
3. **Interactive/ Brainstorming session with CA Firms**
4. **Networking Summit**
5. **Management Development Programmes / Executive Development Programmes**
6. **Other Programmes**

Indicative Topics

- i. IFRS
- ii. Taxation
- iii. Corporate Governance
- iv. Investment
- v. Information Technology
- vi. Auditing
- vii. Accounting Standards
- viii. Revised Schedule VI
- ix. Valuations
- x. Capital Market
- xi. Portfolio Management
- xii. A Roadmap to GST
- xiii. A Roadmap to DTC
- xiv. Networking/Merger/Corporate form of Practice
- xv. Limited Liability Partnership
- xvi. Service Tax

- xvii. Income Tax
- xviii. Professional opportunities/avenues
- xix. Practice Management
- xx. Other topics relevant for the Practitioners

Experts who have more than three years of experience in the relevant area and who have delivered lectures at various forums of Chartered Accountants are eligible for the enlistment in the Panel of Experts.

Experts who are interested to be associated with The Institute of Chartered Accountants of India as Resource Persons are requested to send/e-mail their resume at the following address:

Dr. Sambit Kumar Mishra
Secretary, CCBCAF&SMP
The Institute of Chartered Accountants of India
ICAI BHAWAN
I.P. Marg,
New Delhi -110 002
E-Mail: sambit.mishra@icai.org
Tel. No. 011-30110497

It would be appreciated if the resume including all details regarding qualification, Membership no. of ICAI (if any), Experience, areas of specialization, contact address, etc. is sent at the earliest, preferably within 15 days.

CA. Pankaj Tyagee
Chairman,
Committee for Capacity Building of CA Firms and
Small & Medium Practitioners (CCBCAF & SMP),
ICAI



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Premier professional body set up by an Act of Parliament)

ICAI Bhawan, Indraprastha Marg, Post Box No. 7100, New Delhi 110 002.

Committee on Management Accounting

REQUEST TO CONTRIBUTE ARTICLES FOR JOURNAL ON MANAGEMENT ACCOUNTING AND BUSINESS FINANCE

The Committee on Management Accounting (CMA) of ICAI invites articles having practical view, case studies, write-ups and other similar materials in the areas of Management Accounting and Business Finance for publishing in its journal i.e. *Journal on Management Accounting and Business Finance*. The objective of this Journal is to spread advanced knowledge on Management Accounting and allied areas which are relevant for the members of the accountancy profession and allied professionals. The Journal is to focus on publication of articles for practical, advanced and research oriented knowledge. An indicative list of topics on which contribution can be made is as follows:

- Recent Developments in Financial Management
- Role of CFO in an Organization
- CFO – A Controller or Value Creator
- Role of Finance Professional in Corporate Governance
- Management Accounting: A Tool of Decision Making
- Strategic Management and Management Accounting
- Management Information System – Aid to Decision Making
- Time Value of Money
- Study on Management of Working Capital
- Significance of CMA Data in Assessment of Working Capital
- Evolution in Working Capital Management: from Tondon Committee to Chore Committee... Consortium Funding through Multiple Banking and the Current Scenario
- Strategies of Negative Working Capital
- Latest Financial Products offered Internationally and in India for Working Capital Finance
- How to Manage Excess Cash and Liquidity?
- Latest Developments in Dividend Distribution Strategies
- Over Pricing of Public Issue: A Game for Self Destruction



- Financial Indicators for the Buy Back of Shares
- Creating Value, Valuation will Follow - A Right Management Objective
- Take Out Finance
- Infrastructure Funding: Strength and Weaknesses of Financial Institutional Framework
- Preparation of Techno-Economic Feasibility Report

The articles submitted for consideration of publication should be of 4000-6000 words (along with executive summary of about 150 words) typed double spaced on A4 size paper with 1 inch margin all around. In order to facilitate blind review process, the author should not mention his/her name on the body of the manuscript. The articles along with scanned photograph, detailed profile and complete contact details of the author (s) may be sent by email at cma@icai.org. Three hard copies of the manuscript along with executive summary and profile should be sent at the following address:

Secretary,
Committee on Management Accounting (CMA),
The Institute of Chartered Accountants of India,
ICAI Bhawan
Administrative Block, Third Floor
A-29, Sector 62
NOIDA - 201 309
Phone: 0120- 3045945

Authors may note that in appreciation of their contribution to the MABF journal an honorarium of Rs.5,000/- per article (on publication) would be paid to them. Detailed Guidelines for writing articles are available on the webpage of the Committee on Management accounting at www.icai.org

Chairman,
Committee on Management Accounting (CMA)
ICAI, New Delhi
Email: vinodjainca@gmail.com
Mobile: 09811040004

Billing & Accounting Software

Software on Accounting and Billing on Cash Basis for Chartered Accountants

An Initiative of Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI

Salient Features

Billing & Accounting software for accounting requirements of Chartered Accountants. This is a complete package to manage the accounting and billing requirements of a CA Firm on Cash System of Accounting. This package provides you the facility to generate bills, receipts, vouchers and clients outstanding, some of the salient features are as follows:

Master Data

- Maintains Accounts of Multiple Firms
- Client Master

Accounting and Billing

- Accounting on Cash Basis i.e. client's ledger will not be part of account books
- Generates Bill with Different Series according to requirements
- Automatic Calculation of Service Tax on billing and receiving
- Multiple Services can be inserted in one bill
- Provision of TDS when receiving payment
- Automatic entry in Professional Receipts account, Service Tax Payable A/c and TDSA/c when feeding and receipt from client
- Provision to write off any outstanding balance in client's account
- Customization of Bill Format
- Bill wise receipt can be maintained
- Different series for each type of voucher can be maintained Billing Reports

- Client's Outstanding (Bill wise / Consolidated)
- Client's Ledger
- Receipt Register (Bill Wise / Service Wise / Monthly)
- Bill List (Full / Pending)
- Service Tax Collection Report
- TDS Register
- TDS Certificate List (Received / Pending)
- Reminder Letter to clients (Pending Bill / Pending TDS Certificates)
- Service Tax Report
- Facility to generate the Client Ledger for period more than 1 year Accounting Reports
- Listings (Cash / Bank Receipt / Payment / Journal)
- Voucher Printing
- Receipts (Cash / Bank)
- Cash Book
- Ledger
- Journal
- Trial Balance
- Balance Sheet
- Profit & Loss Account
- Daily Cash / Bank Report

About the Arrangement

- i. The MDA Softwares Ltd (hereinafter referred to as vendor) will provide initial license for Billing & Accounting software free of cost for 2 financial years i.e. upto 31st March, 2013
- ii. The license renewal charges will be Rs. 1000/- after 31st March, 2013. Statutory taxes on License Renewal shall be extra as applicable.
- iii. The Vendor will provide support which would be free up to 31st March, 2013 and include all upgrades up to Assessment Year 2013-14. Thereafter, support would be provided on payment of renewal charges.
- iv. The Vendor will provide free of cost patches up to two years and till renewed.

Installation Support

The vendor will provide a web form to enable CA firms and members to request for support for Online Installation on "First Come, First Serve" basis.

Downloading the Software:

The Software may be downloaded free of cost from the website of Committee for Capacity Building of CA Firms and Small & Medium Practitioners, www.icaai.org.in on request by members.

Support on use of Software:

The vendor will provide the technical support to the users and renewed customers via Phone, email and remote PC access from the date of registering the license.

E-mail : support@mdasoft.in, **Phone:** 09621813973, 09621813874



Committee for Capacity Building of
CA Firms and Small Medium Practitioners
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

Payroll Software Software on Payroll Management

*An Initiative of Committee for Capacity Building of
CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI*

Features of Payroll Software

- **Recruitment Management** – Store and search resumes to Schedule interview. The complete recruitment management process is automated.
- **Time & attendance** – Attendance, integration with time & attendance devices, leave allotment, encashment, applying & approval system.
- **Payroll Management** – Recording attendance, processing salary, arrears, gratuity, loan, medical reimbursements etc.

- **Indian Labor Law Management** – PF, ESI, PT, TDS and all Indian Labor Acts forms
- **HR Communication Management** – An automated tool to update the each transaction with respect to HR activity to the staff and their higher-ups
- **HR Office Management** – An automated emailing & documentation process related to HR activity
- **Employee Information Portal** – A self login portal to have details about salary, leave etc. it allows employee to apply leave etc.

About the Arrangement

1. The Relyon Softech Ltd. (hereinafter referred to as vendor) will provide initial license for Payroll software free of cost for 2 years i.e. up to 31st December, 2013
2. The license renewal charges will be Rs. 1300/- after 31st December, 2013. Statutory taxes on License Renewal shall be extra as applicable.
3. The Vendor will provide support which would be free up to 31st December, 2013 and thereafter, support would be provided on payment of renewal charges.
4. The Vendor will provide free of cost patches up to two years and till renewed.

Installation Support

The vendor will provide a web form to enable CA firms and members to request for support for Online Installation on "First Come, First Serve" basis.

Downloading the Software:

The Software may be downloaded free of cost from the website of Committee for Capacity Building of CA Firms and Small & Medium Practitioners, www.icai.org.in on request by members.

Support on use of Software:

The vendor will provide the technical support to the users and renewed customers via Phone, email and remote PC access from the date of registering the license.

E-mail: info@reylonsoft.com; **Phone:** 1860-425-5570



Committee for Capacity Building of
CA Firms and Small Medium Practitioners
The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi



Invitation to Contribute Articles for E-Newsletter 'Prudence'

The Committee on Public Finance & Government Accounting of The Institute of Chartered Accountants of India is regularly coming up with its E-Newsletter -'Prudence' featuring various articles on economic issues and measures on bi-monthly basis. The February-March 2012 issue of the E-Newsletter is available at the URL http://www.icai.org/new_post.html?post_id=3825&c_id=241.

The Committee invites experts, researchers and writers to contribute articles in different areas of Public Finance and Government Accounting preferably on *Public Debt, Public Expenditure, Fiscal Policy, Monetary Policy, Accounting Reforms, Accrual Accounting, Accounting for Intangible Assets and Restructuring of Chart of Accounts in Accrual System in Public Sector* for publication in the April-May 2012 issue of its E-newsletter. If the article is published, a token honorarium of ₹3000/- per article shall be paid. Discretion of the Committee regarding publication/non-publication of the article shall be final and abiding therewith under copyright of the Committee. Material of this E-Newsletter may not be reproduced, whether in part or in whole, without the consent of Editorial Board of Committee. Authors may only

submit original work that has not been appeared elsewhere in any publication. A formal signed undertaking in the form of a letter stating that "the article is original and does not infringe any copyright and has not been published elsewhere or has not been sent for publication" should be sent along with the article.

The articles (up to 1500 words) may be sent to us latest by 10th May 2012 in the form of soft copy through mail/ CD or in printed format through post giving details of the subject matter.

Those desirous may please contact at the following address:

The Secretary
Committee on Public Finance and Government Accounting
The Institute of Chartered Accountants of India
'ICAI Bhawan', A-29, Sector-62,
Noida- 201 309
Phone: 0120-3045950
Email: cpf_ga@icai.org



Invitation for Expression of interest for Authoring Publications relevant to the Members in Practice of ICAI



Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) is meant to encourage and enhance close links between the Institute of Chartered Accountant of India and the Chartered Accountants in Practice, so as to provide for them, a base of reference in terms of knowledge, expertise, skills and assistance in their professional growth, simultaneously pursuing the goal of providing newer opportunities to the practitioners & Firms.

One of the major responsibilities of CCBCAF & SMP is to bring out publications on various topics relevant for the Members in Practice of the Institute of Chartered Accountants of India (ICAI).

The CCBCAF & SMP invites Expression of Interest from members of the Institute and other experts who are interested in developing / preparing basic drafts of the publications on topics relevant to the Members in Practice of ICAI. The intending authors of the CCBCAF & SMP publications are expected to have appropriate level practical experience in the relevant area along with the knowledge of various aspects of profession.

The CCBCAF & SMP publication has to be prepared as self-learning booklets in the form of handbooks with proper mix of theory and practical case studies.

Apart from getting recognition among their professional brethren, for their contribution in preparing the background materials, the authors of the accepted publication materials will get:

1. Their names printed in the Publications
2. Honorarium and reimbursement of incidental expenses as per the prevailing policy of the Institute. (Which will depend upon the size, time and efforts required to prepare such publication materials).

The intending authors are required to send a formal request letter with the following details:-

1. Brief profile of the author
2. Specific experience and expertise in the relevant topic for which they offer themselves to write the background materials which will enable the CMII secretariat for allotting the preparation of material for them

3. Proposed coverage of the Publication (in about 2000 - 3000 words)
4. Sources of primary and secondary data based on which the Publication material will be written
5. Time frame within which they can submit the publication material.

Address:

Dr. Sambit Kumar Mishra

Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP),

The Institute of Chartered Accountants of India,
Post Box No.7100, Indraprastha Marg,
New Delhi - 110 002

Email: sambit.mishra@icai.org, ccbcaf@icai.org

It may be noted that mere submission of the Expression of Interest may not lead to allotment of the particular publication materials to a particular applicant. The Institute reserves the right to request any other expert (though they may not have offered their expression of interest in this regard) to prepare publication materials. No communications will be entertained in this regard. Only selected authors will be individually communicated.

Indicative topics on which CCBCAF & SMP would like to bring out publications are given below:

1. Mentoring Guidelines for Small & Medium Practitioners
2. Evaluating and Improving Performance : A Guide for Small & Medium Practitioners
3. Handbook for the Practice Management

4. E-Business and the Small & Medium Practitioners
5. Handbook for Information Security Governance : Practitioner/ CA Firms perspectives
6. Issues & Perspectives of Financial Reporting by Small & Medium Practitioners
7. A study of Mergers & Acquisitions: An International Perspective
8. Implementing the Accounting Standards: Technical Issues pertaining to the Practitioners/CA Firms
9. Issues in Auditing Standards, Expectations, and compliance requirements Practitioner/CA Firms perspective
10. Cost & Financial Management: Practitioner/CA Firms perspective
11. LLP: Practitioner/CA Firms perspective
12. MDP : Practitioner/CA Firms perspective
13. A Roadmap to GST: Practitioner/CA Firms perspective
14. A Roadmap to Direct Tax Code: Practitioner/CA Firms perspective
15. Auditors' Report under the Companies Act – Issues on CARO, Documentation
16. Export Documentation : A Guideline for Small & Medium Practitioners
17. Professional Opportunities: A Snapshot for Small & Medium Practitioners
18. Other topics relevant to Practitioners/ CA Firms

CA. Pankaj Tyagee
Chairman

Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP),
ICAI



Certificate Course on Internal Audit

Hyderabad	Delhi	Mumbai	Chennai	Kolkata
June 25 to July 06, 2012	July 21 & 22, 28 & 29, 2012 and August 4 & 5, 11 & 12, 18 & 19, 2012	August 11 & 12, 18 & 19, 25 & 26, 2012 and September 1 & 2, 8 & 9, 2012	September 8 & 9, 15 & 16, 22 & 23, 29 & 30, 2012 and October 6 & 7, 2012	October 6 & 7, 13 & 14, 20 & 21, 27 & 28, 2012 and November 3 & 4, 2012

The Internal Audit Standards Board of the ICAI is pleased to offer "**Certificate Course on Internal Audit**" to enable members to understand various issues relating to the internal audit and in developing the necessary skills to provide value added services in this area.

Course Objectives

The objectives of the Certificate Course on Internal Audit are:

- Disseminating knowledge on the theory and practice of internal audit and allied functions.
- Reflect current internal audit thinking and practices and how they impact contemporary business enterprises.
- Enhancing the role of chartered accountants in the area of internal audit and allied functions.
- Building up internal audit as a core competence area of chartered accountants.

Eligibility

Only the Members of the Institute are eligible to pursue this Course.

CPE Hours :

100 hrs (50 hrs structured and 50 hrs unstructured)

Evaluation

Participants who successfully complete the course in line with the evaluation criteria mentioned below and qualifies the evaluation test will be awarded Certificate.

- **Eligibility** : A candidate will have to attend minimum of 42 hours of classes and complete the entire E-learning module, failing which, he/ she will not be entitled to appear in the evaluation.
- **Weightage** : the following weightage is assigned during evaluation:
 - Class room learning and tests : 50 per cent
 - E-learning : 20 per cent
 - Case Study/ Presentation : 20 per cent
 - Class room attendance : 10 per cent
- **Number of attempts**: There is no limit on the permissible number of attempts for the evaluation tests. A candidate will be allowed to re-appear for the evaluation test only after six months of the previous attempt.

Further Details and Registration Form Link:

http://www.icaai.org/post.html?post_id=7606

The commencement of Certificate Course is subject to the minimum number of participants as prescribed by the Board. It may be noted that due to limitation of seats, registration will be on 'first come first served' basis.

Address for sending the Registration Form :

Secretary, Internal Audit Standards Board
The Institute of Chartered Accountants of India
ICAI Bhawan, First Floor, Research Block
A-29, Sector 62,
NOIDA – 201 309 (U.P.)

Further Details and Assistance

Chairman,
Internal Audit Standards
Board
Mob: 09820061049,
09323061049
Email: radukia@icaai.org

Secretary,
Internal Audit Standards
Board
Mob: 09310542606,
09350799932
Ph. No: 0120-3045949
Email: cia@icaai.org;
iasb.prgam@icaai.in



Certificate Course on Enterprise Risk Management

Hyderabad	Delhi	Mumbai	Chennai	Kolkata
May 07-14, 2012	July 28 & 29, 2012 and August 4 & 5, 11 & 12, 2012	August 4 & 5, 11 & 12 and 18 & 19, 2012	September 15 & 16, 22 & 23 and 29 & 30, 2012	October 13 & 14, 20 & 21 and 27 & 28, 2012

The Internal Audit Standards Board (IASB) of the Institute of Chartered Accountants of India (ICAI) has been constituted to reinforce the role of the Institute as a promoter and source of knowledge relating to internal audit. Having regard to the need for further educating the members of the Institute in the area of Enterprise Risk Management and as part of capacity building of members, the Internal Audit Standards Board of the ICAI is pleased to offer "**Certificate Course on Enterprise Risk Management**" to enable the members to develop competence in this emerging field and offer value added services.

Course Objectives

The overall objectives of the course are:

- To enhance the role of Chartered Accountants in the area of ERM; and

- To build ERM as one of their core competencies.

The main thrust of the course is to educate the participants on:

- Theory and concepts of ERM.
- Manner in which ERM is designed and implemented in practice.
- Current thinking on risk management and its impact on contemporary business enterprises.

Eligibility

Only the members of ICAI and the students of ICAI who have passed the CA Final Examination are eligible to pursue this course.

CPE Hours :

100 hrs (50 hrs structured and 50 hrs unstructured)

Evaluation :

Participants who successfully complete the course in line with the evaluation criteria mentioned below and qualify the evaluation test will be awarded Certificate.

- **Eligibility :** A candidate will have to attend minimum of 40 hours of classes and complete the entire e-learning module, failing which, he/ she will not be entitled to appear in the evaluation.
- **Weightage :** The following weightage is assigned during evaluation:
 - Class room learning and tests : 50 per cent
 - E-learning : 20 per cent
 - Case Study/ Presentation : 20 per cent
 - Class room attendance : 10 per cent
- **Number of attempts:** There is no limit on the permissible number of attempts for the evaluation tests. A candidate will be allowed to re-appear for the evaluation test only after six months of the previous attempt.

Further Details and Registration Form Link:

http://www.icai.org/post.html?post_id=4287

The commencement of Certificate Course is subject to the minimum number of participants as prescribed by the Board. It may be noted that due to limitation of seats, registration will be on 'first come first served' basis.

Address for sending the Registration Form :

Secretary, Internal Audit Standards Board
The Institute of Chartered Accountants of India
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**Invitation to become Checker for Chartered Accountants Examinations**

Examination Department of the Institute would like to avail the services of the members of the Institute (upto 15 years of Experience) to act as Checker, other details are as under:

The Examination Department of the Institute avails the services of resource persons (members of the Institute, academicians, executives, etc.) to act as Examiners to evaluate the answer books of Chartered Accountants Examinations (Final/IPCE/PCE). Each examiner is required to appoint a person as his checker to inter-alia perform the following functions besides assisting him in the preparation of Award List.

The services of the checkers are required at individual examiner level to check the following:

1. To ensure that the marks awarded to the sub parts of a question entered in the marks grid on the cover page of the answer book has been totaled correctly.
2. To ensure that the total marks written in numerals in the marks grid on the cover page of the answer book tallies with what is written in words therein below.
3. To ensure that total marks in the grid is carried forward correctly in numerals in the OMR portion on the right hand bottom corner of the cover page of the answer book.
4. To ensure that the darkening of the corresponding OMR circles on the cover page is done as per the

numerals written in the box there above.

5. To ensure that the total marks on the cover page of the answer book is carried forward correctly in the award list against the respective code number.
6. To ensure that the totals of the marks entered in each column of the award list is correct.
7. To ensure that the grand total of each award list is correct
8. To ensure that the total number of answer books is entered correctly in the relevant box in the award list.
9. To ensure that darkening of circles in the award list is in accordance with the marks written in numerals against the respective code number of the answer book.
10. To ensure that the page wise totals of marks awarded on the award list is carried forward correctly to the summary sheet
11. To ensure that totaling of marks of all the candidates carried forward to the **Summary Sheet** is correct.
12. To ensure that darkening of OMR circles is done completely in Cover page of the answer books as well as OMR Award List.

Overall scheme for members of the Institute to become checkers:

1. Members who would like to associate with the Examination Department to act as Checker have to fill up an online form available at

http://www.icai.org/app_forms/empanelment.html.

The Examination Department will not entertain any other mode of empanelment application form.

2. Based on the assignment given to individual examiners, reference of such examiners to whom the services of empanelled checkers are required would be provided to the empanelled checkers in due course.
3. Though the empanelment is open to members having upto 15 years of experience, first preference will be given to members having upto 5 years of post membership experience. Similarly second preference will be given to members with upto 10 years of post membership experience and so on.
4. The empanelled checkers have to visit the

examiners at their residence or official address for providing the services as aforesaid.

5. A token honorarium of ₹25 per full paper or ₹15 per half paper would be paid to the checkers.
6. It is anticipated that the number of visit of checker to the examiners' office/residence would be maximum 3 to complete the assignment for which a conveyance expenditure reimbursement of ₹1000 for A class cities or ₹500 for B class cities (per occasion) will be paid. Additional visits by the checkers to examiners, if found necessary may, also be eligible for reimbursement of the conveyance expenditure subject to necessary approvals.

Examination Department



EVENTS

Forthcoming Events¹

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Topics (in brief without details of technical sessions, timings and speakers)	Contact Person
1.	National Conference on Empowerment of the Profession Through Excellence	9 th June, 2012	Chandigarh	6	- Emerging issues on Income Tax - Emerging issues on Service Tax - Capacity Through IT Tools	CA. Sanjeev Sharma Chairman Chandigarh Branch of NIRC of ICAI Mobile: 09888484801 E-mail: casharmasanjeev@gmail.com
2.	Workshop on Capacity Building Measures for the Practitioners & CA Firms	5 th May, 2012	Mathura	6	- An Overview of Accounting Standards - An overview of Taxation - An overview of Revised Schedule VI	CA. Mahendra Kumar Gupta Chairman Mathura Branch of CIRC of ICAI Mobile: 09414023117 E-mail: mahendra_co@icai.org
3.	Workshop on Capacity Building Measures for the Practitioners & CA Firms	5 th May, 2012	Raipur	6	- Revised Schedule VI - Emerging issues on Income Tax - Capacity Through IT Tools	CA. M.M. Upadhyay Chairman Raipur Branch of CIRC of ICAI Mobile: 9981140015 E-mail: jsa1777@gmail.com
4.	Three Days National Residential Seminar	June 29, 2012 to July 1, 2012	The Raviz Resort & Spa, Lake Ashtamudi, Kollam, Kerala	12	Service Tax – Recent Admendment, Revised Schedule VI, Issues in Tax Deduction at source & Business Deductions	CA. Rajendra Kumar P. Central Council Member, ICAI Mobile: 09382303403 Email: rk@ssaca.in Chairman Quilon Branch of SIRC of ICAI Mobile: 099495114025 Phone No: 0474-2750583; 2763506 Email: quilon@icai.org

¹ For more details please refer the detailed announcements hosted on the ICAI website www.icai.org

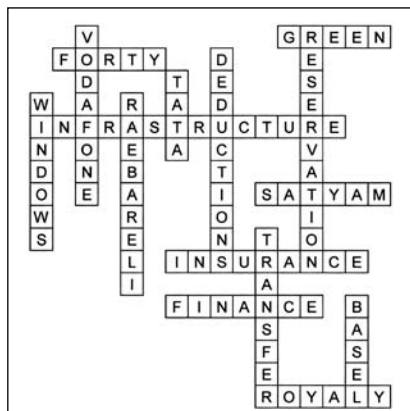
071

- 3 The reduction in the _____ rate at which RBI lends to banks, has been prompted by deceleration in growth and softening of inflation. (4)
- 5 The age for determining the eligibility as senior citizen for submitting declaration in Form 15G and 15H so as to avoid deduction of tax at source under Section 197A is proposed to be reduced from sixty-five years to _____ years. (5)
- 7 _____ is now among the top 10 preferred entrepreneurial locations worldwide for entrepreneurs to start up companies. (9)
- 8 Reserve Bank governor recently slashed short term lending rate by 0.50 per cent to 8 per cent, a move that will reduce the cost of _____, auto and corporate loans. (4)
- 12 TRAI has sought power to grant telecom _____. (8)
- 13 A puzzle of words that takes the form of squares and rectangular grid. (9)
- 15 Using globally recognised frameworks such as _____ 5 enables CAs to provide value addition and also results in building brand image of being user of an approach and tool set based on the latest thinking and research. (5)
- 16 The Federal Communications Commission has fined _____ \$25,000 for impeding an investigation into how the online search leader collected data while taking photos for its Street View mapping feature. (6)

- 1 Union budget 2012 has tried to settle the long drawn battle between the Revenue Authorities and the Tax Payers in respect of taxability of sale of computer _____. (8)
- 2 Woori Bank, one of the oldest and largest banks in South Korea, has set up its first Indian branch in _____. (7)
- 4 The five objectives identified in the _____ and are significant for setting the direction and the pace of the Indian economy are relating

to growth recovery, private investment, supply bottlenecks, malnutrition and governance matters. (6) In the Budget 2012-13, the scheme has been extended to habitations with population of more than 1000 in North Eastern states. (10)

6 _____ advocacy aims
at promoting pro-competition
measures in an economy. (11)
9 India has been ranked as the most
_____ nation in Asia in a global
consumer confidence survey
released in Dubai. (10)
10 As per budget 2012-13 pro-farmer
initiative, the _____ Credit Card will

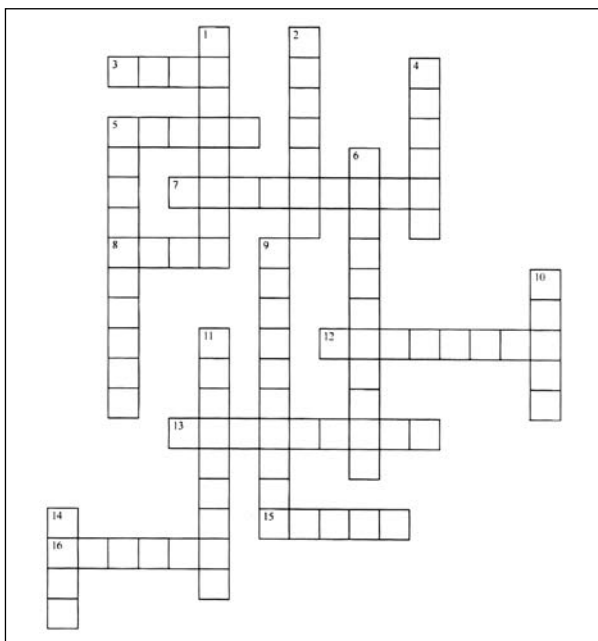


SOLUTION CROSSWORD 070



Man: 'Excuse me Do you have the book named, Husband, the master of Wife'?

Sales girl: 'Sir, our fantasy and comic section is on the 1st floor'.



now act as smart card which could be used in ATMs. (5)

11 IFRS 9 replaces the multiple classification and measurement models in IAS 39 with a single model that has only two classification categories as _____ cost and Fair value. (9)

14 DRDO project director Tessy Thomas, recently guided a team of scientists to successfully test _____ V, the ICBM. (4)

NOTE: Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/ puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.