VOLUME 61 | No. 10 | APRIL 2013 | ₹ 100

THE CHARTERED ACCOUNTANT JOURNAL

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

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₹ 100

Inclusive & Sustainable Growth with Fiscal Consolidation

Values Virtues Vision

Budget 2013-14 for Inclusive, Sustainable Growth

Given the onerous task of chasing the elusive high growth rate and bringing the economy back on track in the face of populist pressures, Finance Minister P. Chidambaram, in the Union Budget 2013-14, has deftly mooted good economics as a tool of good politics. Taking into account the tight spot in which our economy has slipped into, he has clearly identified the challenges and spelled out the direction, by keeping the focus of the Budget on inclusive and sustainable growth with fiscal consolidation. *"It is not a novelty or beyond our capacity,"* rightly said the Finance Minister in his Budget speech, as he went an extra mile for the poor, backward, women, minorities, youth, education, health, agriculture, industry, infrastructure and defence.

It is a responsible, bold Budget that will lead to macro-economic stability. The responsible bit is evident enough: the fiscal deficit has been reined in, both for the current year and for the next year (5.2% in 2012-13 and projected 4.8% in 2013-14). Further, the subsidies for 2013-14 are just over 2% of GDP, compared to over 2.5% in 2012-13. The boldness is that, he has preferred good economics over politics of populism.

The Budget has unveiled a higher-than-expected spending for fiscal 2013-14, aiming to fund it with higher revenues. In this regard, the tax proposals are in tandem with the overall aim of the budget, proposed to be achieved by focusing on key areas, such as bringing in stability in tax regime, ensuring a non-adversarial tax administration, curbing tax evasion and increasing voluntary compliance. Also, the budget reinforces its faith on the progressive system of taxation, by proposing a levy of 10% surcharge on individuals with an income in excess of ₹1 crore and increased levy by way of surcharge @10% on domestic companies with total income exceeding ₹10 crore, higher taxes on luxury & sin goods, provision of additional deductions to specified categories which do not encompass the rich (like additional interest on housing loans up to a specified limit, total income cap of ₹12 lakh for new investors to avail the benefit of deduction of investment in Rajiv Gandhi Equity Savings Scheme), and lower abatements for service tax in case of houses of high value.

The stability in tax regime is to be achieved by maintaining status quo with respect to basic exemption limit and income-tax slabs. The rates for all the three central indirect taxes, namely, excise duty, customs duty and service tax have also not been tinkered with. The proposals to continue the benefits relating to deduction for new investors investing in equity market as well as the lower rate of tax on dividend received from foreign companies and the proposal to make minimum addition in the negative list of services introduced last year are in line with this objective. Further, another notable feature in ensuring stability is that no major retrospective amendment has been proposed this year. *"In a constrained economy, there is little room to raise tax rates or large amounts of additional tax revenues. Equally, there is little room to give away tax revenues or the tax base. It is a time for prudence, restraint and patience,"* rightly said the Finance Minister in his budget speech.

Significant thrust has been placed on "non-adversarial tax administration" by proposing to constitute a Tax Administration Reform Commission, to review the application of tax policies and tax laws. This would facilitate our tax systems to adopt best global practices. The proposal to provide for MRP based valuation in respect of branded medicaments of non-allopathic systems of medicine will bring more clarity in law. However, non-rationalisation of the complex and restrictive credit provisions is a major disappointment.

The re-introduction of tax deduction at source on sale of immovable property, where the consideration exceeds ₹50 lakh, is certainly the need of the hour to curb tax evasion. Introduction of additional income tax @ 20% of profits distributed by unlisted companies to shareholders through buyback of shares would prevent significant revenue leakage. Likewise, levy of higher rate of tax on royalty and fee for technical services on payments to non-resident, to prevent categorising distribution of profits by a subsidiary to a foreign parent company as royalty, is expected to plug the loophole and prevent escapement of income.

In order to ensure that the current defaulters of service tax comply with the requirement to file returns and pay taxes, a one-time scheme called "Voluntary Compliance Encouragement Scheme" is to be introduced, which is a welcome revenue garnering step.

The proposed introduction of investment allowance @ 15% to a manufacturing company investing more than ₹100 crore in plant and machinery during the period 01-04-2013 to 31-03-2015, exemption of Investor Protection Fund (set-up by a depository for the protection of interest of beneficial owners) from income-tax, extension of "eligible date" for projects in power sector for availing benefit under sSection 80-IA would certainly go a long way in giving a boost to the economy by attracting more investments.

Commendably, the Finance Minister has outlined the roadmap for ushering in the GST regime by specifically allocating a sum of ₹9,000 crore towards the first installment of the balance of CST compensation. The Finance Minister's assurance on the Direct Taxes Code Bill is also welcome. It is hoped that the new DTC, giving due weightage to the recommendations of the Standing Committee, would ultimately incorporate the best global practices, and at the same time, maintain the right balance between simplicity and equity.

The Budget 2013-14 has indeed given a clear direction to the economy, but much more is still to be done. As such, we need to pay heed to the concluding words of the Finance Minister's speech where he quoteds Swami Vivekanand- *"All the strength and succour you want is within yourself. Therefore, make your own future."*

-Editorial Board

ICAI – Partner in Nation Building

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SUBSCRIPTION RATES

Inland subscribers :	₹1,000 per annum
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EDITORIAL SUPPORT, DESIGN, ADVERTISEMENT & MARKETING SPENTA MULTIMEDIA
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ICAI RESERVES THE RIGHT TO REJECT ADVERTISEMENTS
Printed and published by Vijay Kapur on behalf of The Institute of Chartered Accountants of India (ICAI)
Editor – CA. Subodh Kumar Agrawal
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

TOTAL CIRCULATION: 2,34,589
Total No. of Pages: 156 including Covers
Cover Image: Illustration by Nilesh Juvalekar
Inside images and Graphics: www.dreamstime.com

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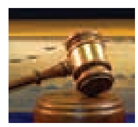


ICAI NEWS

EVENTS

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CA. Subodh Kumar Agrawal, President, ICAI

Dear Friends,

It is the responsibility of the strong to help the weak.

Not resorting to any populist measures, the Government has not touched the direct and indirect tax structures in principle in the Union Budget 2013-14; neither has it touched the middle class. Some of the experts have felt that they were expecting something more miraculous in the Budget that could tackle the existing economic issues at hand.

When the Union Finance Minister Shri P. Chidambaram introduced the concept of super-rich tax, i.e. people having their annual income more than ₹1 crore will have to pay a surcharge of 10%, his agenda apparently was quite clear, i.e. to inspire the capable people to act in the best interests of their nation. Shri Chidambaram expressed the underlying expectations behind this: *There is a little bit of the spirit of Mr. Azim Premji in every affluent taxpayer.* Our Government has never appeared more confident about their intention.

Let us not forget that the Union MCA Minister Shri Sachin Pilot had prepared the ground much before for this agenda, while he met the corporate executives and shared the Government's intention with them. I, in fact, take pride in agreeing with Shri Sachin Pilot's declaration: *We are perhaps going to be the first country in the world that will have corporate social responsibility in the statute.* Eradication of extreme hunger and poverty, promotion of education and gender equality, and women empowerment are some of the prime concerns as CSR activities, according to the proposed *Bill*. Accountancy professionals will be ready to take an active role while inspiring, persuading and checking if their client corporations are effectively complying with the regulation of CSR. Profit-making PSUs have already started spending on CSR.

It is actually high time that we should start getting serious about payback to our society and the state for what we are at present. This has to be all the more a serious agenda for the stronger and more capable strata of our society, who must extend a helping hand to uplift their less-privileged and disadvantaged fellow countrymen.

Shri Sachin Pilot Dedicates Iconic ICAI Tower in Mumbai to Profession and Nation

In a major infrastructural milestone in the glorious ongoing journey of our profession, the iconic *ICAI Tower* was dedicated to the ICAI members and students by the Union Corporate Affairs Minister (Independent Charge) Shri Sachin Pilot in the vibrant financial capital of our country, i.e. Mumbai. Inaugurating the *Tower*, Shri Pilot hailed the accountancy profession's role in nation-building and said that this tower in the financial capital of the country would complement the infrastructural drive of the Government. This Ground+8 floors tower, which will house the Western India Regional Council office of the ICAI, is spread over an area of 32,090 sq. feet and has been carefully designed to cater to the ever-increasing requirements of our members and students from the western as well as other regions of the nation. This is ICAI's biggest venture yet, born out of a vision of tomorrow—as a symbol of dominance of the world's second largest accountancy organisation.

It is frequently said: *Stronger the foundation*, higher the building. This is especially true for us who have seen our Institute go from strength to strength over decades. And in this context, I believe that given the mammoth rise in the membership and number of students, we need excellent infrastructure to cater to their needs, which is one of my key focus areas. I am sure that this *ICAI Tower* in the heart of Mumbai will take our infrastructure development drive to the next level. A strong accountancy profession is the key to a strong financial infrastructure of our country. This

Tower will lend that strength to our accountancy profession. I firmly believe that this will prove to be a landmark in the field of education and training and also act as a research hub for accountancy in India, and a major force for formulation of economic and financial policies.

Plan to Strengthen National and International Initiatives in 2013-14

Going by the core of current Action Plan, i.e. of 2013-14, our focus is on embedding sustainability. We intend to do more collaborations with the Government offices and departments, and Ministries to develop effective transparency and establish better accountability in the system. We have set our goals to increase the avenues of our professional fraternity exercising our efforts on various initiatives of financial inclusion of our Government. We have to pay back to our society and we will do this fairly by training and educating our society in the sectors where we are strong. We already have been going strong with regard to convergence with IFRSs and promotion of XBRL, and we have been extending our technical help and support to various initiatives of international accounting bodies like IFAC, CAPA, SAFA, etc. We need to accelerate these endeavours further, keeping the increasing scope of our accounting professionals in mind. Our agenda is clear: to help our Government and our society using our academic and technical expertise.

On Provisions in Companies Bill, 2012

The Companies Bill, 2012 as passed by the Lok Sabha is substantively a law based on Rules (that will be prescribed). The concept of CSR in the Indian context as introduced in the Bill is definitely a welcome step. However, there are some key issues in the Bill that are affecting CA profession, such as the constitution of National Financial Reporting Authority (NFRA), reporting of fraud by the auditors, revision of annual audited and adopted accounts, ceiling on audit assignments and harsh penalty provisions introduced in the Bill. The ICAI has given representations to the Ministry of Corporate Affairs expressing its concerns over certain issues in the Companies Bill, 2012 that will have an impact on the profession.

Our Suggestions Incorporated in Finance Bill, 2013

Every year, the ICAI submits its Pre-Budget and Post-Budget Memoranda to the Ministry of Finance to put forward its suggestions that are largely based on the concerns of our membership on the one hand and our society on the other. I am extremely happy to share with you that like every year, all our significant suggestions were considered while some of them were incorporated in the Finance Bill, 2013.

On Direct Tax: We had suggested an increase in the amount of deduction in respect of interest on housing loan. This was considered and an additional deduction of Rs. 1 lakh has been proposed in respect of interest on loan taken for purchase of the first house. We would be seeking clarification as well as submitting further suggestions through our Post-Budget Memorandum on certain issues arising out of this proposal. Considering the difficulties being faced by our membership with regard to valuation under Section 50C, we had submitted that the section should require adoption of stamp-duty value as on the date of agreement and not on the date of registration of such a transfer, which was appreciated and incorporated in Sections 56(2)(vii) and 43CA of the Bill. In order to dissuade cash payments, we had recommended a threshold limit for deduction under Sections 80GGB and 80GGC in respect of donations made in cash, which got accepted in principle, being the need of the hour. Many of our recommendations with regard to GAAR have also been incorporated.

On Indirect Tax: Our suggestions about an amendment in the definition of 'process amounting to manufacture or production of goods' and inclusion of the process of manufacture of products liable to excise duty under Medicinal and Toilet Preparation (Excise Duties) Act, 1955, with regard to Section 65B(40) of Finance Act, 1994, has been incorporated in the Finance Bill, 2013. We had also submitted with regard to Section 77(1) of Finance Act, 1994, that in case of non-registration, a suitable cap be provided on the amount of penalty to be levied, which was accepted as the cap on maximum penalty for failure to obtain registration has been decided. On our recommendation with regard to the Rule 7 of Service Tax Rules, 1994, the format of ST-3 Return was revised and the field for entering amount of exemption of R&D cess from service tax was inserted. With regard to Section 96A (b) (iii) of Finance Act, 1994 and Sections 35C (2A) and 35D of Central Excise Act, 1994, our submissions were partially accepted.

Initiatives for Effective Bank-Branch Audit

We are concerned that all the public-sector bank branches having outstanding advances of more than ₹20 crore and rest of the branches only 1/5th every year will be subject to statutory branch audits. We met many parliamentarians including the officials from Finance Ministry and communicated our concerns on non-audit of branches of banks. Recent media reports on noncompliance with KYC norms and AML Guidelines by some of the banks and the report of Comptroller and Auditor General of India on Agricultural Debt Waiver and Debt Relief Scheme, 2008, is a matter of concern. We professionals need to rise to the occasion to prove our quality.

Bank Audit and Audit Report Format

Members will become busy in April for completing Audits for year ending 31st March, 2013, especially listed companies and, more particularly, bank branch audits. With regard to bank branch audits, the RBI has observed that some statutory auditors of banks claimed that bank's (branch's) failure to make adequate provisions was reported in the long-form audit report (LFAR), but not in the Auditor's Report. Therefore, any matter affecting the *true and fair view* of financial statements like inadequate provisioning of advances should be reported in the Auditor's Report also.

In response to the concerns raised by RBI, the ICAI's 2013 Guidance Note on Audit of Banks presents a guidance on this aspect *(ref: para 3.44 of Chapter 3 of Part I),* and an illustrative format of bank branch auditor's report in its Appendix. An expert panel has also been constituted by the ICAI to deal with members' technical queries relating to bank branch audits, which is open from 26th March 2013 to 10th April 2013. The details in this regard have been published elsewhere in the Journal. With respect to the Auditor's Report, the members should comply with the three standards issued by ICAI, *viz.* SA 700 (Revised), SA 705 and SA 706, which are applicable for the periods commencing on or after 1st April, 2012. Complete text of these SAs is available on ICAI's website.

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Technology is altering the media business dramatically and irreversibly. Given the changing reader habits and a huge potential of cost savings in shifting from print to digital, we at *The Chartered Accountant* journal are promoting a combination of print and digital versions. As you know, we already have a highly user-friendly e-journal hosted on our website with journal highlights being regularly e-mailed to our members. Taking this drive forward, we have now made our e-Journal compatible on iOS (used by mobile phones and tablets like iPhone, iPad, etc.) and android devices from 1st March, 2012, to enable our readers to browse through the journal just at the push of a button anywhere, anytime. You may now access the e-journal on the above mentioned platforms without any specific download requirements, under *e-Journal* tab at http://www.icai.org/. This initiative is part of our commitment to keep pace with changing times, technology and innovation.

Health/Professional Indemnity Insurance for Members & Students

We recently signed an MoU with the New India Assurance Co. Ltd. and arranged a facility of customised health insurance and professional indemnity insurance for our members. Health insurance that has features like no health check-up, no age limit, no entry barrier, premium discount in lieu of cumulative bonus, 5% discount in premium to be paid to insurance company, etc., is for members and students of the ICAI. Our MoU with New India Assurance Co. Ltd. also provides an insurance protection for members-in-practice/firms in the form of special professional indemnity insurance at a reasonable premium, i.e. 85% discount on market rate. Both the insurance schemes have already been made effective. Website http://icai.newindia.co.in could be checked to know the details and to apply online for insurance.

CAs— Ever Changing, Never Changing

Mahatma Gandhi had advised: *...you must be the change you wish to see in the world.* I sincerely believe in that. In fact, change is the only phenomenon that has been constant in this world. The spirit to change *vis-à-vis* time has put us on a high pedestal professionally in our country. Some achiever had said: *...continuity gives us roots; change gives us branches, letting us stretch and grow and reach new heights.* As you know, the Action Plan for this Council Year is ***embedding sustainability & developing leadership through core values, distinguished virtues and focused vision;*** this will require certain changes in the work environment in the ICAI too. These changes have to be in line with the betterment of accountancy profession and its membership, and society as a whole. Celebrated coach Bob Proctor says: *It does not matter where you are, you are nowhere compared to where you can go.* Therefore, our passion and endeavours to aim at becoming the best in profession globally will remain unaffected, considering that a pursuit of excellence is a journey of continuous and ongoing efforts; we promise to keep marching ahead in action.

However, in these times of change, what shall remain unchanged is our passion to be on top of the accounting world, and our commitment to our professional ethos and ethics. Let's recall a line from the Mahabharata which is as relevant today as it was then, which says: *No matter what conditions you encounter in life, your right is only to the efforts, not to the fruits thereof. You should not be impelled to act for selfish reasons, nor should you be attached to inaction.*

Come Forward and Strengthen CABF

I appeal all stakeholders of our profession to come forward and actively support and contribute for the cause of membership of accountancy profession, i.e. Chartered Accountants Benevolent Fund (CABF), which is an initiative of ICAI to provide financial assistance to our members-in-distress for sustenance. Contributions to CABF are exempted under Section 80(G) of the Income-tax Act, 1961. We have been helping the accounting fraternity using this Fund for quite some years. We sincerely need to increase the corpus of the fund so that we may bring back smiles on the faces of more needy families from our professional fraternity.

Sincere Article Training Goes a Long Way in Life

Somebody had said: *Never surrender before. It is not part of our training.* Our students should remember this. Future of accountancy profession in India depends on the efficacy of the system of article training, which is an integral aspect of the CA course. As a senior and an experienced in the field and from this high office of accountancy profession in India, I can assure our students that training with sincerity will take them much ahead in professional life, and help in evolving their basic personality. In the past, we have taken many initiatives in this regard, like bringing out guidelines on article training, with an objective to ensure that students take the training sincerely and seriously. Remember, practical training is the cornerstone for our profession.

Opportunities & Consolidation

It's time for the CA fraternity to change its mindset and start developing itself with the changing technology scenario. Opportunities are coming up in the domains of ITATs, internal audit, VAT audit, insurance and risk management, excise, consultancy, international taxation, transfer pricing, cross-border transactions, merger & acquisition, etc. We need to tap them. Many a time, these come disguised as difficult situations. Let's not wait for extraordinary opportunities and instead seize common occasions and make them great. It is the weak who wait for opportunities, the strong simply make them.

Now, firms can be formed as limited liability partnership. Networking is beneficial but not essential and enough for survival and for a long-term growth. As such, consolidation could be the key to a sustainable long-term growth of the profession. Consolidation of smaller firms can change the scene and can bring in effective competition in the market for large company audit services. Besides building great opportunities, consolidation may also result in higher expectations and responsibilities. But with the quantity and quality of training and education our members and students undergo, we could meet any professional challenge.

Membership Restoration for Empowerment

Considering the multifarious activities being taken up by the ICAI today to empower its members and make them stand as one of the best in profession globally in these critical times, I would like to appeal to all the chartered accountants who are not members of the Institute at present, to restore their membership in order to avail the benefits of empowerment initiatives taken by their alma mater, i.e. the ICAI. The members of ICAI enjoy many privileges such as training programmes to bring them up as globally-competent professionals. Knowledge is power and, in this way, the ICAI intends to make its members powerful. Programmes also give opportunities to the members to network with the accounting stakeholders, apart from getting updated in matters of professional interest. Membership of the Institute is a privilege, as it helps you in keeping connected to your roots.

Advocating Women Empowerment

It is actually encouraging that the Government proposes to set up banks for women. This step becomes quite significant as the CSR activities that the Ministry of Corporate Affairs has proposed to the corporate houses to take up, include promotion of gender equality and women empowerment, and contribution for socio-economic development for the welfare of the backward and minority including women.

Women empowerment should be an essential item on the agenda of our times if we want to see our nation in the category of really-developed nations. The result of our efforts in this regard is for everybody to observe. The fact that the topper of CA Final examination this time is a girl called Prema Jayakumar, that too coming from a humble background, indicates a lot on the change that the ICAI has effected over the years. I take pride in pronouncing that this is not a story of exception. Percentage of women members too is on the rise.

Best wishes

S K Agrawal

CA. Subodh Kumar Agrawal
President, ICAI
New Delhi, March 23, 2013

ICAI Tower at Bandra Kurla Complex (Mumbai) Inaugurated (March 15, 2013)

Union Corporate Affairs Minister Shri Sachin Pilot inaugurates the ICAI Tower, while ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu and Central Council Member CA. Mukesh Singh Kushwah, among others, celebrate.

Enormous ICAI Tower symbolising power of accountancy profession in India.

Union Corporate Affairs Minister Shri Sachin Pilot cuts the ribbon to inaugurate the main building of ICAI Tower, while ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu and past-Council member CA. Bhavna Doshi, among others, celebrate. (March 15, 2013)

ICAI President CA. Subodh Kumar Agrawal presents bouquet to Union Corporate Affairs Minister Shri Sachin Pilot. (March 15, 2013)

Union Corporate Affairs Minister Shri Sachin Pilot addresses the audience, along with ICAI President CA. Subodh Kumar Agrawal. (March 15, 2013)

ICAI President CA. Subodh Kumar Agrawal presents memento to Union Corporate Affairs Minister Shri Sachin Pilot while ICAI Vice-President CA. K. Raghu and WIRC Chairman CA. Mangesh Kinare share the happy moments. (March 15, 2013)

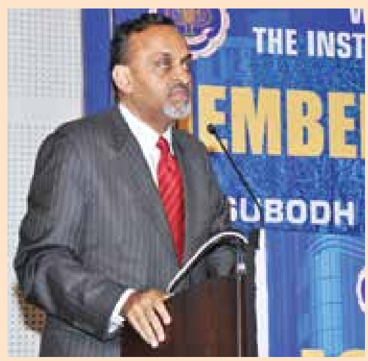
Union Corporate Affairs Minister Shri Sachin Pilot and ICAI President CA. Subodh Kumar Agrawal share matters of mutual concerns. (March 15, 2013)

On the sidelines of ICAI Tower inauguration, ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu and WIRC Chairman CA. Mangesh Kinare, among others, address the membership at large. (March 15, 2013)

Members Meet and Felicitation in Mumbai

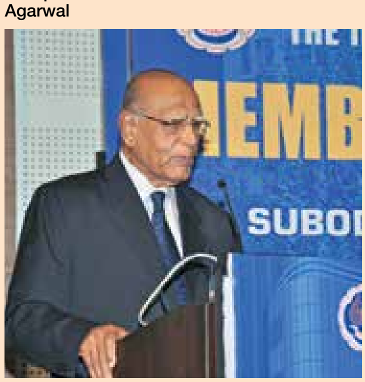
ICAI President CA. Subodh Kumar Agrawal

ICAI past-President CA. Uttam Prakash Agarwal



ICAI past-President CA. Kamlesh Vikamsey

ICAI past-President CA. M. M. Chitale



ICAI past-President CA. V. B. Haribhakti

ICAI past-President CA. Arvind H. Dalal

ICAI & IFAC Meet CGA

ICAI President CA. Subodh Kumar Agrawal presents bouquet to Controller General of Accounts Shri Jawahar Thakur, while IFAC CEO Mr. Fayezul Choudhury and ICAI Vice-President CA. K. Raghu were also present on the occasion. (March 11, 2013)

ICAI and IFAC Heads Meet Deputy C&AG

ICAI President CA. Subodh Kumar Agrawal and Vice-President CA. K. Raghu along with IFAC CEO Mr. Fayezul Choudhury in a meeting with Deputy C&AG Shri Niranjan Pant in New Delhi. (March 12, 2013)

IFAC CEO at ICAI

IFAC CEO Mr. Fayezul Choudhury along with ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu and Secretary Shri T. Karthikeyan. (March 11, 2013)

Meeting with Secretary, Department of Financial Services

ICAI President CA. Subodh Kumar Agrawal with Secretary, Department of Financial Services, Government of India, Shri Rajiv Takru, during a meeting in New Delhi. (March 21, 2013)

ICAI Representatives Meet RBI Executive Director

ICAI Vice-President CA. K. Raghu, along with Central Council members CA. Sanjeev Maheshwari and CA. Pankaj I. Jain, presents bouquet to RBI Executive Director Shri G. Gopalakrishna in Mumbai. (February 26, 2013)

Infrastructure of Hubli Branch Inaugurated

ICAI Vice-President CA. K. Raghu inaugurates additional infrastructure of the Branch; Central Council member CA. M. Devaraja Reddy, SIRC Vice-Chairman CA. P. R. Suresh and Branch Chairman CA. Suresh Chenni, among others, were also present.

Meeting with Presidents of ICSI and ICAI *(erstwhile ICWAI)*

ICAI President CA. Subodh Kumar Agrawal along with President of Institute of Company Secretaries of India, CS. S. N. Anantha Subramanian, and President of Institute of Cost Accountants of India, CMA. Rakesh Singh, in New Delhi. (March 1, 2013)

Meeting with MP (Rajya Sabha)

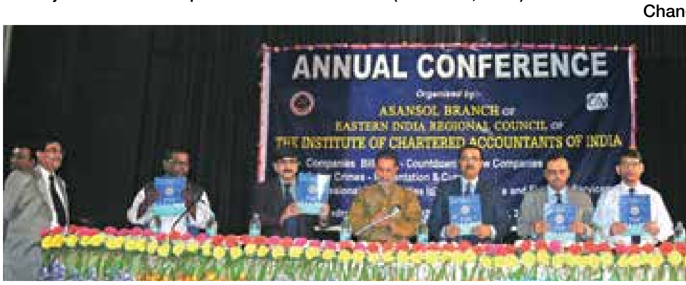
ICAI President CA. Subodh Kumar Agrawal in a meeting with MP (Rajya Sabha) Shri Naresh Gujral in New Delhi. (March 9, 2013)

Meeting with RBI's Deputy Governor

ICAI President CA. Subodh Kumar Agrawal with Dy. Governor, RBI Shri K.C. Chakarborty during a meeting in Mumbai. ICAI Central Council Member CA. Pankaj I. Jain was also present on the occasion. (March 21, 2013)

ICAI Representatives Meet RBI Deputy Governor

ICAI Vice-President CA. K. Raghu presents bouquet to RBI Deputy Governor Shri Anand Sinha; Central Council members CA. Sanjeev Maheshwari, CA. Pankaj I. Jain and ICAI Technical Director Dr. Avinash Chander were also present in the meeting in Mumbai. (February 26, 2013)



ICAI President CA. Subodh Kumar Agrawal sharing the dais with Central Council member CA. Sumantra Guha and other Officials of the Branch during a book release. (February 24, 2013)

Annual Conference at Asansol Branch of EIRC

New Building of Panipat Branch Inaugurated

ICAI Vice-President CA. K. Raghu inaugurates new building of the Branch; Central Council members CA. Sanjay "Voice of CA" Agarwal, CA. Sanjeev Choudhary, CA. Atul Kumar Gupta and CA. Charanjot Singh Nanda, among others, were also present. (February 22, 2013)

Seminar on Bank Audit at Hyderabad Branch

ICAI Vice-President CA. K. Raghu lights the lamp to inaugurate the Seminar, while Central Council members CA. J. Venkateswarlu and CA. M. Devaraja Reddy, and Branch Chairman CA. Dayakar Gelli, among others, were also present. (March 6, 2013)

For attention of Members and Students - Serious view Taken on Breach of CA Regulation 65

As you are aware, the Council of the Institute, under Regulation 65 of the Chartered Accountants Regulations, 1988 has permitted Articled Assistants to pursue/attend, with prior permission to be obtained from concerned Decentralised offices, only one course simultaneously with CA course subject to the condition that the classes being attended for such permitted courses do not overlap with the Principal`s office hours.

The Executive Committee of the Council of the Institute, has had an occasion to consider certain instances of breach of the above Regulation 65/ relevant decision of the Council and taking a serious view of the matter, it has decided to impose severe consequences by delaying grant of Membership for substantial period as deemed fit corresponding to quantum of overlapping period between office timings of the Principal and attendance at the classes.

It has also been decided that the conduct of members/employers concerned would also be simultaneously examined and appropriate action initiated against them, whenever required.

Members and students are therefore hereby cautioned to be careful in observing the provisions of the Chartered Accountant Regulation/sdecisions of the Council.

EVENTS

Forthcoming Events[1]

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
1.	Two Days Conference on Capital Markets and Securities Laws	3rd-4th May, 2013	Hotel Orchid, Mumbai	12
Topics	• Overview of Securities Laws • Takeover Regulations • Insider Trading Regulation • Professional Opportunities in Capital Markets • Deriving Values through Derivative Trading • Currency Derivatives & Forex • Implication of Hedge Fund on Indian Capital Market • Capital Market for Inclusive Economic Growth			
Contact Person	CA. Rohit Kumar, Sr E.O., CFMIP 09650075010; cfmip@icai.org			

[1] For more details about the forthcoming events please refer the detailed announcements hosted on the ICAI website www.icai.org

Ethical Issues in Question-Answer Form

Q. Can there be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the sole proprietor of the firm?

A. No, there could not be any sharing of fees between the widow or the legal representative of the proprietor of a single member firm and the purchaser of the goodwill of the firm on the death of the sole proprietor of the firm. Payment of goodwill to the widow is permissible in such cases only for the goodwill of the firm and to enable such payments to be made in installments provided the agreement of the sale of goodwill contains such a provision. These payments even if they are spread over the specified period should not be linked up with participation in the earnings of the firm.

Q. Can the goodwill of a proprietary firm of Chartered Accountant, after his death be sold/transferred to another eligible member of the Institute?

A. Yes, the Council of the Institute considered the issue whether the goodwill of a proprietary firm of Chartered Accountant can be sold/transferred to another eligible member of the Institute, after the death of the proprietor concerned and came to the view that the same is permissible. Accordingly, the Council passed the following resolution after the death of such proprietors, subject to following conditions:

(a) in respect of cases where the death of the proprietor concerned occurred on or after 30-8-1998.
Provided such a sale is completed/effected in all respects and the Institute's permission to practice in deceased's proprietary firm name is sought within a year of the death of such proprietor concerned. In respect of these cases, the name of the proprietary firm concerned would be kept in abeyance (i.e. not removed on receipt of information about the death of the proprietor as is being done at present) only up to a period of one year from the death of proprietor concerned as aforesaid.

(b) in respect of cases where the death of the proprietor concerned occurred on or after 30-8-1998 and there existed a dispute as to the legal heir of the deceased proprietor.
Provided the information as to the existence of the dispute is received by the Institute within a year of the death of the proprietor concerned. In respect of these cases, the name of proprietary firm concerned shall be kept in abeyance till one year from the date of settlement of dispute.

(c) in respect of cases where the death of the proprietor concerned had occurred on or before 29th August, 1998 (irrespective of the time lag between the date of death of the proprietor concerned and the date of sale/transfer of goodwill completed/to be completed). Provided such a sale/transfer is completed/effected and the Institute's permission to practice in the deceased's proprietary firm name is sought for by 28th August, 1999 and also further provided that the firm name concerned is still available with the Institute."

Q. Can a member publish a change in partnership or change in the address of practice and telephone numbers?

A. Yes, a member can publish a change in partnership or change in the address of practice and telephone numbers. Such announcements should be limited to a bare statement of facts and consideration given to the appropriateness of the area of distribution of the newspaper or magazine and number of insertions.

Q. What is the meantime of communicating with the retiring auditor?

A. Where a new auditor is appointed, the incoming auditor has an obligation to communicate the fact of his appointment to the retiring auditor and make enquiry as to whether there are any professional or other reasons why he should not accept the appointment.

This intended not only as a mark of Professional courtesy but also to know the reasons for the change in order to be able to safeguard member's own interest, the legitimate interest of the public and the independence of the existing

* Contributed by the Ethical Standards Board of the ICAI

accountant. The provision is not intended, in any way, to prevent or obstruct the change.

The incoming auditor may not accept the audit in following cases:-

(i) Non-compliance of the provisions of Sections 224 and 225 of the Companies Act as mentioned in Clause (9);

(ii) Non-payment of undisputed audit fees by auditee's other than in case of sick units for carrying out the statutory audit under the Companies Act, 1956 or various other statutes; and

(iii) Issuance of a qualified report.

Q. Can a member act as an Insurance Surveyor?

A. As per Appendix (9) of CA Regulations, a member of the Institute in practice is generally permitted to act as a Surveyor and Loss Assessor under the Insurance Act, 1938 provided they are otherwise eligible and can perform attest functions.

Q. Whether the members are required to intimate his website address to the Institute?

A. No, members are not required to intimate the Website address to the Institute. However, the Website has to comply with the Guidelines issued by the Institute in this regard.

Q. Can a member act as a Tax Auditor and Internal Auditor of an entity?

A. No, the Council has decided that Tax Auditor cannot as an Internal Auditor or vice-versa for the same financial year.

Q. Can a Concurrent Auditor of a Bank also undertake the assignment of quarterly review of the same bank?

A. No, the Concurrent audit and the Assignment of quarterly review of the same entity cannot be taken simultaneously as the concurrent audit is a kind of internal audit and the quarterly review is a kind of statutory audit. It is prohibited in terms of the `Guidance Note of Independence of Auditors'.

Q. Can a member act as a Insurance Agent and arrange business for Insurance company?

A. No, members are permitted to render Insurance Financial Advisory services. It is not permissible to the members to do any kind of marketing and business procurement for any insurance company. There services should remain limited to professional services in the form of advisory and consultancy services.

Q. Can a member or firm advertise his/its services?

A. Yes, in a restricted manner within the provisions of the Advertisement Guidelines issued by the Council on 14th May, 2008.

Q. Can a member holding Certificate of Practice is entitled to own Agricultural land and continue agricultural activity?

A. Yes, member holding Certificate of Practice can own and hold agricultural land and continue agricultural activity.

Q. What are the Fundamental Principles which a Professional Accountant is required to comply?

A. A professional accountant is required to comply with the following fundamental principles:

(a) Integrity

(b) Objectivity

(c) Professional Competence and Due Care

(d) Confidentiality

(e) Professional Behaviour. ■

Classifieds

5008 Delhi based practising Chartered Accountant having 5 years experience with assurance line of service invites proposals for professional work in the nature of assignments/sub-contracting/networking in the fields of audit/taxation/management consultancy/risk advisory. Please contact CA. Shilpa Vasudeva at cashilpavasudeva@gmail.com or +91 98183 98004

5009 FCA with 35 years experience, in practice, seeks professional work on assignment, sub-contract, retainership basis at Delhi/Dehradun. E-mail: aksg2012@gmail.com

5010 S. Madhavan & Associates, a newly started Chennai based firm seeks professional work. E-mail: madhavan.ca2008@gmail.com, Contact: 9865691436.

Revised Auditor's Report Format – *An Overview* (SA 700 REVISED, SA 705 AND SA 706)[1]

Auditor's report is culmination of the work of the auditor. It is like a mouthpiece of the auditor and a medium of communication with the various stakeholders. In the year 2003, the Institute of Chartered Accountants of India issued SA 700, *The Auditor's Report on Financial Statements* (then known as Auditing & Assurance Standard {AAS} 28), corresponding to the existing International Standard on Auditing (ISA) 700. The Standard laid down the basic principles governing the formation of auditor's opinion on the truth and fairness of the financial statements as also the basic elements of the auditor's report. One of the objectives was to bring in uniformity in the auditor's reporting practices in the country. The Standard contained guidance on various types of audit opinions that could be issued, viz., qualified, adverse and disclaimer. For the first time, it also introduced the concept of an Emphasis of Matter paragraph in the auditor's report.

The 2008 financial crisis brought to fore the increasing demand from the stakeholders, globally, for greater clarity and information in the auditor's report. Particularly, a need was felt to clearly bring out the duties and responsibilities of the management vis a vis the auditors as also the scope of an audit. Accordingly, to respond to these needs of the stakeholders and to strengthen the guidance to the auditors in use of different types of audit opinions, the International Auditing and Assurance Standards Board (IAASB) revised its then existing ISA 700. Under its Clarity Project, IAASB split the erstwhile ISA 700 into three separate International Standards on Auditing (ISAs) as follows:

- ISA 700 (Revised), *Forming an Opinion and Reporting on Financial Statements*
- ISA 705, *Modifications to the Opinion in the Independent Auditor's Report*
- ISA 706, *Emphasis of Matter Paragraphs in the Independent Auditor's Report*

Following these international developments, in the year 2010, the Institute of Chartered Accountants of India, also revised its SA 700 (AAS 28) and issued three separate Standards on Auditing (SA) to deal with the form and content of an independent auditor's report as also the various types of opinion that may be included in the auditor's report corresponding to the aforementioned ISAs. These Standards are:

- SA 700 (Revised), *Forming an Opinion and Reporting on Financial Statements;*
- SA 705, *Modifications to the Opinion in the Independent Auditor's Report;* and
- SA 706, *Emphasis of Matter Paragraphs in the Independent Auditor's Report.*

SA 700 (Revised), as the name makes clear, deals with the auditor's responsibility to form an opinion on the financial statements. It also deals with the form and content of the auditor's report issued as a result of an audit of financial statements. The Standard, unlike its predecessor dealt only with situations where a clean opinion was being issued by the auditor. The concepts of qualified, adverse and disclaimer of opinion being dealt with by a separate SA 705.

SA 705, *Modifications to the Opinion in the Independent Auditor's Report* deals with the auditor's responsibility to issue an appropriate report in circumstances when, in forming an opinion in accordance with SA 700 (Revised)[2] , the auditor concludes that a modification to the auditor's opinion on the financial statements is necessary. Thus, it contains detailed guidance on the existing concepts of qualified, adverse and disclaimer of opinion.

SA 706, *Emphasis of Matter Paragraphs in the Independent Auditor's Report* deals with additional communication in the auditor's report when the auditor considers it necessary to:

- Draw users' attention to a matter or matters presented or disclosed in the financial statements that are of such importance that they are fundamental to users' understanding of the financial statements; or
- Draw users' attention to any matter or matters other than those presented or disclosed in the financial statements that are relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report.

SA 706 envisages two types of such additional communications, one, through an Emphasis of

[1] Contributed by Auditing & Assurance Standard Board Secretariat. The views presented herein do not necessarily represent the views of Auditing and Assurance Standards Board.

[2] SA 700 (Revised), "Forming an Opinion and Reporting on Financial Statements".

Matter Paragraph and the second, through the Other Matter Paragraph. As per SA 706, an ***Emphasis of Matter paragraph*** is a paragraph included in the auditor's report that refers to a matter appropriately presented or disclosed in the financial statements that, in the auditor's judgment, is of such importance that it is fundamental to users' understanding of the financial statements. Further, SA 706 also introduced the concept of ***Other Matter paragraph***. It is a paragraph included in the auditor's report that refers to a matter other than those presented or disclosed in the financial statements that, in the auditor's judgment, is relevant to users' understanding of the audit, the auditor's responsibilities or the auditor's report.

In so far as the basic principles relating to elements of the auditor's report and their presentation is concerned, they are still retained in the SA 700 (Revised), albeit, some improvements to the format of the auditor's report prescribed by the Revised SA 700 to address the stakeholders' information needs. These are:

- Additional description with respect to the responsibilities of the management for the financial statements
- Extensive description with respect to the responsibilities of the auditor
- Segregation of auditor's opinion on financial statements to stand out distinctly from auditor's report on other aspects as may be required by the relevant law/ regulations.
- Following titles be given to the relevant sections of the audit report:
  - Management's responsibility for the financial statements
  - Auditor's responsibility
  - Basis of Qualified/ Adverse/ Disclaimer of opinion *(if so required in terms of SA 705, Modifications to the Opinion in the Independent Auditor's Report)*
  - Opinion
  - Emphasis of Matter *(if so required in terms of SA 706, Emphasis of Matter Paragraphs and Other Matter Paragraphs in the Independent Auditor's Report)*
  - Report on Other Legal and Regulatory Requirements *(To cover reporting on aspects such as section 227(1A) and 227(3)* of the Companies Act, 1956)

All the three aforementioned Standards are applicable for audits of financial statements for periods commencing on or after 1st April, 2012.■

Expert Panel for Addressing Queries Arising During Bank Branch Audits

FOR THE ATTENTION OF THE MEMBERS
EXPERT PANEL FOR ADDRESSING QUERIES ARISING DURING BANK BRANCH AUDITS FOR YEAR ENDING 31ST MARCH 2013

Dear Members,

The bank audit season is around the corner. Given the fact that the banking industry is typical in terms of its geographical and customer spread, the volume and varied nature of products and services offered, coupled with the strict constraints for completing the audits, the members, many a times, face a lot of issues/ queries while conducting Bank Branch Audit. These could include determination of NPA status, implications of complicated data found in a branch audit, unavailability of any relevant RBI circular, implications of the requirements of an RBI circular, nature and adequacy of documentation, possible wordings of the audit report on some important matters in branch audit, issues relating to LFAR, etc.

With a view to support our members for fast resolution of such queries, the Auditing and Assurance Standards Board is pleased to offer an online support to our members from **26th March, 2013 to 10th April, 2013** for the bank branch audits for the year ended 31st March 2013. The queries can be sent at bankauditfaq@icai.org.

The online support facility will be managed by an expert panel constituting the following members:

Panel Coordinators

CA. Abhijit Bandyopadhyay, Central Council Member (CCM) and Chairman, Auditing and Assurance Standards Board

CA. Shriniwas Y. Joshi¸ CCM, CA. Sanjeev Maheshwari, CCM, CA. Nilesh Vikamsey, CCM, CA. J Venkateswarlu, CCM, CA. V Murali, CCM and CA. Anuj Goyal, CCM.

CA. Mehul Shah, Member (IT Support)

Other Members on the Panel

CA. Abhay Kamat, CA. Anagha Thatte, CA. Ashutosh Pednekar, CA. Dhananjay Gokhale, CA. Dilip Dixit, CA. Gautam Shah, CA. Giriraj Soni, CA. Ketan Saiya, CA. Manish Baxi, CA. Manish Sampat, CA. Manoj Daga, CA. Mrudul Gokhale, CA. Nilesh Joshi, CA. Niranjan Joshi, CA. Parag Hangekar, CA. Prakash Kulkarni, CA. Ramesha Shetty, CA. Sandeep Welling, CA. Sanjay Khemani, CA. Sanjay Rane, CA. Shivratan Agarwal, CA. Uday Sathaye, CA. Ulhas Chitale, CA. Vikas Kumar, CA. Vipul Choksi.

The queries so received will be distributed amongst the members of the panel on random basis and they would reply to the same.

Disclaimer

Members are specifically informed that the views expressed by the experts would be their personal views and not necessarily the views of the Institute of Chartered Accountants of India. The Institute or the members of the Panel, in any case, would not take any responsibility of actions taken based on such advice.

To enable us to serve you better, you are also advised to -

- Be brief but provide full information and facts.
- Do not mention the name of the Bank or Branch to avoid problem of violation of confidentiality.
- Avoid rejoinders.
- Do not send the same query twice.
- Draft the report on your own.
- Use your own judgment.

Legal Decisions[1]

Income-tax Act

LD/61/68

Sanofi Pasteur Holdings SA
Vs.
Department of Revenue, Ministry of Finance, Government of India
February 15, 2013 (AP)

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

Where 80% shares of an Indian company were held by French company Shan H and shares of Shan H were transferred by one French company to another, gains would be taxable in France and not in India

Two French companies MA and QIMD held 80% shares in Indian company SBL. They transferred their shares in SBL to their French joint venture Shan H. In 2009 MA and GIMP entered into a share purchase agreement with another French company Sanofi and transferred entire share capital of Shan H.

Before the AAR the French companies contended that no tax liability arose in India as transfers of shares were between two French companies. The department submitted that the only purpose of creating the French-JV Shan H by MA and GIMD was for holding shares and controlling interest in Indian company and, thus, the gains were taxable in India.

The AAR ruled that the only assets of the French-JV, Shan H were shares in the Indian company SBL. By share transfer agreement no control in French JV, Shan H was transferred; in fact, the control in the Indian company SBL was transferred. The AAR opined that the French JV Shan H was created for avoidance of tax. The AAR concluded that gains arising from transfer of shares were liable to tax in India.

Issues before the Andhra Pradesh High Court:

(1) Is Shan H not an entity with commercial substance; is a sham or illusory contrivance, a mere nominee of MA and/or MA/GIMD being the real, legal and beneficial owner(s) of SBL shares; and a device incorporated and pursued only for the purpose of avoiding capital gains liability under the Act ?

(2) Was the investment, initially by MA and thereafter by MA and GIMD through Shan H in SBL, a colourable device designed for tax avoidance? If so, whether the corporate veil of Shan H must be lifted and the transaction (of the sale of the entirety of Shan H shares by MA/GIMD to Sanofi) treated as a sale of SBL shares?

(3) Is the transaction (on a holistic and proper interpretation of relevant provisions of the Act and the DTAA), liable to tax in India?

(4) Whether retrospective amendments to provisions of the Act (by the Finance Act, 2012) alter the trajectory or impact provisions of the DTAA and/or otherwise render the transaction liable to tax under the provisions of the Act?

(5) Whether the AAR ruling dated 28-11-2011 is sustainable? If not, what is the appropriate relief that could be granted to the petitioners (in W.P.Nos.3339 and 3358 of 2012); and whether the orders by the Revenue dated 25-05-2010 and 15-11-2011 are valid and sustainable? and

(6) Whether the order dated 25-05-2010 (challenged in W.P.No.14212 of 2010) determining the petitioner-Sanofi to be an "assessee in default" in respect of payments made by it to MA and GIMD for acquisition of Shan H shares, under section 201(1) of the Act; the consequent notice of demand dated 25-05-2010; and a rectification order dated 15-11-2011 (under section 154 of the Act) recomputing the long-term capital gain, the tax thereon and the consequent interest, are valid?

Conclusions of the Andhra Pradesh High Court:

a) Shan H is an independent corporate entity, registered and resident in France. It has a commercial substance and a purpose (FDI in SBL); and is neither a mere nominee of MA and/or MA/GIMD, nor is a contrivance/device for tax avoidance;

b) Since inception (in 2006) till date, Shan H

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

(not MA or MA/GIMD) had acquired and continues to hold the SBL shares;

c) there is no warrant for lifting the corporate veil of Shan H; and even on looking through the Shan H corporate persona there is no material to conclude that there is a design or stratagem to avoid tax;

d) the capital gain arising as a consequence of the transaction in issue is chargeable to tax; and the resultant tax is allocated to France (not to India) under the DTAA;

e) the retrospective amendments to the Income-tax Act, 1961 (vide the Finance Act, 2012) have no impact on interpretation of the DTAA; the transaction in issue falls within Article 14(5) of the DTAA; and the tax resulting there from is allocated exclusively to France;

f) the ruling dated 28-11-2011 of the Authority for Advance Rulings is unsustainable; and

g) the order of assessment dated 25-05-2010 (determining Sanofi to be an assessee in default, under Section 201 of the Act) is unsustainable. The consequent demand notice dated 25-05-2010 and the Rectification order dated 15-11-2011, being orders/proceedings consequent to the order dated 25-05-2010, are unsustainable.

LD/61/69

Khanna and Annadhanam

Vs.

CIT

January 29, 2013 (DEL)

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

Where under release agreement, assessee-CA firm which was representing a foreign firm for 13 years was to no longer represent foreign CA firm in India and foreign firm would not refer any work to assessee-firm, compensation received by assessee-firm from said foreign CA firm for termination its service would be capital receipt

As per understanding between the assessee-CA firm and a foreign accounting firm, DHS the assessee firm was getting referred work form the foreign firm for about 13 years. The foreign firm wanted another Indian CA firm to represent its work in India. Accordingly, an agreement was entered into on 14.11.1996, which was called a release agreement, under which assessee-CA firm was to no longer represent foreign CA firm in India and foreign firm would not refer any work to assessee-firm. In consideration of the termination of the services of the assessee-firm, a compensation of certain amount was paid by DHS to the assessee-firm. The assessing officer took the view that the receipt was taxable as part of the professional income of the assessee-firm; his decision was reversed by the CIT (Appeals) and on further appeal by the revenue, the Tribunal agreed with the assessing officer.

The Delhi High Court held as follows:

In *Kettle well Bullion & Co. Ltd. v. CIT, (1964) 53 ITR 261* the Supreme Court drew a distinction between the compensation received for injury to trading operations arising from breach of contract or from the exercise of sovereign rights and compensation received as solarium for loss of office. It was held that the compensation received for loss of an asset of enduring value would be regarded as capital.

The ratio of the above judgment applies to the present case. The Tribunal seems to have been troubled by the fact that despite the termination arrangement with DHS the assessee did not cease to carry on the profession. This aspect of the matter has also been answered by the Supreme Court in the above judgment and it has been held that the fact that the assessee continued its business or its usual operations even after termination of the agencies was of no consequence. What appears to be the ratio of the judgment is that if the receipt represents compensation for the loss of a source of income, it would be capital and it matters little that the assessee continues to be in receipt of income from its other similar operations.

The Supreme Court in *Oberoi Hotel Pvt. Ltd. v. CIT, (1999) 236 ITR 903* has held that ordinarily compensation for loss of office or agency is to be regarded as a capital receipt and the only exception where the payment received for termination of an agency agreement could be treated as revenue was where the agency was one of many which the assessee held and its termination did not impair the profit-making structure of the assessee, but was within the framework of the business, it being a necessary incident of the business that existing agencies may be terminated and fresh agencies may be taken. It is somewhat difficult to conceive of a professional firm of chartered accountants entering into such arrangements with international firms of chartered accountants, as the assessee in the present case had done, with the same frequency and regularity with which companies carrying on business take agencies, simultaneously running the risk of such agencies being terminated with the strong possibility of fresh agencies being taken. In a firm of chartered accountants, there could be separate sources of professional income such as tax work, audit work, certification work, opinion work as also referred work. Under the arrangement with DHS, there was a regular inflow of referred work from DHS in respect of clients based in Delhi and nearby areas. There is no evidence that the assessee-firm had entered into similar arrangements with other international firms of chartered accountants. The arrangement with DHS was in vogue for a long period 13 years and had acquired a kind of permanency as a source of income. When that source was unexpectedly terminated, it amounted to the impairment of the profit-making structure or apparatus of the assessee-firm. It is for that loss of the source of income that the compensation was calculated and paid to the assessee. The compensation was thus a substitute for the source. Thus, the Tribunal was wrong in treating the receipt as being revenue in nature. Thus, the amount received by the assessee-CA firm in terms of release agreement represents a capital receipts, not assessable to income tax.

LD/61/70
CIT, Patiala
Vs.
Groz Beckert Asia Limited
January 24, 2013 (P&H)(FB)

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

Corporate membership fee paid to Golf Club is allowable as revenue expenditure

The assessee-company obtained corporate membership of Golf Club, Chandigarh on payment of ₹6 lacs. ₹16,945/- was paid towards services and facilities used during the relevant assessment year. The Assessing Officer declined such expenses for the reason that the same are personal expenses of the Managing Director and other employees and, thus, added back to the income of the assessee. In appeal before the Commissioner (Appeals), the said disallowance was set aside holding that club membership is in the nature of an advantage in the commercial sense and not in the capital field. The Tribunal affirmed the findings recorded by the Commissioner (Appeals).

The Full Bench of Panjab and Haryana High Court held as follows:

Section 37 provides that “Any expenditure (not being expenditure of the nature described in Sections 30 to 36) and not being in the nature of capital expenditure or personal expenses of the assessee, laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head 'Profits and gains of business or profession”. It is not easy to define the term ‘capital expenditure’ in the abstract or to lay down any general and satisfactory test to discriminate between a capital and a revenue expenditure. Some of the broad principles deduced by the Apex Court are that, outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment and; expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence as asset or an advantage for the enduring benefit of a trade. The expression ‘enduring benefit’ or ‘of a permanent character’ were introduced to make it clear that the asset or the Right acquired must have enough durability to justify its being treated as a capital asset.

The Supreme Court in *Assam Bengal Cement Co. Vs. Commissioner of Income Tax, West Bengal (1955) 27 ITR 34* has culled down the following tests to determine the nature of expenditure:

> “1. Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment.
> 2. Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade.
> 3. Whether, for the purpose of the expenditure, any capital was withdrawn, or, in other words,

> whether the object of incurring the expenditure was to employ what was taken in as capital of the business. Again, it is to be seen whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital."

In *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, 124 ITR 1*, it was observed that it is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating, the assessee is trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case.

Applying the principles laid down in the previously mentioned judgments, the Bombay High Court in *Otis Elevator Co. India Ltd. Vs. Commissioner of Income Tax (1992) 195 ITR 682*, allowed the payment of club fee as a business expenditure. Similar view was taken by the Delhi High Court in *Commissioner of Income Tax Vs. Engineers India Ltd.(1999) 239 ITR 237* in respect of membership fee of a club. Referring to the judgment in *Assam Bengal Cement Co. Ltd. case (supra)*, it was observed that if expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure. If, on the other hand, it is made only for running the business or working it with a view to produce the benefits, it is a revenue expenditure. It was held that payment of membership fee has to be allowed as revenue expenditure.

The Gujarat High Court in *Gujarat State Export Corporation Limited Vs. Commissioner of Income Tax (1994) 209 ITR 649* examined the payment of fee to the Sports Club of Gujarat Limited. It was held that if expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure. But if it is made for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. In view of the tests laid down, it was held that payment of entrance fee for becoming a member of the sports club cannot be termed as a capital expenditure.

The second test is that expenditure should bring into existence *an asset or an advantage for the enduring benefit of a trade*. In the present case, the corporate membership of Rs. 6 lacs was for a limited period of 5 years. The corporate membership was obtained for running the business with a view to produce profit. Such membership does not bring into existence an asset or an advantage for the enduring benefit of the business. It is an expenditure incurred for the period of membership and is not long lasting. By subscribing to the membership of a club, no capital asset is created or comes into existence. By such membership, a privilege to use facilities of a club alone, are conferred on the assessee and that too for a limited period. Such expenses are for running the business with a view to produce the benefits to the assessee. Consequently, it cannot be treated as capital asset.

Note: The view of Division Bench of the Punjab and Haryana High Court in Commissioner of Income Tax – I, Ludhiana Vs. Majestic Auto Limited, Ludhiana [ITA No.448 of 2007 decided on 11.09.2008], overruled.

LD/61/71

Confederation of Indian Pharmaceutical Industry (SSI)
Vs.
CBDT
December 26, 2012 (HP)

Section 37 (1) of the Income-Tax Act, 1961 - Business expenditure – Allowable as *Circular No. 5/2012 dated 1.8.2012 issued by the Central Board of Direct Taxes providing* *that claim of any expense incurred in providing freebees in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under section 37 (1), is valid*

Circular No. 5/2012 dated 1.8.2012 issued by the Central Board of Direct Taxes provides that the claim of any expense incurred in providing freebees in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 shall be inadmissible under Section 37(1) being an expense prohibited by the law. This disallowance shall be made in the hands of such pharmaceutical or allied health sector Industries or other assessee, which has provided freebees and claimed it as a deductable expense in its accounts against income. The Confederation of Indian Pharmaceutical Industry (SSI) contended that circular goes beyond the section itself.

The High Court of Himachal Pradesh held that the regulation of the medical Council of India is a very salutary regulation which is in the interest of the patients and the public. This Court is not oblivious to the increasing complaints that the medical practitioners do not prescribe generic medicines and prescribe branded medicines only in lieu of the gifts and other freebies granted to them by some particular pharmaceutical industries. Once this has been prohibited by the Medical Council under the powers vested in it, Section 37(1) comes into play.

It cannot be contended that the Circular goes beyond the section itself. The *Explanation* to Section 37(1) makes it clear that any expenditure incurred by an assessee for any purpose, which is prohibited by law, shall not be deemed to have been incurred for the purpose of business or profession. The sum and substance of the circular is also the same. In case the assessing authorities are not properly understanding the circular then the remedy lies for each individual assessee to file appeals under the Income-tax Act but the circular which is totally in line with Section 37(1) cannot be said to be illegal. In fact Para 4 of the circular itself clarifies that the value of the freebies enjoyed by the medical practitioner is also taxable as business income or income from other sources depending on the facts of each case. Under the regulations framed by the medical council one may legitimately claim a deduction, but it is for the assessee to satisfy the assessing officer that the expense is not in violation of the Medical Council Regulations.

LD/61/72

Director of Income-tax-II
Vs.
OHM Limited
December 6, 2012 (DEL)

Section 44BB, read with section 44DA and Section 197 of the Income-tax Act, 1961 - Non-residents, business of exploration mineral oils etc

Assessee-UK company providing geophysical services to oil and gas exploration industry, would fell to be assessed under section 44BB as claimed by it and not under section 44DA as claimed Revenue

The assessee UK company is providing geophysical services to oil and gas exploration industry. It conducts electromagnetic survey, processing and interpretation of data. The data so collected through the survey is used in off shore oil industry. Two exploration companies awarded contracts to the assessee for procuring data, processing and interpreting the data in respect of an off shore exploration block in India. The respondent is paid for mobilisation as well as de-mobilisation of its vessels from the site area and for providing services in connection with the prospecting for extraction or production of mineral oils. The assessee applied to the concerned authority under Section 197 of the Act for issuance of a certificate for receiving payments after deduction of tax at the lesser rate of 4.223% as per the provisions of section 44BB. The main contention of the Revenue is that section 44BB would not apply to the present case and that the appropriate provision to be applied was Section 44DA, read with section 9(1)(vii), *Explanation* 2.

On the other hand the contention urged on behalf of the assessee is that it is Section 44BB which is the more specific of the two sections and which made "special provision for computing profits and gains in connection with the business of exploration, etc. of mineral oils" that was applicable and not Section 44DA which made "special provision for computing income by way of royalties, etc. in case of non-resident".

The Delhi High Court held that the rule is that the specific provision excludes the general provision. Section 44BB is a special provision for computing the profits and gains of a non-resident in connection with the business of providing services or facilities in connection with, or supplying plant and machinery on hire, used or to be used, in the prospecting for, or extraction or production of mineral oils including petroleum and natural gas. Section 44DA is also a provision which applies to non-residents only. It is, however, broader and more general in nature and provides for assessment of the income of the non-resident by way of royalty or fees for technical services, where such non-resident carries on business in India through a permanent establishment situated therein or performs services from a fixed place of profession situated in India and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with the permanent establishment or fixed place of profession. Such income would be computed and assessed under the head "business" in accordance with the provisions of the Act, subject to the condition that no deduction would be allowed in respect of any expenditure or allowance which is not wholly or exclusively incurred for the business of such permanent establishment or fixed place of profession or in respect of amounts, if any, paid by the permanent establishment to its head office or to any of its other offices. Under section 44BB one does not find any reference to a permanent establishment in India. The type of services contemplated by the provision is more specific than what is contemplated by Section 44DA. Section 44BB refers specifically to *"services or facilities in connection with, or supplying plant and machinery on hire, used or to be used in the prospecting for, or extraction or production of mineral oils"*. Revenues earned by the non-resident from rendering such specific services are covered by Section 44BB.

It is a well settled rule of interpretation that if a special provision is made respecting a certain matter, that matter is excluded from the general provision under the rule which is expressed by the maxim "*Generallia specialibus non derogant*". It is again a well-settled rule of construction that when, in an enactment two provisions exist, which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is stated to be the "rule of harmonious construction".

If section 44DA is held to cover all types of services rendered by the non-resident, that would reduce section 44BB to a useless lumber or dead letter and such a result would be opposed to the very essence of the rule of harmonious construction.

The second *proviso* to sub-section (1) of Section 44DA inserted by the Finance Act, 2010 *w.e.f.* 01.04.2011 makes the position clear. Simultaneously a reference to Section 44DA was inserted in the proviso to sub-section (1) of section 44BB. It should be remembered that section 44DA also requires that the

non-resident or the foreign company should carry on business in India through a permanent establishment situated therein and the right, property or contract in respect of which the royalty or fees for technical services is paid should be effectively connected with the permanent establishment. Such a requirement has not been spelt out in Section 44BB; moreover, a flat rate of 10% of the revenues received by the non-resident for the specific services rendered by it are deemed to be profits from the business chargeable to tax in India under Section 44BB, whereas under Section 44DA, deduction of expenditure or allowance wholly and exclusively incurred by the non-resident for the business of the permanent establishment in India and for expenditure towards reimbursement of actual expense by the permanent establishment to its head office or to any of its other offices is allowed from the revenues received by the non-resident. Because of the different modes or methods prescribed in the two sections for computing the profits, it apparently became necessary to clarify the position by making necessary amendments. That perhaps is the reason for inserting the second proviso to sub-section (1) of Section 44DA and a reference to section 44DA in the proviso below sub-section (1) of Section 44BB. A careful perusal of both the provisos shows that they refer only to computation of the profits under the sections. If both the sections have to be read harmoniously and in such a manner that neither of them becomes a useless lumber then the only way in which the provisos can be given effect to is to understand them as referring only to the computation of profits, and to understand the amendments as having been inserted only to clarify the position. So understood, the proviso to sub-section (1) of Section 44BB can only mean that the flat rate of 10% of the revenues cannot be deemed to be the profits of the non-resident where the services are of the type which do not fall under that section, but are more general in nature so as to fall under Section 44DA. Similarly, the second proviso to sub-section (1) of Section 44DA can only be interpreted to mean that where the services are general in nature and fall under the sub-section read with *Explanation* 2 to Section 9(1)(vii) of the Act, then an assessee rendering such services as provided in Section 44BB cannot claim the benefit of being assessed on the basis that 10% of the revenues will be deemed to be the profits as provided in Section 44BB. In other words, the amendment made by the Finance Act, 2010 w. e. f. 01.04.2011 in both the sections, cannot have the effect of altering or effacing the fundamental nature of both the provisions or their respective spheres of operation or to take away the separate identity of Section 44BB. Therefore, in the present case the profits would be computed in accordance with the provisions of section 44BB and not section 44DA.

LD/61/73
CIT
Vs.
Gita Duggal
February 21, 2013 (DEL)
[Assessment Year 2007-08]

Section 54 and 54F of the Income tax Act, 1961 - Capital gains - Profit on sale of residential property

Expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number; Residential house consisting of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under Section 54/54F, it is neither expressly nor by necessary implication prohibited

The assessee was the owner of a building property from where she was deriving rental income. She entered into a collaboration agreement to develop, construct, and/or put up a building consisting of basement, ground floor, first floor, second floor and third floor with terrace at its own costs and expenses. In addition to the cost of construction incurred by the builder on development of the property, a further payment of four crores was payable to the assessee as consideration against the rights of the assessee. The builder was to get the third floor. The assessee claimed that if the cost of construction of ₹3.44 cores incurred by the builder is to be added to the sale price of ₹4 cores then the same should also be correspondingly taken to have been invested in the residential house namely the two floors which the assessee was to get in addition to the cash amount under the agreement with the builder, and the amount so spent on the construction should be allowed as deduction under Section 54.

The assessing officer rejected the claim for deduction under Section 54 on the footing that the two floors obtained by the assessee contained two separate residential units having separate entrances and cannot qualify as a single residential unit. He agreed that the assessee was eligible for the relief under section 54F in respect of the cost of construction incurred on one unit. He therefore, apportioned the construction cost for different floor (unit) and allowed the relief under Section 54F only in respect of one unit. This was disapproved by the CIT (Appeals) on the basis of the judgment in *CIT v. B. Anada Basappa, (2009) 309 ITR 329* and his decision was approved by the Tribunal. The Tribunal expressed the view that the words “a residential house” appearing in Section 54/54F cannot be construed to mean a single residential house since under Section 13(2) of the General Clauses Act, a singular includes plural.

The Delhi High Court held that:

The judgment of the Karnataka High Court in CIT v. B. Anada Basappa (Supra) supports the contention of the assessee. An identical contention raised by the revenue before that Court was rejected in the following terms:

> *“The contention of the Revenue is that the phrase "a" residential house would mean one residential house and it does not appear to the correct understanding. The expression "a" residential house should be understood in a sense that building should be of residential in nature and "a" should not be understood to indicate a singular number. The combined reading of sections 54(1) and 54F discloses that, a non residential building can be sold, the capital gain of which can be invested in a residential building to seek exemption of capital gain tax. However, the proviso to section 54, lays down that if the assessee has already one residential building, he is not entitled to exemption of capital gains tax, when he invests the capital gain in purchase of additional residential building.”*

There could also be another angle. Section 54/54F uses the expression “a residential house”. The expression used is not “a residential unit”. This is a new concept introduced by the assessing officer into the section. Section 54/54F requires the assessee to acquire a “residential house” and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the section should be taken to have been satisfied. There is nothing in these sections which require the residential house to be constructed in a particular manner. The only requirement is that it should be for the residential use and not for commercial use. If there is nothing in the section which requires that the residential house should be built in a particular manner, it seems to us that the income tax authorities cannot insist upon that requirement. A person may construct a house according to his plans and requirements. Most of the houses are constructed according to the needs and requirements and even compulsions. There may be several considerations for a person while constructing a residential house. Therefore, the physical structuring of the new residential house, whether it is lateral or vertical, should come in the way of considering the building as a residential house. The fact that the residential house consists of several independent units can not be permitted to act as an impediment to the allowance of the deduction under Section 54/54F. It is neither expressly nor by necessary implication prohibited.

LD/61/74
CIT, Delhi-V
Vs.
N.R. Portfolio Pvt. Ltd
December 21, 2012 (DEL)
[Assessment Year 2004-05]

Section 68 of the Income- tax Act, 1961 – Cash Credit

Concept of “shifting onus” does not mean that once certain facts are provided, the assessee’s duties are over; if on verification, or during proceedings, the AO cannot contact the share applicants, or that the information becomes unverifiable, or there are further doubts in the pursuit of such details, the onus shifts back to the assessee and at that stage, if it falters, the consequence may well be an addition under Section 68

The assessee cannot be faulted if the share applicants do not respond to summons, and that the state or revenue authorities have the wherewithal to compel anyone to attend legal proceedings. An assessee's duty to establish that the amounts which the AO proposes to add back, under Section 68 are properly sourced, does not cease by merely furnishing the names, addresses and PAN particulars, or relying on entries in a Registrar of Companies website. One must remember that in all such cases, more often than not, the company is a private one, and share applicants are known to it, since they are issued on private placement, or even request basis. If the assessee has access to the share applicant's PAN particulars, or bank account statement, surely its relationship is closer than arm's length. Its request to such concerns to participate in income tax proceedings, would, viewed from a pragmatic perspective, be quite strong, because the next possible step for the tax administrators could well be reopening of such investor's proceedings. That apart, the concept of "shifting onus" does not mean that once certain facts are provided, the assessee's duties are over. If on verification, or during proceedings, the AO cannot contact the share applicants, or that the information becomes unverifiable, or there are further doubts in the pursuit of such details, the onus shifts back to the assessee. At that stage, if it falters, the consequence may well be an addition under Section 68.

LD/61/75

Fiat India Automobiles Limited
Vs.
Virendra Singh, Asstt. CIT-10, Mumbai
October 16, 2012 (BOM)

Section 127 of the Income-tax Act, 1961 – Income-tax Authorities – Transfer of Cases

Once Commissioner has passed order transferring case from one jurisdiction to another, corrigendum order passed behind back of assessee without issuing any notice to assessee would be non-existent and any proceeding based on such illegal corrigendum order would not sustain

The CIT-10 Mumbai had transferred the jurisdiction to assess/reassess the petitioner from ACIT 10(1) Mumbai to DCIT Circle 1(2) Pune under Section 127 after hearing the petitioner on 22.11.2011. Later on the CIT-10 Mumbai at the instance of ACIT 10(1) Mumbai issued a corrigendum order on 27.03.2012 behind the back of the petitioner. Neither any notice for the same issued to the assessee, nor the corrigendum order was communicated to the assessee. Then the ACIT-10(1) Mumbai issued the impugned notice under Section 148 dated 30.03.2012 on the basis of the said corrigendum order.

The Bombay High Court held that once the jurisdiction to assess the petitioner was transferred by the CIT-10 Mumbai from ACIT-10(1) Mumbai to DCIT Circle 1(2) Pune by order dated 22.11.2011 it was totally improper on the part of ACIT 10(1) Mumbai to request the CIT-10, Mumbai to pass a corrigendum order with a view to circumvent the jurisdictional issue. Making such a request on the part of ACIT-10(1) Mumbai to the CIT-10 Mumbai, was in gross abuse of the process of law. If there was any time barring issue, the ACIT-10(1) Mumbai ought to have asked his counterpart at Pune to whom the jurisdiction was transferred to take appropriate steps in the matter instead of taking steps to circumvent the jurisdictional issue. It does not befit ACIT-10(1) Mumbai to indulge in circumventing the provisions of law and was to be condemned the conduct of ACIT10(1) Mumbai in that behalf. Instead of bringing to book the persons who circumvent the provisions of law, the ACIT10(1) Mumbai has himself indulged in circumventing the provisions of law which is totally disgraceful.

In any event, the CIT-10 Mumbai ought not to have succumbed to the unjust demands of ACIT-10(1) and instead ought to have admonished the ACIT 10(1) for making such unjust request. The CIT-10 Mumbai ought to have known that there is no provision under the Act which empowers the CIT to temporarily withdraw the order passed by him under Section 127(2) for the sake of administrative convenience or otherwise. If the CIT-10 Mumbai was honestly of the opinion that the order passed under Section 127(2) was required to be recalled for any valid reasons, then, the CIT-10 Mumbai ought to have issued notice to that effect to the petitioner and after hearing the petitioner ought to have passed any order as he deemed fit and serve the same to the petitioner.

In the present case, admittedly, the CIT-10 Mumbai had not issued any notice and had not heard the petitioner before passing the Corrigendum order and infact the said corrigendum order had not been communicated to the petitioner before issuing the impugned notice dated 30.03.2012 and admittedly the alleged corrigendum order was served upon the petitioner for the first time in Court.

In these circumstances, the impugned notice dated 30.03.2012 issued by the ACIT 10(1) Mumbai based on the corrigendum order passed allegedly by the CIT-10 Mumbai at the behest of ACIT 10(1) Mumbai and in gross abuse of the process of law. Apart from the fact that the CIT-10 Mumbai had no jurisdiction to temporarily suspend an order passed under Section 127(2) of the Act, in the fact of the present case, the impugned corrigendum order passed behind the back of the petitioner without issuing any notice to the petitioner, without hearing the petitioner and admittedly uncommunicated to the petitioner till date, would have no legal existence and therefore the impugned notice dated 30.03.2012 based on the legally non-existent corrigendum order dated 27.03.2012 cannot be sustained.

LD/61/76

CIT, Andhra Pradesh-I, Hyderabad
Vs.
Bake Food Products (P.) Ltd.
August 21, 2012 (AP)
[Assessment Year 1986-87]

Section 144, read with sections 139, of the Income-tax Act, 1961 – Best Judgment Assessment

Prior to 1-4-1989, where various discrepancies had been pointed out by the AO in the return filed, but assessee did not rectify same, AO should proceed as if assessee had failed to furnish return and he should issue notice under section 139(2); he should not make ex-parte assessment under section 144

The respondent/assessee filed its return of income for the assessment year 1986-87 admitting a loss. Notice under Section 143(2) was issued fixing the date of hearing. There was no response to this notice. A detailed letter was issued by the assessing officer to the assessee stating that the return was not accompanied by the audited balance sheet and profit and loss account and sought an explanation from the assessee as to various discrepancies noticed in the books of account. As the assessee had not furnished any information even after giving of three months time and as the assessing officer felt that the assessment was getting barred by limitation by 31-03-1989, he completed the assessment based on the information available on record to the best of his judgment under section 144.

The Andhra Pradesh High Court held that section 139 (1) provides for filing of a return by an assessee if his total income during the previous year exceeds the maximum amount which is not chargeable to income tax.

Sub-section (2) in section 139 was omitted by the Direct Tax Laws (Amendment) Act, 1987 with effect from 01-04-1989. But since the subject matter of the present case is the assessment made on 20.3.1989 for assessment year 1986-87, the effect of sub-section (2) of section 139 has to be considered and it cannot be ignored.

Section 144 provides for best judgment assessment of tax by an assessing officer. For the subject assessment year 1986-87, Section 144(1) (a) provided for a best judgment assessment being made by the assessing officer if an assessee failed to make the return required "by any notice given under sub-section (2) of Section 139" and has not made a return or revised return under sub-section (4) of sub-section (5) of Section 139. By the Direct Tax Laws (Amendment) Act, 1987, w.e.f.1.4.1989, the words "by any notice given under sub-section (2) of Section 139" in section 144(1)(a) were substituted by the words "under sub-section (1) of s. 139". But since this amendment came into force only with effect from 01-04-1989, the pre-amended provision applied to the present case (as the subject assessment year is 1986-87). Therefore best judgment assessment can only be made under Section 144(1)(a) if an assessee fails to make the return required by any notice given under sub-section (2) of Section 139 and has not made a return or revised return under sub-section (4) or sub-section (5) of that Section.

Section 144 also provides for a best judgment assessment to be made under clause 1(b) (which is not relevant for the present case) and under clause 1(c) thereof. Section 144 (1)(c) provided that a best judgment assessment can be made by the assessing officer if the assessee having made a return, failed to comply with all the terms of a notice issued under Section 143(2) of the Act.

No doubt Section 144(1)(c) provides for a situation where a best judgment assessment can be made when the assessee having made a return fails to comply with all the terms of a notice issued under Section 143 (2). But the interplay between section 144(1)(a) and section 144(1)(c) and the proper course of action to be followed by an assessing officer before making a best judgment assessment where a return filed is defective is set out by the Circular No. 281, dated 22-9-1980. The said circular is not contrary to the provisions of the Act and it correctly guides the assessing officer as to what is to be done before proceeding to make best judgment assessment when a return filed *suo motu* by the assessee is found defective. Moreover, the circular is beneficial to the assessee as it provides him a further opportunity to give his correct income details after his earlier return is found to be defective (as he can give them atleast after receiving the notice under section139(2)).

By the above circular the C.B.D.T. has rightly directed that in case where the return is furnished voluntarily under Section 139 (1), the I.T.O. cannot proceed to make ex parte assessment under Section 144 without serving notice under Section 139(2) or as the case may be under Section 148. This circular is binding on the assessing officer.

On the facts of the present case, when the assessee filed a defective return, and did not rectify the defects which were pointed out by the I.T.O., the assessing officer was bound to treat the return of income as invalid and take further proceedings on the footing that the assessee had failed to furnish the return. The assessing authority could not have proceeded to make *ex parte* assessment under Section 144 without serving notice under Section 139(2) or as the case may be under Section 148.

LD/61/77
CIT-V
Vs.
Orient Craft Ltd.
December 12, 2012 (DEL)
[Assessment Year 2002-2003]

Section 147 read with Section 143 of the Income-tax Act, 1961 – Income Escaping Assessment

Where the reasons disclose that Assessing Officer reached the belief that there was escapement of income "on going through the return of income" filed by assessee after he accepted said return under section 143(1) without scrutiny, and nothing more, this is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer

The assumption that somehow the words "reason to believe" have to be understood in a liberal manner where the finality of an intimation under Section 143(1) is sought to be disturbed, is erroneous and misconceived. There is no warrant for such an assumption because of the language employed in Section 147; it makes no distinction between an order passed under section 143(3) and the intimation issued under section 143(1).

Therefore it is not permissible to adopt different standards while interpreting the words "reason to believe" *vis-à-vis* Section 143(1) and Section 143(3). None can appreciate what permits the Revenue to assume that somehow the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of an assessment earlier made under Section 143(3) cannot apply where only an intimation was issued earlier under Section 143(1). It would in effect place an assessee in whose case the return was processed under Section 143(1) in a more vulnerable position than an assessee in whose case there was a full-fledged scrutiny assessment made under Section 143(3). Whether the return is put to scrutiny or is accepted without demur is not a matter which is within the control of assessee; he has no choice in the matter. The other consequence, which is somewhat graver, would be that the entire rigorous procedure involved in reopening an assessment and the burden of proving valid reasons to believe could be circumvented by first accepting the return under Section 143(1) and thereafter issue notices to reopen the assessment.

An interpretation which makes a distinction between the meaning and content of the expression “reason to believe” in cases where assessments were framed earlier under Section 143(3) and cases where mere intimations were issued earlier under Section 143(1) may well lead to such an unintended mischief. It would be discriminatory too. An interpretation that leads to absurd results or mischief is to be eschewed.

From the observations of the Supreme Court itself in *Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers P. Ltd.(2007) 291 ITR 500*, it would appear clear that the court reiterated that *“so long as the ingredients of section 147 are fulfilled”* an intimation issued under section 143(1) can be subjected to proceedings for reopening. The court also emphasised that the only requirement for disturbing the finality of an intimation is that the assessing officer should have “reason to believe” that income chargeable to tax has escaped assessment. The said expression should apply to an intimation in the same manner and subject to the same interpretation as it would have applied to an assessment made under section 143(3).

If an “intimation” is not an “assessment” then it can never be subjected to section 147 proceedings, for, that section covers only an “assessment”. An “intimation” can be subjected to section 147 proceedings. If the revenue wants to invoke section 147, it should play by the rules of that section and cannot bog down. In other words, the expression “reason to believe” cannot have two different standards or sets of meaning, one applicable where the assessment was earlier made under section 143(3) and another applicable where an intimation was earlier issued under section 143(1). It follows that it is open to the assessee to contend that notwithstanding that the argument of “change of opinion” is not available to him, it would still be open to him to contest the reopening on the ground that there was either no reason to believe or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment. In doing so, it is further open to the assessee to challenge the reasons recorded under section 148(2) on the ground that they do not meet the standards set in the various judicial pronouncements.

Where the reasons disclose that the Assessing Officer reached the belief that there was escapement of income *“on going through the return of income”* filed by the assessee after he accepted the return under Section 143(1) without scrutiny, and nothing more. This is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer. A less strict interpretation of the words “reason to believe” vis-à-vis an intimation issued under section 143(1) can cause to the tax regime. Where there is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer subsequent to the issue of the intimation, it will be an arbitrary exercise of the power conferred under section 147.

LD/61/78

CIT (Central), Gurgaon
Vs.
C & C Constructions
October 18, 2012 (P&H)

Section 245D of the Income-tax Act, 1961 - Settlement Commission - Procedures on application under section 245C

Where applications were filed by the respondent-assessees under Section 245(D)(2C) for settlement of their cases and objections of the Revenue to the admissibility of the applications were turned down by Settlement Commissioner, at this stage only a prima facie view was expressed by the Settlement Commission and applications were yet to be considered on their merits, writ jurisdiction of high court could not be invoked

The applications were filed by the respondents under Section 245(D)(2C) for settlement of their cases. The Settlement Commission had called for the report from the Commissioner of Income-tax. The CIT had raised objections to the admission of the applications filed by the respondents and had submitted that since the respondents had not given the complete and true disclosure of all the facts, such applications were narrated with a outright rejection. The main submission in this behalf was that respondent No. 2 was a non-existence entity.

This and other objections of the petitioner have been discussed by the Settlement Commission, but were turned down with the observations that right from the search the existence and disclosure of undisclosed income in the status of AOP was accepted. Accordingly, the objections of the petitioner to the admissibility of the applications were turned down and the Settlement Commission had decided to proceed with the consideration of those applications on merits.

The Punjab and Haryana High court held that It was clear from the impugned order that at this stage only a *prima facie* view was expressed by the Settlement Commission and rightly so because of the reason that the applications were yet to be considered on their merits. At this stage, it was still open to the Income Tax Department to raise objections, which were available under the law, opposing the said applications. It was only after the applications were considered on merits in the light of submissions made by respondents and the opposition of the department on the merits of these applications that Settlement Commission would arrive at a final conclusion whether to accept the applications of the respondents or not and even if these were to be accepted on what terms. Having regard to the aforesaid considerations in mind, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India, it was not necessary to go into the validity of the impugned order at this stage. In case the final order passed by the Settlement Commission was against the department or was not acceptable on the terms on which the same was passed, it would be open to the department to challenge the same by filing appropriate proceedings.

LD/61/79

CIT

Vs.

Sania Mirza

February 9, 2012 (AP)

[Assessment Year 2004-2005]

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

Where assessee player disclosed the details of awards received from the government and other institutions but did not offer them to tax and subsequent to reopening of assessment voluntarily offered same to tax, penalty could not be levied

The assessee is a tennis player. She filed her return of income declaring a total income of ₹94,605. Along with her return of income, she filed a statement of affairs wherein she disclosed that she had received ₹30,63,310 as awards from the Government and from other institutions. This amount was not offered to tax although it was disclosed in the statement of affairs along with the return. When the assessment was reopened, she voluntarily offered ₹30,63,310 for tax. It was stated that the amount was shown in the capital account and was not shown as a capital receipt.

The Assessing Officer accepted the amount as taxable income and levied the tax accordingly. The Assessing Officer decided to impose penalty of ₹10,14,582 on the ground that the assessee had furnished inaccurate particulars of her income and concealed her income.

The Court held that there is nothing to suggest that the assessee acted in a manner such as to lead to the conclusion that she had concealed the particulars of her income or had furnished inaccurate particulars of income. The admitted position is that the amount of ₹30,63,310 was shown by her in the return. That being the position, it cannot be said that there was any concealment. There is no dispute about the fact that the amount was correctly mentioned and therefore, there is also nothing inaccurate in the particulars furnished by her. The only error that seems to have been committed was that it was not shown as a capital receipt. But as soon as this was pointed out, the error was accepted and the amount was surrendered to tax. Hence, this is not a fit case for imposition of penalty.

INDIRECT TAXES

Excise

LD/61/80

Larsen & Toubro Limited
Vs.
Union of India and Others
February 1, 2013 (BOM)

Section 87 of the Finance Act, 1994 and Section 35F of the Central Excise Act, 1944 - Recovery of any amount due to Central Government

Provisions contained in CBDT circular dated 1st January 2013 mandating initiation of recovery proceedings thirty days after the filing of an appeal, if no stay is granted, cannot be applied to an assessee who has filed an application for stay, which has remained pending for reasons beyond the control of the assessee, as same would be patently arbitrary and violative of Article 14 of the Constitution

In this batch of writ petitions under Article 226 of the Constitution there is a challenge to circular dated 1st January 2013 issued by the Central Board of Excise and Customs which stipulates that though an application for stay of the recovery of the demand has been filed before the appellate forum, recoveries would be proceeded with on the expiry of a stipulated period, and in certain cases immediately. According to the Petitioners when the stay application remains to be disposed of due to the inability of the appellate authority to take up the application for hearing and for disposal, and without any default on the part of the assessee, it would be arbitrary to penalize the assessee by enforcing the recovery despite the pendency of the application for stay.

The High Court of Bombay held as follows:

In the present batch of cases the dispute relates to the instructions which have been issued in Sr. Nos. 3, 6, 9, 10 and 11 of the table appended to the circular dated 1 January 2013. Sr. Nos., 3, 6 and 9 all deal with situations where appeals are filed together with an application for stay. Sr. No.3 deals with an appeal to the Commissioner (Appeals), Sr. No. 6 with an appeal to the CESTAT against an original order of the Commissioner and Sr. No. 9 with an appeal before the CESTAT against an order of the Appellate Authority confirming a demand for the first time. The Board has now mandated that even though an application for stay has been filed with the appeal, recovery would be initiated thirty days after the filing of the appeal if no stay is granted or after the disposal of the stay petition in accordance with the conditions of stay, if any, whichever is earlier. There can be no legitimate grievance in regard to the latter part under which recovery can be initiated after the disposal of the stay petition, in accordance with the conditions of stay. Where the assessee has been granted a stay subject to condition, but fails to comply with a condition of pre-deposit, there can be no possible reason to find fault with the Revenue in initiating recovery proceedings. However, the first part of the direction requires that recovery proceedings be initiated thirty days after the filing of the appeal, if no stay is granted. In other words, though an application for stay has been filed with

the appeal and is pending disposal before the Appellate Authority, the circular mandates that recovery proceedings should be initiated.

The Central Excise Act, 1944 has introduced provisions by which a time limit has been legislated for the disposal of appeals. But the time limit is obviously not inflexible because sub-section (4A) of Section 35A which governs the disposal of appeals by the Commissioner (Appeals) and sub section (2A) of Section 35C which governs the disposal of appeals by the Tribunal prescribe periods for disposal "where it is possible to do so". As regards stay applications, the second proviso to Section 35F requires the Commissioner (Appeals) again "where it is possible to do so to decide an application for stay within thirty days from the date of its filing". In regard to the Appellate Tribunal sub-section (2A) of Section 35C was introduced by Amending Act 20 of 2002. Under the first proviso, it came to be stipulated that where an order of stay is made in any proceedings relating to an appeal filed under Section 35B(1), the Tribunal shall dispose of the appeal within a period of 180 days from the date of such order. The second proviso stipulated that if such an appeal is not disposed of within that period, the stay order shall on the expiry of that period stand vacated. Now the reason why the Appellate Tribunal may not be able to dispose of the appeal within a period of 180 days may have no bearing on the conduct of the assessee, but on the availability of sufficient judicial and administrative infrastructure for the disposal of appeals. Undoubtedly, in a given case the failure of a judicial body to dispose of the appeal expeditiously may be the consequence of dilatory tactics by the assessee, but that is not necessarily so. This issue was dealt with by the Supreme Court in a judgment in *Commissioner of Customs and Central Excise, Ahmedabad v. Kumar Cotton Mills Pvt. Ltd.2005 (180) ELT 434 (S.C).* The Supreme Court noted that sub-section (2A) of Section 35C was a provision which has been made by Parliament to curb dilatory tactics of those assesses who, having got an interim order in their favour, seek to continue their operation by delaying the disposal of the proceedings, thus, depriving the revenue not only of the benefit of the assessed value, but of a decision on points which may have an impact on other cases. At the same time, the Supreme Court emphasized that the provision cannot be interpreted to punish an assessee whose appeal has not been disposed of within the stipulated time limit for reasons beyond the control of the assessee.

Where the failure of the Appellate Authority to dispose of the appeal or the application for stay arises without any default on the part of the assessee, and without the assessee having resorted to any dilatory tactics, there would, be no reason or justification to penalize the assessee by recovering the demand in the meantime. Undoubtedly, where the assessee has been responsible for the delay in the disposal of the stay application, such an assessee cannot be heard to complain if the Revenue were to initiate steps for recovery. But the vice of the Circular of the Board dated 1 January 2013 is that it mandates that steps for recovery must be initiated thirty days after the filing of the appeal if no stay is granted. In a situation where the Commissioner (Appeals) or, as the case may be, the CESTAT are unable to decide the application for stay within a period of thirty days of the filing of the appeal, it would be completely arbitrary to take recourse to coercive proceedings for the recovery of the demand until the application for stay is disposed of. Administrative reasons including the lack of adequate infrastructure, the unavailability of the officer concerned before whom the stay application has been filed, the absence of a Bench before the CESTAT for the decision of an application for stay or the sheer volume of work are some of the causes due to which applications for stay remain pending. In such a situation, where an assessee has done everything within his control by moving an application for stay and which remains pending because of the inability of the Commissioner (Appeals) or the CESTAT to dispose of the application within thirty days, it would,

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For the purpose, a financial, commercial, industrial undertakings and Organization fulfilling eligibility requirements of the Service Sector including Government Department (please see eligibility details on Institute website) may get registered with the regional offices of ICAI for imparting Industrial Training to CA Course students. A serving CA employee in such organization can impart Industrial Training upon eligibility depending on total period of service with the organization.

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be a travesty of justice if recovery proceedings are allowed to be initiated in the meantime. The protection of the revenue has to be necessarily balanced with fairness to the assessee. That was why, even though a specific statutory provision came to be introduced by Parliament in Section 35C(2A) to the effect that an order of stay would stand vacated where the appeal before the Tribunal was not disposed of within 180 days, the Supreme Court in *Commissioner of Customs and Central Excise, Ahmedabad v. Kumar Cotton Mills Pvt. Ltd. (Supra)* held that this would not apply to a situation where the appeal had remained pending for reasons not attributable to the assessee.

Sr. No. 10 of the circular of the Board deals with an appeal to the CESTAT where the Commissioner (Appeals) has confirmed a demand in an order in original of the adjudicating authority. The circular stipulates that recovery has to be initiated immediately on the issue of the order in appeal. In a situation where the Commissioner (Appeals) has confirmed the demand made in the order of adjudication, the assessee is permitted by the provisions of Section 35F to move the Tribunal for a dispensation of the requirement of deposit. But the circular mandates that recovery shall be made immediately on the issue of an order in appeal implying thereby that recovery would be initiated without allowing the assessee, the time which is allowed by the statute for filing an appeal and for applying for a waiver of pre-deposit. Similarly, Sr. No.11 stipulates that where the Tribunal has confirmed the demand, a recovery would be initiated immediately on the issuance of the order of the Tribunal. The assessee is therefore deprived of even a reasonable period of time to move the High Court against the order of the Tribunal. The circular which is issued by the Board is in terrorem and its plain effect and consequence is to deprive the assessee of the remedy which is provided under the law of moving, as the case may be, the CESTAT, the High Court or the Supreme Court against an order of adjudication of the competent appellate forum. Initiating recovery proceedings because a stay application has not been disposed of within thirty days of the filing of an appeal would be to penalize an assessee for the inability of the judicial or, as the case may be, quasi-judicial authority to conclude the disposal of the stay application within that period. If the assessee is not responsible for the delay in the disposal of the stay application and the application remain spending for reasons not attributable to the conduct of the assessee, initiation of recovery proceedings would be arbitrary and unfair. However, if the failure to dispose of an application for stay is because of the conduct of the assessee, such as by a resort to dilatory tactics, the revenue would in such a situation be justified in commencing recovery action. Moreover, there is no justification to commence recovery immediately following an order in appeal where a period of limitation is laid down by the relevant provision of law for challenging the decision of the Appellate Authority.

The Appellate Authorities, whether it be the Commissioner (Appeals) or the CESTAT are empowered to waive the requirement of a pre-deposit. An assessee who moves an application for waiver and is diligent in pursuing the application cannot be blamed for the inability of the appellate forum to dispose of the stay application. The reasons such as the absence of adequate infrastructure which lead to an accumulation of a backlog or the unavailability of the appellate officer or a duly constituted Bench of the Tribunal are matters which lie beyond the volition of an assessee. If at all, these are matters over which the executive arm of the State has control. Hence, to blame an assessee who is not in default and to initiate recoveries against an assessee who has filed an appeal together with an application for stay merely because the application has remained pending on the file of the decision making authority would be to penalize the assessee for a situation over which the assessee has no control. This would be patently arbitrary and violative of Article 14 of the Constitution.

For the above reasons it was concluded that the provisions contained in the impugned circular dated 1st January 2013 mandating the initiation of recovery proceedings thirty days after the filing of an appeal, if no stay is granted, cannot be applied to an assessee who has filed an application for stay, which has remained pending for reasons beyond the control of the assessee. Where however, an application for stay has remained pending for more than a reasonable period, for reasons having a bearing on the default or the improper conduct of an assessee, recovery proceedings can well be initiated. ■

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**.

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

A. Notifications

1. Income-tax (Second Amendment) Rules, 2013

In exercise of the powers conferred by Section 295 of the Income-tax Act, 1961 the Central Board of Direct Taxes, has through, this notification notified Income-tax (2nd Amendment) Rules, 2013 which shall come into force on the date of its publication in the Official Gazette.

Through these Amendment Rules, CBDT has modified the following Rules:

A. ***Amendment in Rule 31A-Statement of deduction of tax under Section 200(3)***

Rule 31A has been modified as follows:

- Rule 31A(3)(i) provides that the statement of tax deducted at source referred to in sub-rule (1) may be furnished in any of the modes specified therein. Item (a) specifies that the statements can be furnished in paper form. Item (b) has been substituted to provide that the statements specified in Rule 31A(1) can be furnished electronically under digital signature in accordance with the procedures, formats and standards specified under sub-rule (5). Further, item (c) provides an option to the deductor to furnish such statement electronically along with the verification of the statement in Form 27A or verified through an electronic process in accordance with the procedures, formats and standards specified under sub-rule (5).
- Consequential amendments have been made in clauses (ii) and (iii) of Rule 31A(3)
- Sub-Rule (3A) has been inserted to prescribe the procedures, formats and standards for claiming refund of sum paid to the credit of the Central Government under Chapter XVII-B.
- Clause (viii) has been inserted in Rule 31A(4) to require the deductor to furnish particulars of amount paid or credited on which tax was not deducted in view of the notification issued under of Section 197A(1F).
- Sub-Rule (5) has been modified in order to further empower the Director General of Income-tax (Systems) for the purposes of verification of the statements or claim for refund in Form 26B.

B. ***Amendment in Rule 31AA- Statement of collection of tax under proviso to Section 206C(3)***

Similar amendments have also been made in Rule 31AA which deals with Statement of collection of tax under proviso to Section 206C(3).

C. ***Amendment in Rule 31ACB and Rule 37J- Form for furnishing certificate of accountant under the first proviso to Section 201(1)/206C(6A).***

Rule 31ACB which prescribed Form 26A as a certificate of accountant under the first *proviso* to Section 201(1) has been substituted to further provide that such form shall be furnished to DGIT (Systems) or such other person authorised by him in accordance with procedures, formats and standards specified by DGIT (Systems). It further provides that DGIT (Systems) shall be responsible for day to day administration in relation to furnishing and verification of Form No. 26A.

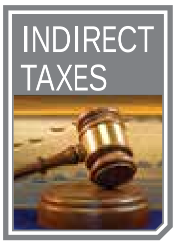
Similar amendment has been made in Rule 37J which prescribes Form 27BA for furnishing certificate of accountant under the first proviso to Section 206C(6A).

D. Substitution of certain Forms in Appendix –II of Income-tax Rules, 1962

Form No. 15G, 15H, 16, 16A, 24Q, 26Q, 27C, 27D, 27Q & 27EQ have been substituted in Appendix-II of the Income-tax Rules, 1962 and Form No. 26B have been inserted which provides the format for claiming refund in respect of sum paid under Chapter XVII-B of the Income-tax Act, 1961.

[Notification No. 11/2013 dated 19-02-2013]

The details of the said notification can be downloaded from the link below: http://law.incometaxindia.gov.in/DIT/Notifications.aspx



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

A. SERVICE TAX

1. Due date for filing ST-3 Return for the period July- Sept, 2012 extended till 15th April, 2013

As per rule 7 of the Service Tax Rules, 1994, every assessee has to submit a half yearly return by the 25th of the month following the particular half-year. However, a *proviso* has been inserted in Rule 7(2) to provide that return in 'ST - 3' for the period 01-07-2012 to 30-09-2012 has to be submitted by 15th April, 2013.

Further, format of ST-3 return has been substituted with a new Form to include *inter alia*, the following significant points:

a) While calculating the value of taxable services the point relating to the partial reverse charge has been incorporated in case of service provider as well as service receiver at B1.6 and B2.7

b) Exemption of R&D Cess provided by *Notification No. 14/2012 ST dated 14-03-2012* was not supported in earlier ST-3 return format. The same has now been incorporated in the modified return form at point B1.18 and B2.18

Assessees have been advised to fill service wise data (to the extent possible) as required to be filled prior to 01-07-2012, for effective use of the data available consequent to the restoration of accounting codes. The objective behind revising the ST-3 form has been to retain the existing structure, which both the assessees and the departmental officers are familiar with, while making some changes required after 01-07-2012.

[Notification No. 01/2013 ST dated 22-02-2013, Order No. 01/2013 ST dated 06-03-2013 and F. No. 137/98/2006-CX-4 (Part-I) dated 22-02-2013]

2. Service tax rate increased from 3.09% to 3.71% in the case of construction of complex, building or civil structure

Service Tax abatement available for construction of complex, building or civil structure or a part thereof is being *reduced* from the existing 75% to 70% **except** in case of residential unit :

a) having carpet area upto 2000 square feet or

b) where the amount charged is less than ₹ 1 crore.

[Notification No. 02/2013 ST dated 01-03-2013]

3. Amendments in Mega Exemption Notification No. 25/2012 ST dated 20-06-2013

All the amendment would be effective from 01-04-2013.

I. Transportation of the following items by a GoodsTransport Agency would be *exempted*:
   (i) foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages,
   (ii) relief materials for specialised purposes,
   (iii) chemical fertilisers and oil cakes,
   (iv) registered newspapers or magazines and defense equipments.

II. The exemptions available in respect of the following services would be *withdrawn*:
   (i) transportation of petroleum and petroleum products, postal mails or mail bags and household effects by railways and vessels.

(ii) services provided by an educational institution by way of renting of immovable property or auxiliary educational service. However, such services when provided to an educational institution would continue to be exempt from service tax.

(iii) temporary transfer or permitting the use or enjoyment of a copyright of cinematograph films for exhibition elsewhere than in a cinema hall or a cinema theatre.

(iv) services by way of vehicle parking to general public.

(v) services provided to Government, a local authority or a governmental authority, by way of repair or maintenance of aircraft.

III. The exemption limit of ₹25 lakh available to charitable organisations providing service towards any other object of general public utility would be *withdrawn*.

IV. All restaurants with air-conditioning or central air heating (including restaurants not serving liquor as well) in any part of the establishment at any time during the year to be *liable to service tax*.

[Notification No. 03/2013 ST dated 01-03-2013]

4. Scope of Advance Ruling extended to Resident public limited companies

Resident public limited companies would now be eligible to seek advance ruling in case of specified matters relating to service tax.

[Notification No. 04/2013 ST dated 01-03-2013]

B. EXCISE

1. MRP based valuation prescribed for non-allopathic medicaments

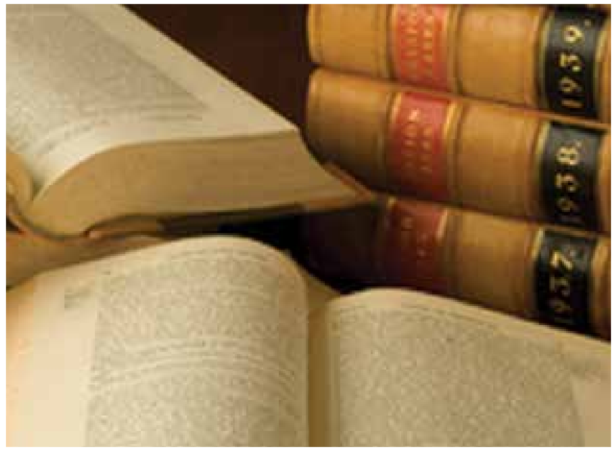
MRP based valuation has been prescribed with 35% abatement for non-allopathic medicaments.

[Notification No. 01/2013 CE (N.T) dated 01-03-2013]

2. Interest on refund in case of provisional assessment to be governed by the provision of Section 11BB

Interest on refund arising out of finalisation of provisional assessment *to be paid after the expiry of three months* from the receipt of application of refund; as per the provisions of Section 11BB.

[Notification No. 02/2013 CE (N.T) dated 01-03-2013]



3. Scope of Rule 14 extended to include recovery of amount payable under Rule 3(5), (5A)& (5B) of CCR, 2004

Recovery provisions provided under rule 14 of the CENVAT Credit Rules, 2004 to apply in case of failure to pay the *amount* on the removal of:

- inputs/capital goods as such,
- capital goods after use and
- writing off the value of the inputs/capital goods.

[Notification No. 03/2013 CE (N.T.) dated 01-03-2013]

4. Scope of Advance Ruling extended to Resident public limited companies

Resident public limited companies would now be eligible to seek advance ruling in case of specified matters relating to central excise.

[Notification No. 04/2013 CE (N.T.) dated 01-03-2013]

C. CUSTOMS

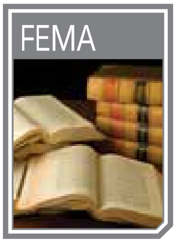
1. Amendment to Baggage Rules, 1988

a) Duty free allowance in respect of jewellery for an Indian passenger who has been residing abroad for over one year or a person who is transferring his residence to India raised from ₹10,000 to ₹50,000 in case of a gentleman passenger and from ₹20,000 to ₹1,00,000 in case of a lady passenger.

b) Duty free allowance for crew member of vessel/ aircraft raised from ₹600 to ₹1,500.

[Notification No. 25/2013 Cus (N.T.) dated 01-03-2013]

The text of the above notification/circulars is available at www.cbec.gov.in



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

A. Clarification for import of precious and semi precious stones

A.P. (DIR Series) Circular No. 83 dated 20th February, 2013

Reserve Bank of India (RBI) had vide A.P. (Dir Series) Circular No. 34 dated 24th September, 2012 allowed AD Category – I banks for Suppliers' and Buyers' credit (trade credit) including the usance period of Letters of Credit opened for import of gold in any form including jewellery made of gold/precious metals or/and studded with diamonds/semi precious/precious stones should not exceed 90 days, from the date of shipment.

It is now clarified by RBI that Suppliers' and Buyers' Credit (trade credit) including the usance period of Letters of Credit opened for import of precious stones and semi-precious stones should not exceed 90 days from the date of shipment. The revised directions will come into force with immediate effect.

B. Risk Management and Inter–Bank dealings

A.P. (DIR Series) Circular No. 86 dated 1st March, 2013

RBI had vide A.P. (DIR Series) Circular No. 92 dated 4th April, 2003 issued the detailed guidelines for the Foreign Exchange Exposure Limits of the Authorised Dealers.

In view of the various developments in the forex markets a group comprising officials of RBI, representatives of select banks and the Foreign Exchange Dealers Association of India (FEDAI) went into the various issues involved in the guidelines relating to the Foreign Exchange Exposure Limits of Authorised Dealers. Based on the recommendations of the group, RBI has revised the existing guidelines on calculation of the Foreign Exchange Exposure Limits of the Authorised Dealers. The revised guidelines are available on RBI website at http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7876&Mode=0

Further, RBI has withdrawn the restrictions placed on open positions limit of the Authorised Dealers involving Rupee as one of the currencies, (on both overnight and intra-day open positions) vide A.P. (Dir Series) Circular No. 58 dated 15th December, 2011.

Consequently, the instructions issued vide A. P. (Dir Series) Circular No.129 dated 21st May, 2012 and A. P. (Dir Series) Circular No. 13 dated 31st July, 2012 also stand withdrawn. Until further review, the following instructions shall however continue to be effective:

(i) The positions in the exchanges (both Futures and Options) cannot be netted/offset by undertaking positions in the OTC market and vice-versa. The positions initiated in the exchanges shall be liquidated/closed in the exchanges only.

(ii) The position limit for the trading member AD Category-I bank in the exchanges for trading Currency Futures and Options shall be $ 100 million or 15% of the Outstanding open interest, whichever is lower.

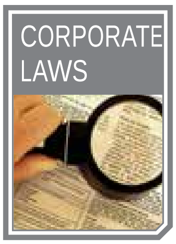
C. External Commercial Borrowings (ECBs) by Corporates under Investigation

A.P. (DIR Series) Circular No. 87 dated 5th March, 2013 and Notification No. FEMA.256/2013-RB dated 6th February, 2013

As per the extant guidelines, corporates under investigation by any law enforcing agencies like the Directorate of Enforcement (DoE), etc. are not allowed to access ECB under the Automatic route and any request by such corporates for ECB is examined by the RBI under the approval route.

It has now been decided to permit all entities to avail of ECBs under the automatic route as per the current norms, notwithstanding the pending investigations/adjudications/appeals by the law enforcing agencies, without prejudice to the outcome of such investigations/adjudications/appeals. Accordingly, in case of all applications where the borrowing entity has indicated about the pending investigations/adjudications/appeals, Authorised Dealers while approving the proposal shall intimate the concerned agencies by endorsing the copy of the approval letter. The same procedure will be followed by RBI also while approving such proposals.

Consequently, the Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 [Notification No. FEMA 3/2000–RB] is amended vide Notification No. FEMA 256/2013-RB dated 6th February, 2013 issued by RBI to give effect to the above amendments.



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

MCA (www.mca.gov.in)

1. Clarification on Debenture Redemption Reserve

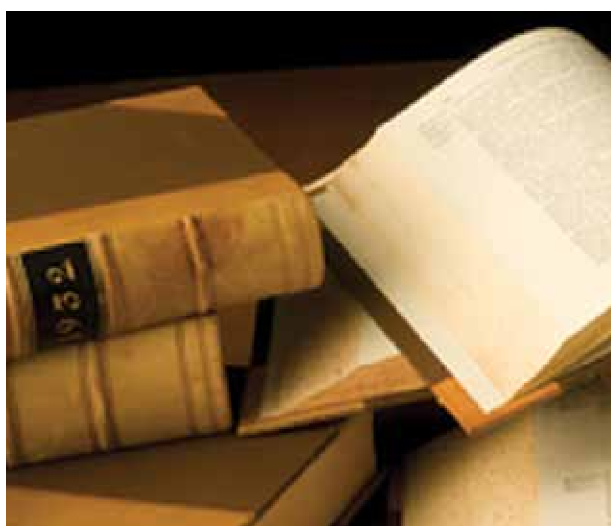
The MCA has issued Circular No. 04/2013 dated 11-02-2013 referring to its earlier issued requirements relating to 'adequacy' of debenture redemption reserve (DRR). The requirements and relation to the adequacy of DRR are examined and reviewed in consultation with stakeholders and regulators and with a view to develop the market for corporate bonds/debentures, clarification is now issued on adequacy of DRR and other related matters as under :

- No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by RBI and banking companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of Section 4A of the Companies Act, 1956, DRR will be as applicable to NBFCs registered with RBI.
- For registered NBFCs, 'the adequacy' of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.
- For other companies including manufacturing and infrastructure companies, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities), Regulations 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.
- Every company required to create/maintain DRR shall before the 30th day of April of each year, deposit or invest, as the case may be, a sum which shall not be less than fifteen percent of the amount of its debentures maturing during the year ending on the 31st day of March next following in any one or more of the specified securities/bonds.
- The amount deposited or invested, as the case may be, above shall not be utilised for any purpose other than for the repayment of debentures maturing during the year referred to above, provided that the amount remaining deposited or invested, as the case may be, shall not at any time fall below 15% of the amount of debentures maturing during the 31st day of March of that year.

One may refer to the broad guidelines for fungibility of future IDR issuances and the existing listed IDRs at the above citation.

2. MCA clarification on Section 372A(3) of the Companies Act

The MCA has issued Circular No. 06/2013 on 14-03-2013 referring to the Union Budget 2013-14 which authorised the government to raise tax free bonds which carry a lower rate of interest, which is currently in the range of 6.75% to 7.50% and which



is tax free under Section 10(15) (iv)(h) of the Income-tax Act, 1961. Such bonds were also provided for in Budget 2012-13, but the response had been poor due to restrictions under Section 372A(3) of the Companies Act, 1956. A reference was made by Ministry of Finance to the MCA to Section 372A(3) of the Companies Act with a view to effectively implement the announcement made in the Budget. While the provisions of Section 372A(3) of the Act provides that "no loan to any body corporate shall be made at a rate of interest lower than the prevailing bank rate, being standard rate made public under Section 49 of the Reserve Bank of India Act, 1934 (2 of 1934)", the MCA hereby clarifies that in cases where the effective yield (effective rate of return) on tax free bonds is greater than the yield on prevailing bank rate, it would not amount to a case of violation of the provisions of Section 3724(3) of Companies Act, 1956. This clarification is effective from the date of its issue. One may refer to the above citation for further details.

SEBI (www.sebi.gov.in)

1. SEBI ICDR Regulations amended

The SEBI has issued Notification No. LAD-NRO/GN/2012-13/32/4947 dated 27-02-2013 amending the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 replacing the definition of 'fungibility' in relation to Indian Depository Receipts (IDRs) to now mean that the IDRs shall be fungible into underlying equity shares of the issuing company in the manner specified by the SEBI and the RBI from time to time. One may refer to the above citation for further details and the detailed guidelines.

2. Guidelines for Enabling Partial Two-Way Fungibility of IDRs

The SEBI has issued Circular No. CIR/CFD/DIL/6/2013 dated 01-03-2013 as follow-up to its Notification No. LAD-NRO/GN/2012-13/32/4947 dated 27-02-2013 (reported and summarised herefore) referring to its earlier guidelines and framework for redemption of IDRs into underlying equity shares and had provided partial fungibility of IDRs (i.e. redemption/conversion of IDRs into underlying equity shares) in a financial year to the extent of 25% of the IDRs originally issued. It had also stated that suitable instructions for modifying the existing legal framework governing IDRs, in order to implement the decision to allow redemption of IDRs into underlying equity shares and re-conversion of equity shares of a foreign issuer (which has already listed their IDRs) into IDRs, will be issued separately. Now, in order to encourage more foreign companies to issue IDRs in the Indian market and also to enable investors to take informed investment decision, it has been decided to provide a detailed roadmap and guidelines for the future IDR issuances as well as for the existing listed IDRs. All IDRs shall have partial two-way fungibility. The partial two-way fungibility means that the IDRs can be converted into underlying equity shares and the underlying equity shares can be converted into IDRs within the available headroom. The headroom for this purpose shall be the number of IDRs originally issued minus the number of IDRs outstanding, which is further adjusted for IDRs redeemed into underlying equity shares. One may refer to the broad guidelines for fungibility of future IDR issuances and the existing listed IDRs at the above citation.

3. Amendment to SEBI associated persons in securities market regulations

The SEBI has issued Notification No. LAD-NRO/GN/202-13/33/1103 dated 11-03-2013 stating that SEBI may require, by notification, any category of associated persons as defined in the Regulations to obtain requisite certification(s). SEBI hereby notifies that the associated persons functioning as compliance officers of intermediaries registered with the SEBI as stock brokers, or as depository participants/ merchant bankers/underwriters/bankers to the issue/ debenture trustees/credit rating agencies, shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as "NISM") by passing the NISM-Series-III A: Securities Intermediaries Compliance (Non-Fund) Certification Examination (hereinafter referred to as "SICCE") as mentioned in the NISM communiqué No. NISM/Certification/ Series-III A: SIC/2013/01 dated 7th January, 2013. All such intermediaries shall ensure that associated persons functioning as compliance officers as on the date of this notification obtain certification by passing SICCE within two years from the date of this notification. It is also notified that an intermediary, who engages or employs any such associated persons functioning as compliance officer after the date of this notification, shall ensure that such person obtains certification by passing SICCE within one year from the date of his employment. One may refer to the above citation for further details.

RBI (www.rbi.gov.in)

1. Guidelines on Fair Practices Code for NBFCs – Grievance Redressal Mechanism

The RBI has issued Circular No. DNBS.CC.PD. No.320/03.10.01/2012-13 dated 18-02-2013 referring to its earlier guidelines on Fair Practices Code (FPC) for all NBFCs to be adopted by them while doing lending business and which were reviewed in view of the creation of a new category of NBFCs viz; NBFC-MFIs and also rapid growth in NBFCs' lending against gold jewellery. In terms of para 2A(v) of the guidelines, it is necessary that the Board of Directors of NBFCs should lay down the appropriate grievance redressal mechanism within the organisation to resolve disputes between the company and its customers and the mechanism should ensure that all disputes arising out of the decisions of lending institutions' functionaries are heard and disposed of at least at the next higher level. And at the operational level, all NBFCs are required to display prominently, for the benefit of their customers, at their branches/places where business is transacted, the details of the grievance redressal officer belonging to their company as also that of the local office of RBI as detailed at paragraph (A) (vi) of annexe. The revised guidelines are issued under Section 45L of the Reserve Bank of India Act, 1934 (Act 2 of 1934). NBFCs may note to make suitable amendments in their existing FPC which should be put in place by all NBFCs with the approval of their Boards within one month from the date of issue of this circular and should be published and disseminated on the website of the company, if any, for the information of the public. One may refer to the above citation for further details and the detailed guidelines. ■

Notification: Examinations

The Institute of Chartered Accountants of India
[Set up by an Act of Parliament]
Post Box No.7112, 'ICAI BHAWAN', Indraprastha Marg
New Delhi – 110002

TO BE PUBLISHED IN PART III SECTION 4 OF THE GAZETTE OF INDIA
NOTIFICATION

20th March, 2013

No.13-CA (EXAM)/CPT/June/2013/II: In partial modification of the Institute's Notification No. 13-CA (EXAM)/CPT/June/2013 dated 2nd January, 2013, it is notified for general information that the last date of receipt of duly filled Common Proficiency Test application forms, through online or otherwise, shall be 25th April, 2013, instead of 24th April 2013 (a gazetted holiday) as announced earlier.

(G. SOMASEKHAR)
ADDITIONAL SECRETARY (EXAMS)

Treatment of Expenditure on Stabilisation of Expanded Plant Declared Commercial.

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 (hereinafter referred to as 'the company') engaged in petrochemicals business decided for an expansion project to enhance the production capacity of its mother plant by about 30%. The expansion project was of complex nature requiring integration of its mother plant with various downstream plants. The execution of the project started in the year 2006.

2. The querist has stated that after completion of the major activities of the said project, the existing plant was shut down from October, 2009 to February, 2010 for completing the installation, integration and commissioning of the project/ plant. Although the existing plant which was shut down during this installation period came into operation from February, 2010, the Parallel Chilling Train and the Extended Binary Refrigeration (EBR) Compressor had not been successfully integrated. As a result, the capacity of the mother plant had not been ramped up and the increased feed from mother plant to auxiliary and other downstream plants had not been achieved. In view of this, the expansion project was not declared commissioned in February, 2010. The plant started operation at nearly 95 % of the enhanced capacity (without one heater which was damaged in fire in July, 2009 and was under reconstruction) for about a month following the integration and commissioning of the EBR and the New Chilling Train (NCT) in May, 2010 and based on an internal certification, the management decided to go ahead with the capitalisation of the project at a cost of ₹1290 crore in the books of account in June, 2010.

3. The querist has further stated that soon after such capitalisation, series of issues came into surface like lower than design yield, high energy consumption, high temperature on gasoline fractionators, failure of vendor supplied systems to achieve design operations, etc., and the plant had to undergo frequent shut downs to address the related problems. Details of such shut down alongwith the root cause analysis and its consequences as analysed by the company's technical department have been provided by the querist for the perusal of the Committee.

4. *In view of the frequent problems faced by the company post commissioning of the project, non-achievement of the expanded capacity of the plant and also considering the opinion given by the licensor, the management of the company has prospectively realised that the expansion project which was commissioned and capitalised in June, 2010 has not yet fully stabilised to operate at the enhanced capacity on a consistent basis* (emphasis supplied by the querist).

5. The company has a technical service agreement with the licensor of its mother plant. All the technical problems as mentioned above were referred to the licensor from time to time for their valued opinion for resolution of problems. In all cases, experts from the licensor visited the plant to assess and identify the root cause of the problems. At the request of the company, licensor

has submitted a report providing its views on the issues being faced by the company wherein they have stated that these kinds of problems are not uncommon to any such complex integration process undertaken worldwide like the expansion project undertaken by the company. They have also stated in the report that "… while the typical time (for installation of such project) is between 3 to 6 months, there have been instances where the plant stabilisation time took more than 18 months as a result of construction issues, mal-functions of vendor supplied equipment or materials, failure of vendor supplied systems to achieve design operation and lack of training or human error". To support its views, it has included a case study in the report, based on their experience in another similar type of company, where it has observed a stabilisation period of 486 days before the company could resolve all technical issues and declare commercial production. In the opinion of the licensor, it was a pre-mature declaration of commissioning by the management in June, 2010.

6. The querist has also stated that after various deliberations with the licensor, management of the company believes that the project should be declared successfully commissioned and capitalised on fulfillment of the following criteria recommended by the licensor in its report dated 20.02.2012, unless waived for valid reasons to be recorded in writing and approved by the competent authority:
   - Steady operation of plant for 4 months.
   - Production rate of 85-90% of expanded capacity on a consistent basis for 2 months.
   - 90% Plant Distributed Control System (DCS) controllers are on auto mode.

The querist has stated that the above-mentioned pre-conditions for carrying out the performance guarantee test as prescribed by the licensor were neither attained in June, 2010 when the plant was declared commissioned and fit for commercial production, nor at any point of time thereafter till date. The company expects to complete the above exercise and to have the successful commissioning of the plant by 30th June, 2012 at a full capacity on sustained basis.

7. In the context of the facts of the case as explained above, the management of the company is of the opinion that:

   (i) Till stabilisation and successful commissioning of the plant in compliance of the criteria and parameters recommended by the licensor, the company should consider costs relating to the expansion project so capitalised earlier as capital work in progress.

   (ii) All subsequent expenditure for rectification of the defects, shut down cost, revenues, gain and loss, etc., incurred during the commissioning and stabilisation period of this expansion project should form part of the project cost.

   (iii) Capitalisation of all such costs as mentioned in point (i) and (ii) above in the books in the year of such successful commissioning.

B. Query

8. On the basis of the above, the querist has sought the opinion of the Expert Advisory Committee of the Institute on the aforesaid accounting treatment and whether the same is in conformity with the applicable accounting principles and Accounting Standards.

C. Points considered by the Committee

9. The Committee notes that the basic issues raised in the query relate to accounting for expenditure on rectification of defects, shut down costs, revenues, gains and losses, etc., incurred during the stabilisation period of the expansion project after declaration of its commissioning and fitness for commercial production in June, 2010 and determination of the point of time when costs relating to expansion project should be capitalised alongwith the plant. The Committee has, therefore, considered only these issues and has not examined any other issue that may arise from the Facts of the Case, such as, accounting treatment of expenditure incurred for the expansion of an existing plant, calculation of depreciation of plant during shut down period and

thereafter, impairment of plant due to prolonged stabilisation period, etc. The Committee further wishes to point out that to the extent, readiness to commence commercial production depends on technological evaluation of the plant, has not been examined by the Committee.

10. The Committee notes that the issues raised by the querist require determination of point of time when expansion of the existing plant in the extant case can be considered as ready to commence commercial production, i.e., whether at the point of time when the plant although declared commercial is facing stabilisation problems or at point of time when the plant is stabilised. In this context, the Committee notes paragraphs 9.3 and 9.4 of AS 10, which provide as follows:

> "9.3 The expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, is usually capitalised as an indirect element of the construction cost. However, the expenditure incurred after the plant has begun commercial production, i.e., production intended for sale or captive consumption, is not capitalised and is treated as revenue expenditure even though the contract may stipulate that the plant will not be finally taken over until after the satisfactory completion of the guarantee period.
>
> 9.4 If the interval between the date a project is ready to commence commercial production and the date at which commercial production actually begins is prolonged, all expenses incurred during this period are charged to the profit and loss statement. …"

From the above, the Committee notes that the expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, is usually capitalised as an indirect element of the construction cost. However, the expenditure incurred after the plant has begun commercial production, i.e., production intended for sale or captive consumption, is not capitalised and is treated as revenue expenditure. The Committee is of the view that the date when the plant is ready to commence commercial production is a question of fact which should be determined on the basis of various factors, such as, technological evaluation of the readiness of the plant and machinery and other facilities, the quality and the quantity of the output produced, etc. The Committee further notes that in this regard, what is relevant, is the date when the plant is ready to commence commercial production and not the date when the plant actually commences commercial production. Commercial production means production in commercially feasible quantities and in a commercially practicable manner. Thus, if an asset is operational and is able to produce the commercially feasible quality and quantity of goods, no further costs can be capitalised even if it is not achieving targeted or 100% production.

11. The Committee notes from the Facts of the Case that the existing plant was expanded and integrated in May, 2010. Thereafter, the expanded plant was operating at 95% of the enhanced capacity for about a month and accordingly, the expansion project was declared commissioned and the capitalisation of the project was materialised in June, 2010. After capitalisation, the plant had to undergo frequent shutdowns due to problems faced in expanded plant. The querist sought the technical opinion of the licensor on stabilisation of plant for which latter suggested certain parameters referred to as 'performance guarantee test runs' for stabilisation of plant. The Committee notes that as per the Standard, stabilisation of commercial production is not a criterion to determine the point of capitalisation rather it is readiness for commercial production that determines it. Accordingly, the Committee is of the view that the activities undertaken for stabilisation of plant cannot be treated as the test run as prescribed in the Standard. The purpose of test run, in the view of the Committee, is to ascertain whether the plant and machinery and other relevant facilities, as installed, give the commercially feasible output in terms of quality and quantity. If, during the test run, the production standards are not met, normally, the production is stopped and necessary alterations/modifications are made in the plant and machinery. It may be necessary to carry out test run(s) further until

the output of commercially feasible quality and quantity is obtained. The Committee notes that in the extant case, plant after expansion was operational at 95% of the enhanced capacity and was able to produce the commercially feasible goods, and, therefore, was ready for commercial production in June, 2010. Accordingly, in the extant case, capitalisation of expenditure on rectification of defects, shut down costs, revenues, gains and loss, etc., incurred after declaration of commissioning of the expansion project in June, 2010 is not appropriate. Therefore, the question of writing back the costs related to the expansion project, capitalised earlier in June, 2010 to 'capital work in progress', as stated by the querist in paragraph 7(i) above, does not arise.

D. Opinion

12. On the basis of the above, the Committee is of the opinion that the expenditure related to expansion should be capitalised along with the plant on the date when the plant after expansion was declared to be ready to commence commercial production (i.e., June, 2010, in the extant case), as discussed in paragraph 11 above. Further, capitalisation of expenditure on rectification of defects, shut down costs, revenues, gains and losses, etc., incurred after declaration of commissioning of the expansion project in June, 2010 is not appropriate. Accordingly, the question of writing back the costs related to the expansion project, capitalised earlier in June, 2010 to 'capital work in progress' does not arise.

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 31.7.2012. 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 thirty volumes. A CD of Compendium of Opinions containing thirty 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.

Salient Features of Finance Bill, 2013: Direct Taxes

The Finance Minister has not tinkered with the tax rate structure, both under direct and indirect taxes. He has not also levied any new taxes as was being widely debated, except commodity transaction tax on non-agricultural commodities. The Finance Minister in his Budget speech has promised to bring the Direct Taxes Code (DTC) back to the house before the end of the Budget session. However, on Goods and Service Tax (GST), he has not made a commitment about the time. The Finance Minister also made a statement to ensure clarity in tax laws, a stable tax regime, non-adversarial tax administration, a fair mechanism for dispute resolution and an independent judiciary. Regarding the amendments on direct taxes, the Finance Bill, 2013 has 53 clauses amending the various provisions on direct taxes. The various amendments proposed in the Finance Bill, 2013 are analysed in this article. Unless otherwise stated, all these amendments are proposed to be effective from 1st April, 2014 i.e. assessment year 2014-15 relevant to the income earned in the financial year 2013-14. Read on to know more…

CA. Ved Jain

(The author is a member and the Past President of the ICAI. He can be reached at jainved@gmail.com)

Shri P. Chidambaram, after reassuming the office of Finance Minister, presented his first Budget and also the last Budget of the UPA-II Government. This budget was keenly watched not only by people in India, but also by the foreign investors. The Finance Minister had the challenge to revive growth without increasing fiscal deficit. He had a challenge to increase revenues without raising taxes, to revive investment and saving without more doles and to rein in inflation without choking growth, besides that of bringing enough pre-election populism without increasing expenditure.

In this backdrop, the Finance Minister presented a cautious Budget, seeking support of all sections of the House as well as the people of India, to navigate the Indian economy through a crisis that has enveloped the whole world and spared none. The Finance Minister has not tinkered with the tax rate structure both under direct and indirect taxes. He has not also levied any new taxes as was being widely debated, except commodity transaction tax on non-agricultural commodities. Despite all the constraints, the Finance Minister has been able to contain the fiscal deficit for the current year at 5.2 and has projected a fiscal deficit of 4.8% in the next year. The Finance Minister, in his Budget speech, has promised to bring the Direct Taxes Code (DTC) back to the house before the end of the Budget session. However, on Goods and Service Tax (GST), he has not made a commitment about the time. He has only hoped to take the consensus on GST forward in the next few months and bring a draft Bill on the constitutional amendment and a draft Bill on GST. The Finance Minister also made a statement to ensure clarity in tax laws, a stable tax regime, non-adversarial tax administration, a fair mechanism for dispute resolution and an independent judiciary. To adopt the best global practices, the Finance Minister has proposed to set up a Tax Administration Reform Commission to review the application of tax policies and tax laws and submit periodic reports that can be implemented to strengthen the capacity of the tax system.

Coming to the amendments on direct taxes, the Finance Bill, 2013 has 53 clauses amending the various provisions on direct taxes. The various amendments proposed in the Bill are analysed below. Unless otherwise stated, all these amendments are proposed to be effective from 1st April, 2014, i.e. assessment year 2014-15, relevant to the income earned in the financial year 2013-14.

A. Tax Rates

1. **No increase in threshold limit – credit of ₹2,000 for individual tax payer having income upto ₹5 lakh**

The Finance Minister has proposed no changes in the current slabs of income tax. The existing threshold exemption accordingly continues to be the same for individual, HUF, association of persons, body of individual and every juridical person:

Income	Tax Rate
Upto ₹2,00,000	Nil
₹2,00,001 - ₹5,00,000	10%
₹5,00,001 to ₹10,00,000	20%
Above ₹10,00,000	30%

However, the Finance Minister has proposed to allow credit to an individual resident in India whose total income does not exceed ₹5 lakh. The tax credit shall be equal to the tax payable or ₹2,000 whichever is less. The implication of this will be that an individual resident having taxable income up to ₹2,20,000 shall not be required to pay any tax. This credit shall be available only to individual resident and as such HUF, AOP, etc. shall not be entitled for this deduction. Similarly,z non-resident individual will also not be entitled for this deduction.

No change has been proposed in the threshold exemption for the senior citizens (of 60 years to 80 years of ₹2,50,000) and for very senior citizen (above 80 years of age of ₹5 lakh). Since the proposed tax credit of ₹2,000 is for resident individual, senior citizen between 60 years to 80 years of age shall get benefitted if the total income does not exceed ₹5 lakh. Such senior citizen will be required to pay tax over and above income of ₹2,70,000. However, in case of very senior citizen, threshold exemption being at ₹5 lakh, they will not be entitled to take benefit of this tax credit.

The ceiling of ₹5 lakh is with reference to the total income after all other deductions such as deduction under Section 80-C in respect of long term savings like life insurance premium, provident fund, deduction under Section 80D in respect of health insurance premium, etc.

2. **Surcharge of 10% on all non-corporate tax payers whose income exceeds ₹1 crore**

The Finance Bill, 2013 proposes to levy surcharge across the board on all persons. In the case of individual, HUF, AOP, body of individual or every juridical person, the surcharge shall be payable at the rate of 10% of the tax where the total income exceeds ₹1 crore. This surcharge shall be levied on the total tax payable once the income has exceeded ₹1 crore. However, marginal relief has been provided so as to ensure that the surcharge does not exceed the amount of the income which exceeds ₹1 crore. Similarly, co-operative society, firm, LLP, local body shall also be required to pay surcharge at the rate of 10% of the tax in case the income exceeds ₹1 crore.

3. **Increase in rate of surcharge from 5% to 10% on companies where income exceeds ₹10 crore**

The Finance Bill, 2013 proposes to increase the rate of surcharge, both on domestic as well as foreign companies. Presently, the surcharge is payable at the rate of 5% by a domestic company in case its income exceeds ₹1 crore. This is proposed to be revised to 10% where the total income exceeds ₹10 crore.

Thus, there will be no surcharge in case the total income of the company does not exceed ₹1 crore. Surcharge applicable shall be 5% where the income exceeds ₹1 crore, but does not exceed ₹10 crore. The surcharge applicable shall be 10% where the income exceeds ₹10 crore.

In the case of a foreign company (a company other than a domestic company) the surcharge is being

The Finance Bill, 2013 proposes to reduce the security transaction tax rate. There will be no STT payable on the delivery based purchases of units of an equity oriented Fund. On delivery based sale of units of an equity oriented Fund – STT payable has been reduced from 0.1% to 0.001%.

increased from 2% to 5% where the income exceeds ₹10 crore. The existing rate of surcharge of 2% shall continue to apply where the income of the foreign company exceeds ₹1 crore but does not exceed ₹10 crore.

4. **Surcharge on dividend distribution tax increased from 5% to 10%**
The rate of surcharge on dividend distribution tax payable under Section 115O and Section 115-R is proposed to be increased from 5% to 10%. The effective rate of dividend distribution tax (including education cess) which is at present 16.22% shall get increased to 16.99%. This amendment is being made from 01-04-2014 and accordingly dividend distributed on or after 01-04-2013 shall be liable for increased surcharge.

The Finance Minister in his Budget speech has stated that the surcharge being levied in this budget is only for one assessment year. However, past experiences show that surcharge once levied is extended year after year.

5. **Tax on distribution of income of debt mutual fund increased from 12.5% to 25%**
The tax rate on distribution of income by Debt Mutual Fund (other than a Money Market Mutual Fund or Liquid Fund) to an individual and HUF, is being increased from 12.5% to 25%. Presently under Section 115-R, no tax is payable on distribution of income of an equity oriented fund. However, in respect of debt fund, there are two classifications. For money market mutual fund or a liquid fund, the tax rate on distribution of income to an individual or HUF is 25% and in respect of other debt fund, the tax rate prescribed is 12.5%. Accordingly, investors could park their funds in debt mutual fund other than money market mutual fund or liquid fund instead of putting the money in deposit with the bank, etc. so as to get the benefit of reduced rate of tax of 12.5%. This has affected the flow of deposits into banks. To address this anomaly, the Finance Bill, 2013 has proposed to increase the tax rate to 25%. Accordingly, the tax rate applicable on distribution of income to an individual or HUF by all debt mutual funds will be 25%. The tax rate on distribution of income to any person other than an individual or HUF i.e. a firm, or a company continues to be 30%.

This new rate will be applicable on income distributed on or after 1st June, 2013 and as such income distributed before 1st June, 2013 will be liable for tax @ 12.5% only.

With this amendment, the Monthly Income Plan (MIPs) of Mutual Funds where a large number of retired people used to invest so as to receive monthly dividend, will get seriously affected. These investors now need to move to a Systematic Withdrawal Plan. If they do so, they would have to pay long term capital gains tax which is 20% if indexation benefits are availed and 10% if indexation benefits are not availed. Systematic Withdrawal Plan in substance is not different from the Monthly Income Dividend Plan. In the Monthly Income Plan, one receives income earned on units by way of dividend and, in the Systematic Withdrawal Plan, the value of the units appreciates by the income earned during the month and a part of the units equivalent to such appreciation in the value of the units are encashed.

The Finance Bill, 2013 proposes to introduce a new Section 80EE to provide deduction in respect of the interest payable on loan taken by an individual from **a bank or a housing finance company for the purpose** of acquisition of a residential house property. This deduction is restricted to only ₹1 lakh and that too for one assessment year i.e. assessment year 2014-15 in respect of the housing loan sanctioned from 1st April, 2013 to 31st March, 2014.

6. **Security Transaction Tax (STT) being reduced on future in securities**
The Finance Bill, 2013 proposes to reduce the security transaction tax rate. There will be no STT payable on the delivery based purchases of units of an equity oriented Fund. On delivery-based sale of units of an equity-oriented Fund, STT payable has been reduced from 0.1% to 0.001%. The STT rate on sale of futures in securities has been reduced from 0.017% to 0.01% and on sale of a unit of equity oriented fund to the Mutual Fund, the rate has been reduced from 0.25% to 0.001%. These changes in STT rate shall be effective only from 1st June, 2013.

7. **Commodity Transaction Tax (CTT) introduced on commodity derivatives other than agricultural commodities**
The Finance Bill, 2013 proposes to levy commodity transaction tax on commodity derivatives at the rate of 0.01%. This tax shall be payable by the seller at the time of sale of commodity derivatives, in respect of commodities other than agricultural commodities traded in recognised associations (exchange). The commodity derivatives shall mean –
   i. A contract for delivery of goods which is not a ready delivery contract; or
   ii. A contract for differences which derives its value from prices –
      a) of such underlying goods;
      b) of related services and rights, such as warehousing and freight; or
      c) with reference to weather and similar events and activities.

      having a bearing on the commodity sector.

The value of taxable commodity transaction shall be the price at which the commodity derivative is traded. This tax is to be collected by the recognised associations (exchange) from the seller and is to be paid within seven days of the month, following the month in which the same is collected. All the provisions applicable regarding security transaction tax in this regard shall be applicable. It is to be noted that, this commodity transaction tax shall be applicable only on commodity other than agricultural commodity and shall be applicable from the date, as the Central Government shall notify in the official gazette which in any case will be after the Finance Act, 2013 is notified. A corresponding amendment is being made by inserting clause (xvi) in Section 36(1), to allow deduction of the commodity transaction tax so paid in the course of the business while computing profit and gains of business or profession, if income from such commodity transaction is included in the income. It may also be relevant to note that the Finance Bill, 2008 had also proposed to levy commodity transaction tax but the same was not implemented.

Levy of Commodity Transaction Tax (CTT) on non-agricultural commodities will increase cost substantially and accordingly the investors and punters in commodities may shift to agricultural commodities' futures. It is interesting to note that the Security Transaction Tax on equity futures has been reduced from ₹1,700 per crore to ₹1,000 per crore, whereas a new CTT of ₹1,000 per crore has been levied on commodity futures. The currency futures, of which the market is also quite big, there is no such transaction tax at present.

B. Exemptions/Deductions

1. **One time benefit of interest of ₹100,000 on acquiring first home by an individual**

The Finance Bill, 2013 proposes to introduce a new Section 80EE, to provide deduction in respect of the interest payable on loan taken by an individual from a bank or a housing finance company, for the purpose of acquisition of a residential house property. This deduction is restricted to only ₹1 lakh and that too for one assessment year, i.e. assessment year 2014-15 in respect of the housing loan sanctioned from 1st April, 2013 to 31st March, 2014. It is to be noted that it is a one time exemption available for one assessment year of ₹1 lakh only. However, in case one is not able to take full deduction of ₹1 lakh in the assessment year 2014-15, then the deduction of the balance amount of ₹1 lakh can be claimed in the subsequent assessment year, i.e. 2015-16. One should not get confused with the yearly deduction of interest of ₹1.5 lakh, which is available under Section 24(a) in respect of self occupied property. Thus, deduction in the first year i.e. assessment year 2014-15 can be up to ₹2.5 lakh in respect of interest on housing loan. However, in the subsequent year, despite the interest on housing loan being more than ₹1.5 lakh, the deduction available will be only of ₹1.5 lakh under Section 24(a) and no deduction shall be available under this new Section 80-EE. It is to be further noted that for claiming this new deduction of ₹1,00,0000, the value of the residential house property should not exceed ₹40 lakh. Further, the assessee should not have any residential house property on the date of the sanction of the loan. The amount of the loan sanctioned should not exceed ₹25 lakh. It is to be further noted that the date of sanction of loan is sacrosanct for this deduction. The benefit is available only in respect of the loan sanctioned between 1st April, 2013 to 31st March, 2014. Any loan sanctioned before 1st April, 2013 will not be eligible loan. However, loan sanctioned before 1st April, 2014 will be eligible though the house may be acquired after 1st April, 2014. This deduction shall be available to an individual only and not to an HUF.

Presently under Section 80-GGB of the Income-tax Act, deduction is allowed to an Indian company in respect of the sum contributed to any political party, while computing its total income. Similarly under Section 80-GGC deduction is allowed to an individual, **HUF, partnership firm, LLP in respect of contribution** to any political party. The Finance Bill, 2013 proposes to insert a condition that no deduction under these sections shall be allowed in respect of any sum contributed by way of cash.

2. **Deduction for investment in Rajiv Gandhi Equity Saving Scheme to be for three years**

The Finance Act, 2012 has introduced a new Section 80CCG to allow deduction of 50% of the amount invested in equity shares to the extent of ₹25,000. This deduction was available to a new retail investor only for one assessment year and whose gross total income does not exceed ₹10 lakh.

The Finance Bill, 2013 proposes to extend the benefit of this scheme from one year to three consecutive assessment years with the result that a new retail investor can make investment of ₹50,000 in each of the three years and claim 50% deduction of such investment in each of the three assessment years. Further, the restriction of gross total income to not to exceed ₹10 lakh is being increased to ₹12 lakh. The scope of investment which was limited to listed equity shares is also being expanded so as to include listed units of an equity oriented fund. Now, the new retail investor can also make the investment in the equity oriented fund of the mutual fund and claim benefit of this scheme.

3. Scope of Section 80-D in respect of Health Insurance Premium expanded to include other schemes

As per the provision of Section 80-D, a deduction of ₹15,000 is allowed in respect of the amount paid to effect or keep in force an insurance on the health of the assessee or his family or any contribution made to Central Government Health Scheme (CGHS). The Finance Bill, 2013 proposes to widen the scope so as to include such other schemes as may be notified by the Central Government from time to time. This is being done to cover contribution being made under other Health Schemes which are similar to the CGHS.

4. Person with disability or disease may contribute higher percentage of insurance premium

The Finance Bill, 2013 proposes to amend the provision of Section 10(10D) so as to allow higher contribution up to 15% of the actual capital sum assured under a life insurance policy to a person with disability or severe disability or to persons suffering from disease or ailment as may be specified in Rule 11DD. The Finance Act, 2003 has introduced a condition under Section 10(10D) to the effect that the amount received on maturity of an insurance policy shall be exempt only when the premium paid for such policy does not exceed 20% of the actual capital sum assured in any year. This condition was inserted to discourage one time life insurance premium policies, whereby to take benefit of Section 10(10D), the entire premium was being paid in one year and later on the maturity amount with bonus was being claimed as exempt under Section 10(10D). The Finance Act, 2012 has further reduced this amount from 20% to 10% of the capital sum assured in any year so as to be eligible for exemption. This Finance Bill, 2013, considering the fact that the premium paid in respect of persons who suffers from severe disability or disease or ailment is higher, has proposed to relax this condition so as to allow contribution up to 15% of the capital sum assured in any one year. It may be noted that this increase in ceiling from 10% to 15% of the capital sum assured shall be applicable only for the policies issued on or after the 1st day of April, 2013.

Corresponding amendment has been proposed in Section 80-C, to allow deduction in the case of a person with disability or suffering from disease or ailment as is not in excess of 15% of the actual capital sum assured.

5. Donation to political parties not to be exempt when paid in cash

Presently under Section 80-GGB of the Income-tax Act, deduction is allowed to an Indian company in respect of the sum contributed to any political party, while computing its total income. Similarly under Section 80-GGC, deduction is allowed to an individual, HUF, partnership firm, LLP in respect of contribution to any political party.

The Finance Bill, 2013 proposes to make a very interesting amendment by inserting a new clause (iia) under Section 40(a) to provide that any amount paid by way of royalty, license fee, services fee, privilege fee, service charge or any other charge by whatever name called, levied exclusively on or which is appropriated directly or indirectly from a State Undertaking by the State Government will not be eligible expenditure while computing its income.

The Finance Bill, 2013 proposes to insert a condition that no deduction under these sections shall be allowed in respect of any sum contributed by way of cash. Thus, the contribution to political parties has to be by way of cheque or draft. It is interesting to note that the restriction is with reference to payment in cash as against provisions of Section 40A(3), Section 269SS and Section 269T, where there is a requirement not to make any payment otherwise than by way of an account payee cheque or an account payee draft.

6. Special provision regarding taxation of Securitisation Trust

The Finance Bill, 2013 proposes to give a special status to the trust formed to undertake securitisation activities which are regulated by SEBI or RBI. The income of such trust shall be exempt under Section 10(23DA) of the Income-tax Act. However, such trust will be liable to pay additional income tax on the income distributed to its investors on the line of dividend distribution tax. The tax rate shall be 25% in the case of distribution being made to the individual and HUF and 30% in other cases. These rates are the same as proposed under Section 115-R in respect of debt mutual fund. The distributed income received by the investor will be exempt from tax.

This provision shall be effective from 1st June, 2013.

7. Deduction under Section 80JJAA for additional wages for workmen employed for manufacture of goods in factory as against industrial undertaking

The existing provisions of Section 80JJAA which provides deduction of an amount equal to 30% of additional wages paid to the new regular workmen employed by the assessee for three years, is being substituted so as to restrict the Indian company deriving profit from manufacture of goods in its factory as against existing provision which allows deduction to any industrial undertaking engaged in the manufacture or production of an article or thing. Thus, the deduction is being limited to a factory as against industrial undertaking at present. This amendment has been proposed on the ground that the incentive under this provision was intended for employment of blue collar employees in the manufacturing sector and not for other employees in other sectors.

C. Business Income

1. Investment Allowance of 15% on investment of more than ₹100 crore in Plant and Machinery

The Finance Bill, 2013 proposes to allow a deduction of 15% as investment allowance on the aggregate amount of the actual cost of the new plant and machinery acquired and installed during the period beginning 1st April, 2013 and ending on 31st March, 2015 under a new Section 32AC. This benefit shall be available to a company only which is engaged in the business of manufacture of an article or thing and which invests more than ₹100 crore in the new plant and machinery. As per the proposed amendment, if a company, in the assessment year 2014-15, i.e. during the period from 1st April, 2013 to 31st March, 2014, invests more than ₹100 crore in the plant and machinery, it can claim the benefit of 15% investment allowance in assessment year 2014-15. Such company if it further invests in plant and machinery in the assessment year 2015-16, i.e. during the period from 1st April, 2014 to 31st March, 2015, it can claim the 15% investment allowance in respect of further additions it has made during the financial year 2014-15 in assessment year 2015-16. In case the company has invested less than ₹100 crore in the financial year 2013-14, it shall not be eligible to claim investment allowance in assessment year 2014-15. However, in case in the financial year 2014-15, it makes further investment so that the total investment including the investment made in the financial year 2013-14 is more than ₹100 crore, then it shall be entitled to claim investment allowance of 15% on the total investment in plant and machinery including that of the financial year 2013-14. It is to be noted that this benefit is available only to a company and not to an individual, HUF, partnership firm, LLP, etc. Further, this benefit shall be available only when the company is engaged in the business of manufacture of an article or thing. Hence service industry, traders are outside this ambit. Power companies will also have a dispute on the issue whether power is an article or a thing and accordingly, whether it can be said that power companies are engaged in the business of manufacture of an article or a thing. The minimum amount of investment of ₹100 crore to claim this benefit is too high and only a few large companies will be in a position to claim this benefit. Further, the investment allowance will not reduce the book profit and as such the liability to pay Minimum Alternate Tax will still be there.

The Finance Minister in his Budget speech has stated that no large economy can be truly developed without a robust manufacturing sector. Accordingly, this proposal is being introduced to attract new investment and to quicken the implementation of projects. He has also hoped that there will be enormous spill over benefits to small and medium enterprises.

The objective, as stated by the Finance Minister, is to promote the manufacturing sector which has lagged behind as is evident from the figures of the GDP of manufacturing sector. Accordingly, it will be ideal that this minimum requirement of ₹100 crore is reduced, if not less, to ₹10 crore so that a large number of enterprises become eligible. Further, there is no need to restrict the benefit to corporate entities only.

There is a further condition attached that the new plant and machinery so acquired and installed shall not be sold or transferred otherwise than on amalgamation or demerger for a period of five years and in case of such transfer, the amount of deduction allowed in respect of such plant and machinery shall be deemed to be the income of the year in which such sale or transfer is effected. The condition of not transferring the new plant and machinery of more than ₹100 crore for a period of five years is too impractical. If plant and machinery of more than ₹100 crore is installed or acquired, there is bound to be some replacement over a period of five years of some of the machinery. Accordingly, it may not be advisable to put a condition to not to transfer even a small part of the plant and machinery. A leverage to transfer or replace 10% to 25% of the total cost of plant and machinery may be provided, so as to avoid practical difficulties on this aspect. Further, the period of five years is too long, given the fact that these days technology changes very fast and plant and machinery gets outdated and becomes obsolete within a short span. Ideally, this period should not be more than three years.

Further, to give a boost to the manufacturing sector, it will be better that the depreciation rate for plant and machinery, which were reduced in the year 2005 from 33.33% to 15%, be again increased to 33.33% across the board for all plant and machinery used in manufacture or production of an article or thing. This will really encourage more investment in the plant and machinery and will not also effect the revenue, as depreciation over a period cannot exceed the actual cost.

2. Sale of property held as stock in trade to be valued at Circle rate for business income also

The Finance Bill, 2013 proposes to introduce a new Section 43CA on the line of Section 50C, so as to compute income of the person engaged in the business of real estate in respect of the property sold on the basis of the value adopted for the payment of the stamp duty based on the circle rate notified by the State Government. The Finance Act, 2002 has introduced Section 50C to provide that in case of transfer of land or building or both, if the consideration received is less than the value adopted or assessed by any State Government for the purpose of levy of stamp duty, the value adopted for stamp duty shall be deemed to be the full value of the consideration received for computing capital gain under Section 48 of the Income-tax Act. This provision was limited to computing capital gain under Section 45 of the Income-tax Act and was not applicable where the land and building was being sold in business like builder, developer etc. The Finance Bill, 2013 now is expanding the scope and, accordingly in the case of a builder or a developer also, if the sale consideration stated is less than the value adopted for the purpose of payment of stamp duty, then the value so adopted will be taken as full value of consideration while computing business income.

As is the case under Section 50C, an option is being given to the assessee that, in case he claims that the value adopted for the purpose of stamp duty exceeds the fair market value as on the date of transfer of the property, the Assessing Officer may refer the valuation of the property to the valuation officer. If the fair market value determined by the valuation officer is less than the value adopted for stamp duty purposes, the Assessing Officer may take such fair market value to be the full value of the consideration received. However, if the fair market value determined by the valuation officer is more than the value adopted for stamp duty purposes, the Assessing Officer shall not adopt the fair market value determined by the valuation officer, but will take the value adopted for stamp duty purposes as the consideration. Thus, in case the property is referred for valuation, the Assessing Officer cannot increase the value, but if the valuation is less than the stamp duty value, the same will get reduced.

Further in order to address the issue of change in circle rate consequent to the time gap between the date when the agreement to sell is entered into and the date when the registration is effected it has been provided that the value to be adopted for the purpose of computing profit and gains of business or profession shall be the stamp duty value on the date of the agreement to sell. However, in order to avoid any manipulation it has been provided that this benefit of agreement to sell shall be available only when the consideration or part of the consideration has been received by any mode other than cash on or before the date of the agreement for transfer of the property. Thus the agreement to sell where consideration has been received in cash only will not be valid for determination of the date applicable for circle rate.

It is to be noted that, under this Section 43CA, in the case of a person selling immovable property as stock-in-trade, the circle rate applicable as on the date of agreement to sell will be applicable. However, for a person selling immovable property as a capital asset, the capital gain would be computed on the basis of the circle rate applicable on the date of registration, not on the date of entering into agreement to sell. No corresponding amendment has been proposed to this effect in existing Section 50C. While selling property as a capital asset also there is every possibility that the circle rate may get changed between the times when the agreement to sell is entered with the prospective buyer and the date when the property is registered in the name of the buyer. Thus, there is a need to add corresponding provision under Section 50C also.

3. **Clarificatory amendment regarding provision for bad debt in case of banks**

The Finance Bill, 2013 proposes to introduce a clarificatory amendment regarding bad debts written off and the provision for bad debts. Presently, under Section 36(1)(vii), deduction is allowed in respect of bad debts actually written off. Further, under Section 36(1)(viia) deduction is allowed to the banks in respect of provision for bad and doubtful debts which include rural advances and other advances. As per Section 36(2)(v), it has been provided that actual bad debts allowable under Section 36(1)(vii) first needs to be debited to the provision made under Section 36(1)(viia) and any amount of the actual debt over and above the provision under Section 36(1)(viia) shall only be eligible for deduction. However, considering some judicial interpretations whereby it has been held that the actual bad debt is to be debited to the provisions which is limited to rural advances and not the total provision for bad debts this amendment is being made. Accordingly while claiming any deduction under Section 36(1)(vii) first the amount available in the provision under Section 36(1)(viia) needs to be adjusted and any bad debt actually written off in excess thereof shall only be eligible for deduction under Section 36(1)(vii).

4. **License Fee, Royalty, etc. levied by State Government on State Government Undertakings not eligible for deduction**

The Finance Bill, 2013 proposes to make a very interesting amendment by inserting a new clause (iia) under Section 40(a) to provide that any amount paid by way of royalty, license fee, services fee, privilege fee, service charge or any other charge by whatever name called, levied exclusively on or which is appropriated directly or indirectly from a State undertaking by the

> The Finance Bill, 2013 proposes to reintroduce an amendment by substituting existing clause (vii)(b) of Section 56(2) with a new clause so as to tax the difference in the stamp duty value of the property purchased and the actual consideration paid, if such difference exceed ₹50,000, as income from other sources of the buyer being individual or HUF.

State Government will not be eligible expenditure while computing its income. The memorandum explaining the provisions in the Finance Bill, 2013 states that this is being done to protect the tax base since disputes have arisen about deductibility of such expenditure while computing income of such undertakings.

It has also been stated that the undertakings are separate legal entities than the State and as such are liable to income tax. This amendment shows the difference in the thought process of the Central Government and the State Governments and also ignores the fact that these State Government undertakings have been created to carry out the State responsibility in a more professional and efficient manner. The scope and the area of these undertakings by and large is the State function. The State Government in order to have a better administration has created these undertakings and has provided them with statutory functions and also the State assets by way of land and other infrastructure. The income arising to these undertakings cannot be considered to be business income in the sense on which tax can be levied. Accordingly, the denial of the deduction in respect of an amount which is statutorily required to be paid, may not be justified. The State Government having delegated a sovereign function to these undertakings for better management and recovering a fee or royalty for the function delegated to such undertakings are entitled to the same and should not be assumed to be a tax avoidance device.

5. Further extension for setting up power generation, transfer or distribution undertaking by one year

The power industry continues to get extension year after year. The Finance Bill, 2013, on the line of the Finance Act, 2012, proposes to extend the terminal date by another one year for claiming exemption under Section 80-IA(4) in respect of undertakings engaged in generation and distribution of power; or which starts transmission or distribution; or which undertakes substantial renovation and modernisation of existing network of transmission or distribution upto 31st March, 2014. Accordingly, all such undertakings which become operational by 31st March, 2014 will be eligible to claim exemption for 10 consecutive assessment years out of the 15 assessment years from the year of its operation.

6. Dividend distribution tax of 20% on buy back of shares of unlisted companies

The Finance Bill, 2013 proposes to introduce a new Section 115-QA to levy dividend distribution tax on an Indian company on buy back of its shares not listed in any recognised stock exchange. The tax payable shall be at the rate of 20% on the distributed income i.e. the consideration paid by the company on buy back of shares as reduced by the amount which was received by the company for issue of such shares. Corresponding amendment is being made in Section 10 by inserting Clause (34A) to exempt income arising to a shareholder on buy back of shares of unlisted companies on which distribution tax has been paid under the above Section 115-QA. This amendment is being proposed considering the fact that the consideration received by a shareholder on buy back of shares by the company at present is taxable as capital gain under Section 46A of the Act. In view of this, many companies instead of paying dividend on which dividend distribution tax is payable, buyback the shares and the shareholder in turn either claim exemption of the capital gain under various provisions of the Income-tax Act or such capital gain is taxed at a lower rate. To address this issue it has been proposed that company on such buyback of shares shall pay distribution tax. It is to be noted that this tax is payable on the difference between the consideration paid by the company for buy back of shares and the amount received by the company for issue of such shares irrespective of the fact whether the company has accumulated profits or not. Thus this proposed provision goes even beyond Section 2(22)(e) of the Act whereby amount advanced is considered to be deemed dividend only to the extent of accumulated profits.

This amendment shall be effective from 1st June, 2013 and accordingly any buy back of unlisted shares by such companies, before 1st June, 2013 shall not be liable for this new additional income tax.

> The Finance Bill, 2013 proposes to clarify the existing provision in Section 153 regarding extension of time period for completion of assessment in case where reference for exchange of information is made abroad by a competent authority under Double Taxation Avoidance Agreement referred to in Section 90 or under Section 90A.

7. Key Man Insurance Policy

The Finance Bill, 2013 proposes to plug another loophole in respect of key man insurance policies so as to provide that the benefit of exemption under Section 10(10D) shall also not be available in respect of a key man insurance policy which has been assigned to any person during its term with or without consideration and such policies shall continue to be treated as a key man insurance policy. This amendment is being made considering the fact that key man insurance policy is assigned before its maturity to the key man and it is claimed that after such assignment the policy is no longer a key man insurance policy and accordingly not excluded from the exemption provided under Section 10(10D).

8. Trading in Commodity Derivatives not to be speculative transaction

The Finance Minister, while proposing to levy CTT on non-agricultural commodities futures contract, has also proposed that trading in commodity derivatives will not be considered as a speculative transaction. However, no corresponding amendment has been proposed in Section 43(5) by the Finance Bill, 2013. It appears that while debating the issue later to levy CTT, it was thought fit to give a concession by treating trading in commodity derivatives as non- speculative transactions. Accordingly suitable amendment will be proposed in Section 43(5) at the time of passage of the Finance Bill so as also to exclude eligible transactions in respect of trading in commodity derivatives on the line on which trading in derivatives or securities have been excluded. It is to be further noted that though the CTT will be levied on non-agricultural commodity derivatives, the benefit of not treating the transaction in commodity derivatives as speculative by implementation will get extended to trading in agricultural commodity derivatives also. It is to be further noted that this benefit of treating the commodity derivatives as non-speculative will be effective from the date the same is notified by the Central Government. Losses, if any, before such notification in such commodity derivatives will be considered to be speculative losses and as such will not be eligible to be set off against the profit arising from such transactions after the notification date.

D. Capital Gain

1. Agricultural land outside municipal limit for the purpose of capital gain and agricultural income re-defined

At present, under the Income-tax Act, capital gain arising on transfer of agricultural land in India is not taxable as it does not fall in the definition of the capital asset under Section 2(14)(iii) of the Income-tax Act. Similarly any rent or revenue derived from agricultural land (farm house) which is situated in India is considered to be agricultural income and not taxed in view of the provisions of Section 2(1A) of the Income-tax Act. For the purpose of claiming this exemption, as on date, in both these sections, it has been provided that such agricultural land should not be situated in any area within the jurisdiction of the municipality or a cantonment board and which has a population of not less than ten thousand or in an area which is not more than 8 KMs from the local limit of any municipality or a cantonment board as may be notified by the Central Government having regard to the extent of urbanisation of that area. Thus for claiming exemption under this provision, as on date, the land must fall outside the area notified by the Central Government. The Finance Bill, 2013 proposes to define the area in the Act itself rather than making a reference to the notification. Accordingly, it has been proposed that the said land should not be situated in the case of a municipality or a cantonment board which has a population of more than 10,000 but not exceeding 1 lakh within a distance of 2 kms. In the case where the population of the municipality or a cantonment board is more than 1 lakh but not exceeding 10 lakh, such land should not be situated within a distance of 6 kms. In the case of a municipality or a cantonment board which has a population of more than 10 lakh, such land should not be situated within a distance of 8 kms. All distances have to be measured from the local (outer) limit of the municipality or a cantonment board and are to be measured aerially. It has also been clarified that the population shall mean the population according to the last preceding census of which the relevant figures have been published before the 1st day of the previous year i.e. the taxable year, not the assessment year. This provision shall come into force from assessment year 2014-15 for which the previous year will start from 1st April, 2013. Accordingly, the persons having land which are covered within the meaning of agricultural land under the existing provisions and may not be covered within the meaning of agricultural land under the proposed amendment, if they sell the said agricultural land by 31st March, 2013, they can still claim exemption.

E. Income from Other Sources

1. Property purchased for inadequate consideration to be taxed as income from other sources

The Finance Bill, 2013 proposes to reintroduce an amendment by substituting existing Clause (vii)(b) of Section 56(2) with a new clause so as to tax the difference in the stamp duty value of the property purchased and the actual consideration paid, if such difference exceed ₹50,000, as income from other sources of the buyer being individual or HUF. It is to be noted that a similar provision was introduced by the Finance (No.2) Act, 2009 effective from 1st October, 2009. However, this provision was withdrawn retrospectively by the Finance Act, 2010. Under Section 50C, the seller is already required to compute capital gain on the basis of stamp duty value if the actual consideration is less than stamp duty value. As is the case under Section 50C for the seller, the buyer in case he disputes that the stamp duty valuation is higher than the fair market value on the date of the transfer, the Assessing Officer may refer the matter to the valuation officer. If the fair market value determined by the valuation officer is less than the value adopted for stamp duty purposes then such fair market value shall be adopted for this purpose. However, if the fair market value determined by the valuation officer is more than the stamp duty value then the Assessing Officer shall not be able to adopt such fair market value and will take the stamp duty value for this purpose in view of the provisions of Section 50C(3) which are applicable to this proposed section also. This amendment by implication may address all those disputes which are recently arising on acquisition of immovable property whereby the Assessing Officer makes addition merely on the basis of the higher valuation made by the valuation officer without there being any material or evidence of any consideration being paid over and above the value stated in the sale deed.

The proposed amendment shall also address the issue which may arise consequent to the revision of the circle rate between the date on which the agreement to sell is entered and the date on which the sale deed is entered. It is being provided that in such a case the stamp duty value on the date of the agreement to sell shall be taken provided the consideration or a part thereof has been paid on or before the date of the agreement by a mode other than cash. This condition of payment at the time of the agreement to sell other than by cash is being introduced to avoid any doubt about the date of the agreement to sell. It is to be noted that this amendment does not make a distinction of acquisition of property for personal purposes or in the course of business. Accordingly it can have far reaching implications in respect of persons engaged in the business of real estate if the purchases have been made at a value less than the stamp duty value. However, it is also to be noted that this provision is applicable only in the case of an individual and HUF and accordingly this provision will not be applicable where the property is purchased by a partnership firm or an LLP or a company.

F. Assessment

1. Return to be defective if tax with interest is not paid before filing of return

The Finance Bill, 2013 proposes to insert a new Clause (aa) in explanation below Section 139(9) so as to provide that if tax together with interest payable in accordance with the provisions of Section 140A has not been paid on or before the date of furnishing of the return, the same will be treated as a defective return.

As per the provisions of Section 139(9), the Assessing Officer in such a situation will intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation or within such further period on an application the Assessing Officer may in his discretion allow. In case the defect is not so rectified within the period so allowed, the return shall be treated as invalid return and it shall be considered that assessee has failed to furnish the return. However, the proviso to this section also states that where assessee rectifies the defect after the expiry of the period allowed to him but before the assessment is made, the assessing officer can condone the delay and treat the return as a valid return.

With this amendment it will not be possible to file return without paying full taxes with interest.

This provision shall be applicable from 1st June, 2013.

2. Scope of directing special audit under Section 142(2A) being widened

At present under Section 142(2A) of the Income-tax Act, the Assessing Officer can direct the assessee to get the accounts audited if he is of the opinion having regard to the nature and complexity of the accounts and the interest of the revenue, it is necessary so to do. The Finance Bill, 2013, proposes to widen the ambit so as to provide that the assessing officer can direct special audit not only having regard to the nature and complexity of the accounts but also having regard to the volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee.

This amendment shall be applicable from 1st June, 2013.

3. Extension of period of limitation where reference for exchange of information is made abroad or where order of special audit is quashed by the court

The Finance Bill, 2013 proposes to clarify the existing provision in Section 153 regarding extension of time period for completion of assessment in case where reference for exchange of information is made abroad by a competent authority under Double Taxation Avoidance Agreement referred to in Section 90 or under Section 90A. It is being clarified that where more than one reference for exchange of information is made the period to be excluded shall be the period from the date on which a reference or first of the references for exchange of information is made to the date on which the information requested is last received by the Commissioner or a period of one year whichever is less while computing the period of limitation under Section 153 of the Income-tax Act. Thus the maximum extension in case of exchange of information is limited to a period of one year.

Further, it is being proposed that the period of limitation for completion of assessment and reassessment shall stand extended in case the direction of the assessing officer for special audit under Section 142(2A) is set asided by the Court. The extension shall be for the period commencing from the date on which the assessing

> In case of failure to furnish the information, presently penalty at the rate of ₹100 per day is leviable under Section 271FA. The Finance Bill, 2013 proposes to raise the penalty, in cases where the income tax authority has called for the information under sub-section (5) of Section 285BA and the same is not furnished, from ₹100 per day to ₹500 per day.

officer directs the assessee for special audit and ending with a date on which orders setting aside such direction is received by the Commissioner while computing the period of limitation for the purpose of Section 153. A corresponding amendment has been proposed in Section 153B of the Income-tax Act regarding reassessment consequent to the search.

This amendment shall be effective from 1st June, 2013.

4. **Tax due from a company/LLP to include interest and penalty in case of recovery from directors/partners**
Provisions of Section 179 whereby tax due from a private company can be recovered from the director is being amended to clarify that the tax due shall also include interest and penalty thereon as well as any other sum payable under the Act. Similar amendment is being made under Section 167C of the Income-tax Act for recovery of tax from partners in respect of liability of LLP.

This amendment shall be effective from 1st June, 2013.

5. **Existing liability under Section 132B not to include advance tax payable**
A clarificatory amendment is proposed to be introduced by inserting Explanation 2 in Section 132B to clarify that existing liability stated in Section 132B does not include advance tax payable in accordance with the provisions of Chapter XVIIC. This is being done to ensure the recovery of not only outstanding tax, interest and penalty but also to provide for recovery of taxes/interest/penalty which may arise subsequent to the assessment pursuant to search.

This amendment shall be effective from 1st June, 2013.

6. **Penalty for non-furnishing of AIR information on requisition by the assessing officer increased from ₹100 to ₹500 per day**
Presently under Section 285BA, there is an obligation to furnish annual information return in respect of certain transactions stated therein. Further in terms of Section 285-BA(5), the income tax authority has power to call for such information where a person has not furnished the AIR information. In case of failure to furnish the information, presently penalty at the rate of ₹100 per day is leviable under Section 271FA. The Finance Bill, 2013 proposes to raise the penalty, in cases where the income tax authority has called for the information under sub-section (5) of Section 285BA and the same is not furnished, from ₹100 per day to ₹500 per day.

7. **Electronic filing of annexure-less Wealth Tax Return**
Provisions of Wealth Tax Act are being amended to facilitate electronic filing of annexure-less return of net wealth. The amendment proposed is on the line similar to the amendment made earlier to facilitate electronic filing in Income-tax Act under Section 139C and 139D.

This amendment is being made with effect from 1st June, 2013, and, accordingly, return of wealth tax for assessment year 2013-14 now can be filed electronically.

The Finance Bill, 2013 proposes to reintroduce provision making it obligatory to deduct tax at source under a new Section 194-IA so as to provide that every buyer at the time of making payment or crediting of any sum as consideration for transfer of immovable property other than agricultural land shall deduct tax at source at the rate of 1% of such sum where the total amount of the consideration for the transfer of the immovable property is ₹50 lakh or more.

G. Tax Deduction at Source

1. **Tax to be deducted at source by buyer on purchase of immovable properties**
The Finance Bill, 2013 proposes to reintroduce provision making it obligatory to deduct tax at source under a new Section 194-IA so as to provide that every buyer at the time of making payment or crediting of any sum as consideration for transfer of immovable property other than agricultural land shall deduct tax at source at the rate of 1% of such sum where the total amount of the consideration for the transfer of the immovable property is ₹50 lakh or more. This provision is being introduced on the reasoning that despite there being a statutory requirement of furnishing Permanent Account Number in the documents relating to the sale of the property, in majority of the cases, such PAN is not being furnished. A similar provision was introduced by the Finance Bill, 2012 whereby an obligation was also cast on the registering officer to not to register any document unless the buyer furnishes the proof of deduction of income tax. However, in the new provision introduced in this Finance Bill, 2013 there is no such obligation on the registering officer. Under the proposed provision, there is an obligation on every buyer irrespective of the status, i.e. individual, HUF, partnership firm, company, to deduct tax at source at the rate of 1%. This deduction has to be made at the time of making payment or credit whichever is earlier. Thus, even at the time of giving earnest money or an advance money or an installment, tax will be required to be deducted and deposited in accordance with the provisions of the Act. Further, it will be also important that the seller has a Permanent Account Number as otherwise in view of the provisions of Section 206AA of the Act the tax will be required

to be deducted at the rate of 20% instead of 1%. The only exclusion is where the consideration is less than ₹50 lakh or agricultural land as defined under Section 2(14)(iii) the definition of which is also proposed to be changed in this Finance Bill, 2013.

This provision may have a lot of practical difficulties in view of the fact that, this will be applicable to an individual buying property who may not be having TAN. Further, tax will be required to be deducted from each payment. In the case of a developer, each customer will be deducting tax at the time of making each payment and it will be a very voluminous task to issue and collect tax certificates. Further, the issue of reconciliation will also be cumbersome considering the fact that the tax will get deducted even on advance payment and income consequent to the sale may accrue in subsequent year or years.

This provision will be applicable from 1st June, 2013 and accordingly all transactions on or after 1st June, 2013, where the consideration is not less than ₹50 lakh, shall be covered under this provision.

H. International Taxation

1. Tax Residency Certificate necessary but not sufficient – GAAR being revived from backdoor

The Finance Bill, 2013 proposes to insert a new sub-section (5) in Section 90 and Section 90A to the effect that for claiming any relief under the Double Taxation Avoidance Agreement, the tax residency certificate as referred to in sub-section (4) of Section 90 and 90A shall be necessary but not a sufficient condition. It has been stated that in the memorandum explaining the provisions in the Finance Bill 2013, that this position that tax residency certificate is necessary but not sufficient condition was earlier mentioned in the memorandum explaining the provisions in the Finance Bill, 2012 while inserting sub-section (4) regarding the requirement of the tax residency certificate.

This amendment, however, has a far reaching implication as the Mauritius tax route will again come under threat because of this provision. This amendment will also dilute the most quoted circular No. 789 dated 13th April, 2000 of CBDT which was quashed by the Delhi High Court, but in an appeal filed by the Union of India, the Supreme Court upheld the validity of the circular in the famous case of Azadi Bachao Andolan 263 ITR 706 (SC). With this proposed amendment, the tax officer will now be able to raise the same dispute which was raised in the year 2000. The officer may ask a foreign institutional investor (FII), besides submitting tax residency certificate, to establish that it has actual residence in Mauritius. It is to be noted that the whole controversy of GAAR has arisen mainly because GAAR was intended to challenge the issue of residency and consequently withdraw the benefit available under the Mauritius Treaty. Despite India having tax treaties with 84 countries, the most important treaties are that of Mauritius and Singapore, as it affects the major foreign investment inflow in India since capital gains realised by the residents of these jurisdictions are exempt under this treaty. The proposed amendment in fact is a backdoor entry of the controversial GAAR provision which otherwise, in view of the hue and cry and serious outflow of FII investment during the year, are proposed in this Finance Bill, 2013 to be postponed by another two years. This amendment will also water down the Supreme Court judgment in the case of Azadi Bachao Andolan and CBDT Circular No.789 dt. 13th April, 2000 by which it has been clarified:

"The provisions of the Indo-Mauritius DTAC of 1983 apply to 'residents' of both India and Mauritius . Article 4 of the DTAC defines a resident of one State to mean any person who, under the laws of that State is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. Foreign Institutional Investors and other investment funds etc. which are operating from Mauritius are invariably incorporated in that country. These entities are 'liable to tax' under the Mauritius Tax law and are therefore to be considered as residents of Mauritius in accordance with the DTAC.

Prior to 1st June, 1997, dividends distributed by domestic companies were taxable in the hands of the shareholder and tax was deductible at source under the Income-tax Act, 1961. Under the DTAC, tax was deductible at source on the gross dividend paid out at the rate of 5% or 15% depending upon the extent of shareholding of the Mauritius resident. Under the Income-tax Act, 1961, tax was deductible at source at the rates specified under Section 115A etc. Doubts have been raised regarding the taxation of dividends in the hands of investors from Mauritius. It is hereby clarified that wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly.

The test of residence mentioned above would also apply in respect of income from capital gains on sale of shares. Accordingly, FIIs etc., which are resident in Mauritius would not be taxable in India on income from capital gains arising in India on sale of shares as per paragraph 4 of article 13."

It may be interesting to note that, in this Finance Bill, 2013, this amendment is the only amendment which is being proposed retrospectively, i.e. from assessment year 2013-14.

2. General Anti Avoidance Rules (GAAR)—being postponed by two years

The Finance Bill, 2013 proposes to postpone the GAAR by another two years and to substitute the existing provision of Chapter XA and Section 144BA regarding General Anti Avoidance Rules (GAAR). The amended provisions are on the line of the expert committee's recommendations, of which the announcement was made on 14th January, 2013. The salient features of this amendment are:

"(A) *The provisions of Chapter X-A and Section 144BA will come into force with effect from 1st April, 2016 as against the current date of 1st April, 2014. The provisions shall apply from the assessment year 2016-17 instead of assessment year 2014-15.*

(B) *An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement. The current provision of Section 96 providing that it should be "the main purpose or one of the main purposes" has been proposed to be amended accordingly.*

(C) *The factors like, period or time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route was provided by the arrangement, would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement. The current provisions of Section 97 which provided that these factors would not be relevant has been proposed to be amended accordingly.*

(D) *An arrangement shall also be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the application of Chapter X-A. The current provisions as contained in Section 97 are proposed to be amended to provide that an arrangement shall also be deemed to lack commercial substance if the condition provided above is satisfied.*

(E) *The Approving Panel shall consist of a Chairperson who is or has been a Judge of a High Court; one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices. The current provision of Section 144BA ,that the Approving Panel shall consist of not less than three members being income-tax authorities and an officer of the Indian Legal Service has been proposed to be amended accordingly.*

(F) *The directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities and no appeal against such directions can be made under the provisions of the Act. The current provisions of Section 144BA providing that the direction of the Approving Panel will be binding only on the Assessing Officer have been proposed to be amended accordingly.*

(G) *The Central Government may constitute one or more Approving Panels as may be necessary and the term of the Approving Panel shall be ordinarily for one year and may be extended from time to time up to a period of three years. The provisions of Section 144BA have been proposed to be amended accordingly.*

(H) *The two separate definitions in the current provisions of Section 102, namely, "associated person" and "connected person" will be combined and there will be only one inclusive provision defining a 'connected person'. The provisions of Section 102 have been proposed to be amended accordingly.*

This amendment will be effective from 1st April, 2016 and, accordingly, shall be applicable from assessment year 2016-17.

It is to be noted that the Finance Minister in his Budget speech has stated that the recommendation of the Shome Committee has been accepted but following major recommendations of the Shome Committee have not been incorporated in the amendment proposed in the Finance Bill, 2013:

i) The monetary threshold limit of ₹3 crore for invoking GAAR;
ii) Grand-fathering provision in respect of investment made on or before 30th August, 2010;
iii) The applicability of the GAAR where a part of the arrangement is an impermissible avoidance agreement to be restricted to that part only and not to the whole arrangement;
iv) The provisions of GAAR to ensure that same income is not taxed twice in the hands of the same tax payer in the same year or in different assessment years.

3. Dividend received from foreign companies to continue to be taxed at concessional rate of 15% for one more year

The Finance Bill, 2013 proposes to extend the benefit of Section 115BBD by another one year the concessional rate of tax of 15% on the dividend income received by an Indian company from a foreign company in which it has shareholding of 26% or more. This provision was introduced by the Finance Act, 2011 to attract more repatriation of income earned by a subsidiary of Indian companies for a period of one year. The Finance Act, 2012 has extended the period to another one year. With this further extension by the Finance Bill, 2013 this benefit will continue to be available for dividend received in the financial year 2013-14, i.e. assessment year 2014-15.

4. Dividend received by Indian company from foreign subsidiary to be exempt from dividend distribution tax

Presently, under the Income Tax provisions, every Indian company in addition to paying tax at the rate of 30% on its income is required to pay dividend distribution tax at the rate of 15% on the amount of dividend distributed, at the time of distribution of dividend. However, there is an exemption in respect of the dividend distributed to the extent of the dividend received from an Indian subsidiary company which has paid the dividend distribution tax on such dividend. Similar exemption is proposed to be extended by this Finance Bill, 2013 in respect of the dividend received from a foreign subsidiary company on which tax has been paid under Section 115-BBD of the Income-tax Act. This amendment is being introduced to remove the cascading effect in respect of the dividend received by an Indian company from a similarly placed foreign company. This exemption can be subject matter of tax planning so as to take benefit of tax at the rate of 15% as against normal tax of 30%. Presently, if a resident individual receives an income from abroad say UAE, the same will get taxed at the rate of 30%. But if this income is received by an Indian company by way of dividend from its subsidiary in UAE, then such dividend income will get taxed at the rate of 15%. The Indian company in turn can pay dividend to its individual shareholders out of such dividend received without paying dividend distribution tax in view of the proposed amendment. Thus, the income from UAE will reach in the hands of the individuals by paying tax at the rate of 15% as against normal tax rate of 30%.

It is to be noted that the existing provisions and the proposed amendment allows deduction only in respect of the dividend received from a subsidiary company on which dividend distribution tax has been paid. The dividend received from a company which is not a subsidiary company continues to bear the cascading effect as the company is required again to pay dividend distribution tax on the income distributed despite the fact that such income comprised of the dividend received from another company on which dividend distribution tax has been paid. It is being realised that subjecting again dividend distribution tax has a cascading effect there is no reason why there should be a distinction of the dividend received from a subsidiary company or a non-subsidiary company. Further, the contention that only such company shall be considered as a subsidiary company if such other company holds more than 50% of the equity share capital of the company also is not in line with the exemption provided under Section 115BBD in respect of dividend received from a foreign company whereby holding 26% or more equity is considered to be eligible for concessional rate of 15% tax.

This amendment shall be effective from 1st June, 2013 and, accordingly, if any Indian company distributes dividend on or after 1st June, 2013, it shall be eligible to, deduct the amount of the dividend received by it from a foreign subsidiary company while computing its liability of paying dividend distribution tax.

> The Finance Bill, 2013 proposes to extend the **benefit of Section 115BBD by another one year the** concessional rate of tax of 15% on the dividend income received by an Indian company from a foreign company in which it has shareholding of 26% or more.

5. Tax on royalty or fee for technical services increased to 25%

Presently, under Section 115-A of the Income-tax Act, the tax rate applicable in the case of a non-resident on income by way of royalty or fee for technical services is 10% if the agreement for such royalty or fee for technical services is entered on or after 1st June, 2005. The Finance Bill, 2013 proposes to increase this from 10% to 25%. This is being done on the ground that as per the Double Taxation Avoidance Agreement (DTAA) entered into by India with other countries, the tax rate provided in the DTAA is more than the tax rate of 10% under this normal provision of the Act. Accordingly, there is no justification to keep the tax rate under the normal tax provision lower than the tax rate applicable as per the Treaty. However, this justification for enhancement of tax rate does not take into account the fact that India has reduced the tax rate on royalty and fee for technical services from 30% to 20% in the year 1997 and from 20% to 10% in the year 2005 to attract more investment and technology despite the fact that the tax rate applicable on royalty or fee for technical services under DTAA at that time were also more than the 10%. It is not that post 1997 or post-2005, the tax rates under DTAA on royalty or fee for technical services has been increased necessitating increase in the normal provision of the Income-tax Act.

6. Concessional rate of 5% on interest on ECB borrowing being extended to rupee denominated long-term infrastructure bond:

The Finance Bill, 2013 proposes to extend the scope of Section 194-LC in respect of a borrowing by an Indian company in foreign currency from a source outside India by issue of long-term infrastructure bond whereby concessional rate of tax of 5% is applicable on the interest payment to a non-resident person. As per the proposal the concessional rate of 5% shall be applicable in respect of the long term infrastructure bonds issued by an Indian company which are denominated in Rupee. However, for claiming this concessional rate of 5%, the non-resident is required to deposit foreign currency in designated bank account and such money converted into Rupee is utilised for subscribing to the long-term infrastructure bond issue of an Indian company. The interest income arising thereon shall be taxable at the rate of 5%.

This provision shall be applicable from 1st June, 2013.

7. **No clarity on retrospective amendment relating to indirect transfer**

Last year, the Finance Act, 2012 had made far reaching retrospective amendments to Section 2 and Section 9 in relation to indirect transfers in order to undo the judgment of the Supreme Court in the case of Vodafone. In view of the severe adverse impact on FII and FDI, the Government asked the Shome Committee to revisit these amendments. The Shome Committee has made recommendations to not to make retrospective amendment. The Finance Bill, 2013 is silent on this issue. The Vodafone case controversy still continues to be a major issue with the foreign investors in view of the retrospective amendments which led to uncertainty in the law. The Finance Minister in his Budget speech though has stated that he will improve communication of policies to remove any apprehension or distrust in the minds of investors but in the absence of any categorical statement about the retrospective amendment in the law, fears about undue regulatory burden and application of tax law continue with the foreign investors.

I. Miscellaneous

1. **Pass through status to alternative investment fund on the line of venture capital fund**

Venture capital fund/venture capital company registered with SEBI as Category-I – Alternative Investment Fund under the Alternative Investment Fund regulations have been granted pass through status on the line of pass through status granted under Section 10(23FB) to venture capital company and venture capital fund from investment in a venture capital undertaking. However the income arising or received by a person out of the investment made in such Fund shall be taxable in his hands under Section 115-U of the Income-tax Act. Under this Section 115-U, the income paid by a special fund is deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it has been received by, or had accrued or arisen to the company or fund during the previous year as the case may be.

2. **Income of investor protection fund of depository to be exempt**

The Finance Bill, 2013 proposes to introduce a new sub-section (23ED) in Section 10 to exempt income of the investor protection fund of depository similar to the exemption provided under Section 10(23EA) of income received by an investor protection fund set up by the recognised Stock Exchange. The exemption will be available to such investor protection fund which is set up by the depository in accordance with the regulations prescribed by the SEBI. Further, it has been provided that any amount standing to the credit of the fund if it is shared wholly or partly with a depository then exemption will not be available in respect of the amount so shared and the same will be deemed to be the income in which such amount is shared. Thus, the investor fund so created by the depository has to be maintained exclusively and is not to be shared with the depository.

The Finance Bill, 2013 proposes to insert a new sub-section (5) in Section 90 and Section 90A to the effect that for claiming any relief under the Double Taxation Avoidance Agreement, the tax residency **certificate as referred to in sub-section (4) of** Section 90 and 90A shall be necessary but not a **sufficient condition.**

3. **Income of National Financial Holding Company Ltd. to be exempt**

The Finance Bill, 2013 has proposed to insert a new sub-section (49) in Section 10 to provide that the income of National Financial Holding Company Ltd. which is a company set up by the Central Government shall be exempt commencing from the assessment year 2014-15. This exemption is continuation of the exemption provided to the specified undertaking of the Unit Trust of India which has been wound up and is succeeded by this new company called National Financial Holding Company Ltd.

4. **Time period for recognised fund to obtain exemption from Provident Fund Commission being extended**

As per the existing provisions, for a Provident Fund to obtain recognition under the Income-tax Act, such Provident Fund should be notified by the Central Provident Fund Commissioner under Section 1(4) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and such Fund should have exemption under Section 17 of the said Act. The Finance Act, 2006 had inserted that this notification and the approval should be obtained by 31st March, 2007 by the existing Provident Fund, otherwise recognition of such fund shall be withdrawn. Considering the fact that such notification and approval has not been granted so far by the Provident Fund Commissioner to a large number of Funds, year after year, this deadline is being extended. The Finance Bill, 2013 proposes to extend this deadline of notification and obtaining exemption from the Provident Fund Commissioner from 31st March, 2013 to 31st March, 2014. ■

Impact of Finance Bill 2013 on Real Estate Sector

The Finance Bill 2013 has effected amendments in Income tax law with respect to 'urbanisation of areas for income tax purposes,' 'value of consideration in case immovable property held as stock in trade is sold below stamp value,' 'taxation of transfer of immovable property for inadequate consideration,' 'TDS on Transfer of immovable property other than agricultural land,' and 'interest on housing loan'. Most of the amendments in the Income-tax Act, 1961, with respect to the real estate transactions, are in a way inevitable and need of the hour. However, considering the current state of inflation, the assessees being 'aam admi', were expecting more relief measures.

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1. Urbanisation of Areas for Income Tax Purposes

1.1 The Finance Act 1970, originally amended Section 2(14) of the Income-tax Act, 1961 to classify Agricultural Land as Rural Agricultural Land and Urban Agricultural Land. In 1974, Notification No. 10 of 1994 was issued, classifying lands as Urban Agricultural Land, and the same was separately specified for each State and Municipality. Since the time of the above Notification, issued almost two decades back, a lot of urbanisation has taken place, and hence with this as the background, the Central Government has amended the Law in Sections 2(1A)(c) and in Section 2(14)(iii) of the Income-tax Act, 1961, and Section 2(ea) clause (b) Explanation 1 in the Wealth Tax Act, 1957, and has introduced the following provisions for classifying lands as Urban Agricultural Lands –

*"… in any area within the **distance, measured aerially,—***

(I) not being more than two kilometres, from the local limits of any municipality or cantonment board referred to, in item (A) and which has a population of more than ten thousand but not exceeding one lakh; or

(II) not being more than six kilometres, from the local limits of any municipality or cantonment board referred to, in item (A) and which has a population of more than one lakh but not exceeding ten lakh; or

(III)not being more than eight kilometres, from the local limits of any municipality or cantonment board referred to, in item (A) and which has a population of more than ten lakh".

Comparison of Existing and Proposed Provisions

1.2 ***Existing Provisions:*** The existing provisions define the term "Capital Asset" as property of any kind held by an Assessee, whether or not connected with his business or profession. Certain categories of properties including Rural Agricultural Land, have been excluded from this definition. Agricultural land situated in any area within the jurisdiction of a Municipality or Cantonment Board, having population of not less than 10,000 according to last preceding census, or (b) situated in any area within such distance not exceeding 8 kilometers from the local limits of any Municipality or Cantonment Board, as notified by the Central Government having regard to the extent and scope of urbanisation and other relevant factors, are in the nature of Urban Agricultural Land, and hence form part of Capital Asset.

1.3 ***Proposed Amendments:*** In Finance Bill 2013, it is proposed to provide that the land situated in any area within the distance, ***measured aerially (shortest aerial distance),*** (I) not being more than two kilometers from the local limits of any Municipality or Cantonment Board and which has a population of more than ten thousand but not exceeding one lakh; or (II) not being more than six kilometers, from the local limits of any Municipality or Cantonment Board and which has a population of more than one lakh but not exceeding ten lakh; or (III) not being more than eight kilometers, from the local limits of any Municipality or Cantonment Board and which has a population of more than ten lakh, shall be considered as Urban Agricultural Land and hence form part of Capital Asset. It is also to be noted that income from Farm House situated in the above Urban Agricultural Land will not be considered as Agricultural Income, if such land is not assessed to Land Revenue. The above Urban Agricultural Land is also included within the definition of the term "Asset" for the purpose of charging Wealth Tax.

It is also proposed to define the expression "population" to mean population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

1.5 ***Issues:***

(a) Whereas, the proposed amendment provides for a distance measure aerially, there may be questions as to whether a particular Survey Number is covered in the aerial distance, since there is no measure as on date to provide for the aerial distance for a particular Survey Number. The aerial distance measured can provide only region–wise coverage, and does not provide accurate coverage by Survey Number wise, which may give rise to unwanted dispute.

(b) Remotely located lands, which are not connected by any motorable road and not approachable, may still be considered as an Urban Land, if they are situated within the specified area. Such classification cannot be considered as a valid proposition.

2. Value of Consideration in case Immovable Property held as Stock in Trade is sold below Stamp Value

2.1 Section 50C of the Income-tax Act, 1961 as amended by the Finance Act 2002, w.e.f 01-04-2003 provides that where a Capital Asset being a land or building or both, is transferred for a value, less than the value as determined by the Stamp Valuation Authority, then the value determined by the Stamp Valuation Authority shall be considered for the purpose of computation of Capital Gains.

2.2 In the following judicial rulings, it has been held that provisions of Section 50C ***shall not apply for Immovable Property held as stock in trade–***

- *KR Palanisamy vs. UOI 2009 180 Taxman 253 (Mad.)*
- *CIT vs. Kan Construction and Colonisers Private Ltd. 2012 208 Taxman 478 (All.)*

2.3 Finance Bill, 2013 proposes to insert a new Section 43CA as follows –

"…43CA. (1) Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(2) The provisions of sub-section (2) and sub-section (3) of Section 50C shall, so far as may be, apply in relation to determination of the value adopted or assessed or assessable under sub-section (1).

The Bill proposes that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the Stamp Duty Value, the value so adopted or assessed or assessable, shall be deemed to be the full value of the consideration for the purposes of computing income **under the head "Profits and Gains of Business of** Profession".

(3) Where the date of agreement fixing the value of consideration for transfer of the asset and the date of registration of such transfer of asset are not the same, the value referred to in sub-section (1) may be taken as the value assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer on the date of the agreement.

(4) The provisions of sub-section (3) shall apply only in a case where the amount of consideration or a part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the asset".

2.4 The Bill proposes that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the Stamp Duty Value, the value so adopted or assessed or assessable, shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and Gains of Business of Profession".

2.5 The bill also provides that, where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the Stamp Duty Value may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer. However, this exception shall apply only in those cases where amount of consideration or a part thereof for the transfer has been received by any mode other than cash on or before the date of the agreement.

2.6 ***Issues:***

(a) The section provides that "consideration for the property, has been made in ***"any mode other than cash",*** on or before the date of agreement, fixing the amount of consideration for the transfer of such Property". The question arises as to whether the word ***"any mode other than cash"*** will include (a) Transfer by Book Entry or (b) Transfer by way of agreement to exchange or (c) Transfer for Hundi, or Promissory Note executed for the amount of consideration.

(b) If an agricultural land, which is not a capital asset, is acquired and held as Stock in Trade, sale of such land may also be brought to tax under the above provision, even if it is used by the assesee for agricultural purpose, since the section starts with the words, ***"An asset other than a Capital Asset".***

3 Double Taxation of Transfer of Immovable Property for Inadequate Consideration

3.1 The following new clause (b) is proposed to be substituted in Section 56(2)(vii), to provide that the following shall be taxable value of gift of immovable property –

"(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:

Provided that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:

Provided further that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;";

3.2 ***Background:*** In 2009, amendments were made to Section 56 vide Finance Act, 2009 to provide that where an immovable property is received, for a

Where the land or building is a Capital Asset, transferred for a value less than the Stamp Duty Value, the notional difference amount is taxable in the hands **of the Transferor as Capital Gain under Section 50C, and if the asset is held as Stock in Trade, taxable as profit** and gains of business or profession, in the hands of the transferor by the proposed Section 43CA. To tax the notional amount again in the hands of the transferee, leading to Double Taxation and collecting a tax of **50% to 60% in aggregate from the Transferor and the** Transferee may not be fair.

consideration, which is less than stamp duty value of the property and the difference exceeds ₹50,000, the difference between stamp duty value and such consideration shall be taxed as the Income of the recipient. But, the Finance Act 2010, withdrew the above provision of taxability with retrospective effect from 01-10-2009, with the reason that there is a time gap between the booking of the property and the receipt of the property in registration, which results in a taxable differential. Therefore, taxing the receipt of property for inadequate consideration is not a fair proposition. But within three years, there seems to have been a change in the mindset of the Government and the same amendment has been brought back.

3.3 The Bill proposes to amend the section, to provide that, where any immovable property is received for a consideration which is less than the value fixed by the Stamp Valuation Authority by an amount exceeding ₹50,000, the differential value shall be chargeable to tax, in the hands of the individual or HUF as Income from Other Sources.

3.4 The Bill also proposes to provide that, where the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration is not the same; the stamp duty value may be taken as on the date of the agreement instead of that on the date of registration. This exception shall, however, apply only in a case where the amount of consideration or part thereof, has been paid by any mode other than cash on or before the date of the agreement fixing the amount of consideration for the transfer of such immovable.

3.5 The above amendments will override the following decision of the Delhi High Court in the case of *CIT vs. Khoobsurat Resorts Private Limited 2012 211 Taxmann 510.*

3.6 ***Issues:***

(a) ***Double Taxation:*** Where the land or building is a Capital Asset, transferred for a value less than the Stamp Duty Value, the ***notional difference amount*** is taxable in the hands of the Transferor as Capital Gain under Section 50C, and if the asset is held as Stock in Trade, taxable as profit and gains of business or profession, in the hands of the transferor by the proposed Section 43CA. To tax the notional amount again in the hands of the transferee, leading to Double Taxation and collecting a tax of 50% to 60% in aggregate from the Transferor and the Transferee may not be fair.

(b) The issue highlighted in Para 2.6(a) above will be applicable here as well.

4. TDS on Transfer of Immovable Property other than Agricultural Land

4.1 ***Background:*** It is mandatory under Section 139A of the Income-tax Act, 1961 read with Rule 114B of the Income-tax Rules, 1962 to quote the PAN in documents pertaining to purchase or sale of immovable property for value of Rs. 5 lakh or more. However, the information furnished to the Department in Annual Information Returns by the Registrar or Sub-Registrar indicate that a majority of the Purchasers or Sellers of immovable properties, valued at ₹30 lakh or more, during the financial year 2011-12 did not quote or quoted invalid PAN in the documents relating to transfer of the property.

4.2 The existing provisions of the Income-tax Act, 1961 provide for deduction of tax at source on certain specified payments made to residents by way of salary, interest, commission, brokerage, professional services, etc. On transfer of immovable property by a Non Resident, tax is required to be deducted at source by the transferee. However, there is no such requirement on transfer of immovable property by a Resident, except in the case of compulsory acquisition of certain immovable properties.

4.3 Hence, a new Section 194–IA is proposed to be introduced as follows –

'194-IA. (1) Any person, being a transferee, responsible for paying (other than the person referred to in Section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), shall, at the time of credit of such sum to the account of the transferor or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to one per cent. of such sum as income-tax thereon.

(2) No deduction under sub-section (1) shall be made where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

Explanation.— For the purposes of this section,—

(a) "agricultural land" means agricultural land in India, not being a land situated in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of Section 2;

(b) "immovable property" means any land (other than agricultural land) or any building or part of a building.'

4.4 In order to have a reporting mechanism of transactions in the real estate sector and also to collect tax at the earliest point of time, it is proposed to insert a new Section 194-IA to provide that every transferee, at the time of making payment or crediting of any sum as consideration for transfer of immovable property (other than Agricultural Land) to a resident transferor, shall deduct tax,at the rate of 1% of such sum.

4.5 In order to reduce the compliance burden on the small taxpayers, it is further proposed that no deduction of tax under this provision shall be made where the total amount of consideration for the transfer of an immovable property is less than ₹50 lakh.

4.6 The above is a welcome move, because most of the undisclosed income in real estate transactions, will now be brought under the lens of the taxman.

4.7 ***Suggestion:*** Instead of putting every transferee into the difficulty of deducting tax and remitting to Government, following options may be considered by the Government in order to avoid the necessity of tax deduction and subsequent compliance by Transferees –

(a) The Sub-Registrar registering the property may be mandated to collect 1% TCS from the Transferor, and require the transferor to quote his PAN as a precondition for registration of property.

(b) The onus may also be passed on to the transferor, to pay mandatory Advance Tax of 1% of the value of the property transferred, and the same may be required to be produced as an evidence and pre–condition for registration. A separate code and challan may be used for remittance of the same so that the said transactions can be distinctly identified and tracked.

(c) If the Government decides to continue the TDS provisions itself, a specially designed TDS challan may be used, with the details of the PAN of transferor and transferee without any need for the transferee to apply for TAN and submit returns etc., for a single property purchase transaction.

5. Interest on Housing Loan

5.1 ***Existing Provisions:*** Presently, income chargeable under the head 'Income from House Property' is computed under Section 24 after making the following deductions –

(a) 30% of the Annual Value,

(b) Where the property has been acquired, constructed, repaired, renewed or reconstructed with Borrowed Capital, the amount of any interest payable on such capital.

5.2 Where the property consists of a house or part of a house which is in the occupation of the owner for the purposes of his own residence or cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him, then the amount of deduction as mentioned above shall not exceed ₹1,50,000.

5.3 Keeping in view the need for affordable housing, an additional benefit for first-home buyers is proposed to be provided, by inserting a new Section 80EE in the Income-tax Act, 1961 relating to deduction, in respect of interest on loan taken for residential house property as follows –

'80EE. (1) In computing the total income of an assessee, being an individual, there shall be deducted, in accordance with and subject to the provisions of this section, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

(2) The deduction under sub-section (1) shall not exceed one lakh rupees and shall be allowed in computing the total income of the individual for the assessment year beginning on the 1st day of April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than one lakh rupees, the balance amount shall be allowed in the assessment year beginning on the 1st day of April, 2015.

(3) The deduction under sub-section (1) shall be subject to the following conditions, namely:—

(i) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 2013 and ending on the 31st day of March, 2014;

The proposed new Section 80EE provides that, the deduction shall apply only for loan taken for the purpose of "acquisition of a residential house property". It is not clear whether the deduction is available in case of self-construction of the property by the assessee. The maximum deduction of **₹1,50,000** for interest on self occupied property was prescribed by Finance Act 2000, w.e.f 01-04-2001. Considering the **inflation, in the last decade and increase in the value** of residential house, in the market, is would have only **been fair on part of the Government to extend this benefit to all assessees having self occupied, property** instead of a select few categories of assessees.

(ii) the amount of loan sanctioned for acquisition of the residential house property does not exceed ₹25 lakh;
(iii) the value of the residential house property does not exceed ₹40 lakh;
(iv) the assessee does not own any residential house property on the date of sanction of the loan.
(4) Where a deduction under this section is allowed for any interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.
(5) For the purposes of this section,—(a) "financial institution" means a banking company to which the Banking Regulation Act, 1949 applies including any bank or banking institution referred to in Section 51 of that Act or a housing finance company;
(b) "housing finance company" means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.'

5.4 The proposed new Section 80EE seeks to provide that in computing the total income of an assessee, being an individual, there shall be deducted, subject to the provisions of Section 80EE, interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property.

5.5 The deduction under the proposed section shall not exceed ₹1,00,000 and shall be allowed in computing the Total Income of the individual for the assessment year beginning on 1st April, 2014 and in a case where the interest payable for the previous year relevant to the said assessment year is less than ₹1,00,000, the balance amount shall be allowed in the assessment year beginning on 1st April, 2015.

5.6 It is also provided that the deduction shall be subject to the following conditions –
- (a) The loan is sanctioned by the financial institution during the period beginning on 1st April, 2013 and ending on 31st March, 2014;
- (b) The amount of loan sanctioned for acquisition of the residential house property does not exceed ₹25 lakh;
- (c) the value of the residential house property does not exceed ₹40 lakh;
- (d) The assessee does not own any residential house property on the date of sanction of the loan.

5.7 It is also provided that where a deduction under this section is allowed for any assessment year, in respect of interest referred to in sub-section (1), deduction shall not be allowed in respect of such interest under any other provisions of the Income-tax Act, 1961 for the same or any other assessment year.

5.8 ***Issue:*** The Section provides that, the deduction shall apply only for loan taken for the purpose of ***"acquisition of a residential house property".*** It is not clear whether the deduction is available in case of ***self-construction*** of the property by the Assessee.

5.9 ***Selective in nature:*** The maximum deduction of ₹1,50,000 for interest on self-occupied property was prescribed by Finance Act 2000, w.e.f. 01-04-2001. Considering the inflation in the last decade and increase in the value of residential houses in the market, it would have only been fair if this benefit was extended to all assessees having self-occupied property, instead of a select few categories of assessees.

6 Conclusion

Most of the above amendments in the Income-tax Act, 1961 with respect to the real estate transactions, are in a way inevitable and need of the hour. However, considering the current state of inflation, the assesses being 'aam admi', were expecting more relief measures (one such example being the fixing of the ceiling for deduction of Interest on House Property at a much higher value.), rather than burdening them with further compliances and subjecting them to double taxation in certain cases.■

Key International Tax Provisions Proposed in Finance Bill, 2013

The Finance Bill ('FB') 2013 was presented on 28th February, 2013 by the Finance Minister Mr. P Chidambaram as a part of Union Budget 2013-14. The purpose of this article is to discuss the key international tax amendments proposed in the FB 2013 pertaining to General Anti Avoidance Rules ('GAAR'), Requirement of Tax Residency Certificate ('TRC'), Increase in the tax rate of royalty/fees for technical services ('FTS') under the Act, and Increase in surcharge on foreign tax payers. Although the number of amendments introduced in FB 2013 pertaining to international tax are much lower compared to amendments introduced in Finance Act 2012, these amendments still are of far reaching nature.

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I. General Anti Avoidance Rules

GAAR was first proposed to be introduced as a part of Direct Tax Code – new legislation envisaged to replace the existing Income-tax Act, 1961. However, through the Finance Act 2012, GAAR provisions in wider form were introduced in the present Income-tax Act, 1961 ('the Act') which were applicable from 1st April, 2013. As per the GAAR provisions introduced in Finance Act, 2012, arrangement entered into an assessee may be declared to be an impermissible avoidance agreement and its effect can be ignored.

Thereafter, the Central Board of Direct Taxes ('CBDT') had formed a Committee to formulate guidelines for implementing the GAAR provisions and to draft a circular to ensure that GAAR provisions are uniformly applied. The Committee released the draft GAAR guidelines in June 2012.

Subsequently, amidst wide-spread opposition to the sweeping powers granted under GAAR, the Prime Minister constituted an Expert Committee on GAAR on 17th July, 2012 under the chairmanship of Dr. Parthasarathi Shome, to vet and rework the GAAR Guidelines based on comments from various stakeholders, including the general public. The Expert Committee furnished its final report to the Government of India which was published on 14th January, 2013.

In the FB 2013 proposal, some of the recommendations of the report have been included. These amendments in GAAR provisions are explained as under:

GAAR amendments under FB 2013:

1. **Date -** Applicability of GAAR provisions has been postponed to AY 2016-17.

2. **Definition of Impermissible Avoidance Arrangement**

   As per the present provisions, GAAR provisions can apply in an impermissible avoidance arrangement. An impermissible avoidance arrangement was defined as an arrangement, *the main purpose or one of the main purposes* is to obtain a tax benefit.

   This has been amended to clarify that an arrangement can be considered as an impermissible avoidance arrangement only if its *"main purpose"* is to obtain a tax benefit.

   Thus, applicability of GAAR provisions has been limited only in cases where the main purpose is to obtain a tax benefit. Hence, for transactions, where tax benefits are incidental and not main, it may be possible to take a view that such transactions/ arrangement do not fall as impermissible avoidance arrangement.

3. **Onus of proof**

   As per the present provisions of Section 96(2) of the Act, an arrangement was presumed to have been entered into for obtaining a tax benefit, if the main purpose of a step in arrangement is to obtain a tax benefit notwithstanding that fact that main purpose of the whole arrangement is to obtain a tax benefit. As per the amended provision proposed to be inserted by FB 2013, an arrangement shall be presumed, *unless it is proved to the contrary by the assessee* to have been entered into for obtaining a tax benefit.

   Hence, the onus of proof for justifying that the arrangement has not been entered into for obtaining tax benefit would now be on the taxpayer.

4. **Definition of arrangement to lack commercial substance**

   As per the present provisions of Section 97(1) of the Act, an arrangement shall be deemed to lack commercial substance if following conditions are satisfied:

   i) The effect of arrangement as a whole is inconsistent with individual steps or parts; or
   ii) It involves or includes
      a. Round tripping;
      b. An accommodating party;
      c. Elements cancelling each other;
      d. Transaction conducted through one or more persons which disguises the value, location, ownership or control of funds; or
   iii) It involves location of an asset or transaction or place of residence which is without any substantial commercial purpose.

   The above definition is proposed to be amended to include that arrangement would be deemed to lack commercial substance if it does not have significant effect on business risks or net cash flows of any party.

5. **Relevant factors for determining whether an arrangement lacks commercial substance**

   FB 2013 proposes to amend that the following factors may be regarded as relevant but not sufficient for determining whether arrangement lacks commercial substance or not:

   - period or time for which the arrangement had existed;
   - the fact of payment of taxes by the assessee;
   - the fact that an exit route was provided by the arrangement.

6. **Definition of the term 'tax benefit'**

   FB 2013 proposes to amend the definition of 'tax benefit' in an inclusive manner rather than in an exhaustive manner as per existing provisions.

   Hence, the term 'tax benefit' would *include*

   (a) a reduction or avoidance or deferral of tax or other amount payable under this Act; or
   (b) an increase in a refund of tax or other amount under this Act; or
   (c) a reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or

(d) an increase in a refund of tax or other amount under this Act as a result of a tax treaty; or
(e) a reduction in total income; or
(f) an increase in loss.

7. Changes in Approving Panel

As per the existing provisions, if the AO at any stage of assessment proceedings considers it necessary to declare an arrangement as an impermissible avoidance arrangement, he would need to make a reference to the Commissioner in this regard. The Commissioner would thereafter and after hearing the assessee, make a reference to the Approving Panel for declaring an arrangement as an impermissible avoidance arrangement.

As per existing provisions, the Approving Panel was to be constituted of not less than three members, being:

i) Income tax authorities not below the rank of Commissioner; and
ii) Officer of the Indian Legal Service not below the rank of Joint Secretary to the Government of India.

Under the existing provisions, as the Approving Panel consisted entirely of the Government officials, a lot of oppositions were raised to ensure that Approving Panel should be independent of Government officials.

Accordingly, as per FB 2013, the Approving Panel is proposed to be reconstituted as under:

i) Chairperson who is or has been a Judge of a High Court;
ii) one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax;
iii) and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices

Additionally, the term of the Approving Panel has been mentioned as ordinarily one year which may be extended from time to time, up to a period of three years.

Further, the Central Government has the power to constitute one or more Approving Panels as against the existing provisions which grants CBDT the power to constitute an Approving Panel.

Also, under the existing provisions, the directions issued by the Approving Panel were binding on the tax authority. However, the FB 2013 proposes to amend that by providing that directions issued by Approving Panel would be binding on assessee as well as tax authority for which no appeal under the Act would be available.

Further, powers of the approving panel have been enhanced to include the powers of a civil court under the Code of Civil Procedure, 1908.

Irrespective of the above changes, as per the existing provisions, GAAR would still override tax treaty.

Some of the key recommendations of the Expert Committee which were accepted by the Government in January 2013 but have not been proposed by the FB 2013 are as under:

- Grandfathering of investments made before 30th August, 2010;
- The same income not to be taxed twice in the hands of the same taxpayer in the same year or in the different assessment year;
- A monetary threshold (₹30 million of tax benefit) in order to attract the provisions of GAAR; and
- Only one of GAAR and specific anti-avoidance rules to apply when both of them are in force.

Thus, FB 2013 has incorporated certain recommendations made by the Expert Committee on GAAR and it needs to be seen as to how the Government deals with the balance recommendations.

II. Requirement of Tax Residency Certificate ('TRC')

The Supreme Court in the landmark judgment in the case of *Azadi Bachao Andolan (184 CTR SC 450)* had upheld CBDT circular No. 789 dated 13th April, 2000 which had said that TRC will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership of a Mauritian company.

The above observations were followed in a number of judicial rulings thereafter and were accepted as a settled principle. However, tax officers were often raising the issue that TRC by itself is not sufficient proof of residential status of an assessee.

As per the present provisions, GAAR provisions can apply in an impermissible avoidance arrangement. An **impermissible avoidance arrangement was defined** as an arrangement, the main purpose or one of the **main purposes is to obtain a tax benefit. This has** been amended to clarify that an arrangement can be considered as an impermissible avoidance arrangement **only if its "main purpose" is to obtain a tax benefit.**

Subsequently, Finance Act 2012 introduced sub-section 4 to Section 90 and 90A which provided for mandatory furnishing of TRC as per the prescribed format in order to avail DTAA benefits. Further, the Memorandum explaining the provisions of FB 2012 provided that furnishing of TRC was not a sufficient proof in order to claim DTAA benefits.

Consequently, FB 2013 has now proposed to introduce sub-section 5 to Section 90 and 90A with retrospective effect from Assessment Year ('AY') 2013-14 to provide as below:

"(5) The certificate of being a resident in a specified territory outside India referred to in sub-section 4, shall be necessary but not a sufficient condition for claiming any relief under the agreement referred to therein."

A literal reading of the proposed amendment would suggest that TRC cannot be regarded as a sufficient proof to claim DTAA benefits.

Due to this proposed amendment, various stakeholders had raised their apprehensions, as it would mean that the TRC produced by a resident of a contracting state could be questioned by the tax authorities in India.

Pursuant to this, the Finance Ministry has clarified that proposed amendment does not intend to dilute the legal position as existing today on acceptance of TRC as a valid proof for treaty residency. Hence, the TRC produced by a resident of a contracting state will be accepted as evidence that he is a resident of that contracting state and the Indian tax authorities will not go behind the TRC and question his resident status. Thus, Finance Ministry confirmed that in the case of Mauritius, Circular no. 789 dated 13-04-2000 continues to be in force by issuing a clarification.

However, the Finance Minster has clarified in the press that for the purpose of examining beneficial ownership of recipient in the matter of interest, royalty, etc. the tax authorities can look beyond TRC to determine their compliance. The above statement has however, not been incorporated in the clarification issued by the Finance Ministry.

The Finance Ministry has clarified that when the FB 2013 is taken up for consideration, the concerns if any for the above sub-section would be suitably addressed.

Thus, based on the amendment to be made by FB 2013, proposed to be applied retrospectively from AY 2013-14, it appears that the TRC will now only be one of the necessary conditions for claiming the treaty benefits. However, the condition of beneficial ownership will have to be independently verified and hence tax authorities may go beyond the valid TRC for looking for beneficial ownership. The tax department in the past and the judiciary have also challenged the concept of beneficial ownership while claiming treaty benefits.

III. Increase in Tax Rate of Royalty/Fees for Technical Services under the Act

Section 115A of the Act deals with the tax rate on dividends, royalty and FTS in case of foreign companies. As per the existing provisions, the gross amount of royalty/FTS received by the foreign company from an India concern from an agreement entered on or after 1st June, 2005 is taxable at the rate of 10% (plus applicable surcharge and cess).

FB 2013 has proposed to increase this rate from 10% to 25% (plus applicable surcharge and cess). This enhanced tax rate of royalty/FTS would apply to all the payments made from the tax year 2013-14.

The Honourable Finance Minister, in his budget speech on 28th February, 2013 gave the following justification for the proposed amendment:

"Another case is the distribution of profits by a subsidiary to a foreign parent company in the form of royalty. Besides, the rate of tax on royalty in the Income-tax Act is lower than the rates provided in the number of Double Tax Avoidance Agreements. This is an anomaly that must be corrected. Hence, I propose to increase the rate of tax on payments by way of royalty/ fees for technical services to non residents from 10% to 25%. However, the applicable rate will be the rate stipulated in the DTAA."

The Honourable Finance Minister has made an inaccurate assumption that the rate of royalty in the Act is lower than the rates provided in the number of

DTAA's. The rate of royalties/FTS under the current DTAA's has been summarised in the following table:

Royalty		FTS	
Rate of withholding	**No. of countries***	**Rate of withholding**	**No. of countries***
10%	52	10%	46
15%	14	15%	7
20%	5	17.5%	1
22.50%	2	20%	5
10%/15%/20%	4	22.5%	2
10%/20%	1	10%/15%/20%	4
15%/20%	1	15%/10%	1
25%/15%	1	25%/15%	1
30%	1	30%	1
As per domestic law	3	Doesn't Exist	15
Total	**84**	**Total**	**84**

* *The numbers are tentative and without considering impact of MFN Clause*

The impact of the proposed increase in the rate would be substantial in cases where:

- There is no treaty with the country of the recipient;
- Treaty benefit is denied for any reason;
- There is unintended coverage due to the wide scope of definition of royalty/FTS under the Act;
- Where the contract is net of tax;
- TDS default could also lead to disallowance under Section 40(a).

The proposed amendment also makes the punitive rate prescribed under Section 206AA smaller. As per Section 206AA of the Act, where any person who is entitled to receive any sum or income or amount on which the tax is deductible under chapter XVIIB of the Act and he fails to furnish his Permanent Account Number, the tax shall be deducted at the higher of the following rates:

i. At the rate specified in the relevant provision of the Act or
ii. At the rate or rates in force or
iii. At the rate of 20%

Accordingly, in case the foreign company receiving royalty/FTS fails to furnish the Permanent Account Number, the tax to be deducted would be 25% (and not punitive rate of 20%).

However, the proposed amendment would not have its impact on the following:

- If the recipient is entitled to DTAA benefit in terms of coverage or rate;
- If the treaty is governed by Fees for included services concept;
- If the payment is made by a non Indian concern (as Section 115A is limited to application of payments by Indian concern).

In the existing scenario, where the Indian companies are reliant on foreign technology for setting up of various operations and joint ventures, transfer of technology is bound to become expensive and prohibitive. Further, it may also affect technology transfers and joint collaboration agreements and in the process, limiting the growth of Indian companies in the competitive global scenario.

The Finance Ministry has clarified that proposed amendment does not intend to dilute the legal position as existing today on acceptance of TRC as a valid proof for treaty residency. Hence, the TRC produced by a resident of a contracting state will be accepted as evidence that he is a resident of that contracting state and the Indian tax authorities will not go behind the TRC and question his resident status.

IV. Increase in Surcharge on Foreign Tax Payers

There is a marginal increase in the rate of surcharge on foreign tax payers. Presently, the rate of surcharge on the foreign tax payers where the income exceeds ₹10 crore is 2%. The said rate is proposed to increase to 5%. Hence, the resulting effective corporate rate tax of foreign tax payers having income in excess of ₹10 crore would be 43.26% for the tax year 2013-14.

Conclusion

Thus, although a number of amendments introduced in FB 2013 pertaining to international tax are much lower compared to amendment introduced in Finance Act 2012, these amendments still are of far-reaching nature and their impact would need to be adequately analysed before undertaking any international transaction. ■

Analysis of Budget 2013-14: Central Excise

There was a buzz in the last week prior to the budget that an increase of excise duty to 14% considering the fiscal challenges continuing to be faced by the country was inevitable. The experience of the year may have dissuaded the Finance Minister of India to go ahead with this move as it could lead to inflation, as well as reduce the pace of growth of the manufacturing sector which as of now are worrying numbers in central excise duty, as forecasted last year.

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(₹ In Crore)

Actual (2011-12)	Budget (2012-13)	% age change b/n 1 & 2	Revised (2012-13)	%age change b/n 2 & 3	Budget (2013-14)	%age change b/n 3 & 4
1	2	-	3	-	4	-
144,900.97	193,729.34	-33.70	171,315.09	-11.57	196,804.95	+14.88

Industrial growth is expected to be lower in this year and maybe the coming year too due to reduced capital spends. The revised budget estimates for the year 2012-13 being 11.57% lower than the budget estimates along with the soft budget indicate that yet again the budget estimates for 2013-14 may not be easy to achieve. Consequently, this would have an adverse impact on the fiscal deficit, as it is unlikely that the government expenditure, especially in this year, could be controlled and would certainly exceed the budget.

Listing of Tariff Changes

Chap. or Tar. Head	Description	Rates Before Finance Bill, 2013	Rates After Finance Bill, 2013	Increase/ (Decrease)
72	Stainless steel pattis/pattas	30,000 per cold rolling machine	40,000	10,000
8517	Mobile handsets of the value exceeding ₹2000	1%	6%	5%
2402	Cigarette, cigar	10% or 12%	18%	6%
8703	Sport utility vehicle (U/Ch. 8703 and engine capacity>1500CC)	27%	30%	3%
1108 19	Tapioca starch manufactured and captively consumed within the factory of their production, in the manufacture of *tapioca sago* (sabudana)	12%	Nil	(12%)
2008 11 00	Peanut butter	6%	Nil	(6%)
1903 00 00	*Tapioca sago* (sabudana)	6%	Nil	(6%)
2503 00 10	All goods for manufacture of fertilisers ***Explanation:*** For the purposes of this entry the term "fertisers" shall include bentonite sulphur	Nil	2%	2%
25151220 25151290 68022110 68022190	Marble slabs and tiles	30 per sqm	60 per sqm	30 per sqm
33	Henna powder or paste not mixed with any other ingredient	6%	Nil	(6%)
57	1. Handmade carpets 2. Carpets and other textiles floor 3. Other carpets and other textile floor	12%	Nil	(12%)
71	Silver produced or manufactured during the process of zinc or lead smelting starting from the stage of zinc or lead ore or concentrate	12%	4%	(8%)
8706 00 42	For vehicles other than petrol driven	15%	13%	(2%)
8901, 8904, 8905 and 8906 90 00	All goods	6%	Nil	(6%)
61, 62 and 63	Readymade branded garments	12%	Nil	(12%)

Ready Made Garment Industry- see-saw:

Union budget 2001 presented by Shri Jaswant Singh, then Finance Minister of India, imposed excise duty on garments by stating "there is no economic logic to continue with excise duty exemption on garments sold under a registered trade name" and imposed duty of 16% on such garments. In 2003 unbranded garments also brought to tax.

This was reversed in 2004 by Shri P. Chidambaram: *I propose to introduce a new tax regime for the textile sector and, in this exercise, those who can compete because of their organisational strength should be* *allowed to compete; for the rest, we must allow more time to comply with a mandatory tax regime*. Articles in Chapter 61, 62 & 63 were specified in *Notification No. 30/2004* granting exemption.

Later, in 2011, Shri Pranab Mukherjee brought the levy back: ...*our garment and made-ups industry has come of age and has shown handsome growth in recent years. As part of base expansion, I propose to convert the optional levy into a mandatory levy at a unified rate of 10%*.

Again in this budget, Shri P. Chidambaram, the present Finance Minister of India, brought the same to 'zero excise duty route' by stating that the readymade garment industry is in the throes of a crisis and needed a lifeline.

Enhanced Recovery Mechanism

Section 11 of the Central Excise Act, 1944 deals with recovery mechanism of duty and other sums payable to the Central Government under any of the provisions of the Act or rules made thereunder. The section also covers the recovery of any excess duty collected by the person liable to pay duty from the buyer of such goods as provided under Section 11D of the Act. As per the provisions of Section 11, the officer empowered by the CBEC may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due, which may be in his hands or under his disposal or control. The Act also empowers such officer to recover the amount due by attachment and sale of excisable goods belonging to such person. If the amount payable is not recovered, he may seek to recover the same through the Collector of the district as if it were an arrear of land revenue.

Clause 80 of the Finance Bill, 2013 seeks to amend Section 11 of the Finance Act, 2013, whereby it has not only re-numbered to Section 11(1) but has also extended the powers of recovery proceedings, apart from the empowered officer to include any other *Central Excise Officer or a proper officer referred to in Section 142 of the Customs Act, 1962*.

Clause 80 of the Finance Bill, 2013 seeks to amend Section 11 of the Finance Act, 2013, whereby it has not only re-numbered to Section 11(1) but has also extended the powers of recovery proceedings apart from the **empowered officer to include** *any other Central Excise* ***Officer or a proper officer referred to in Section 142 of*** *the Customs Act, 1962.*

Sub-section 2(i) is inserted wherein the Central Excise Officer is given certain additional power whereby he, by a notice in writing, requires any other person from whom money is due, or may become due or may subsequently hold money for or on account of such person, to pay to the credit of Central Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice, not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount.

Further, sub clause (ii) provides that every person to whom such notice is issued shall be bound to comply with such notice. In case where such notice is issued to a post office, banking company or an insurer of such person, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made.

After shifting the burden of recovery to the debtors of the person from whom the duty is due, the sub clause (ii) further provides that in a case where the person to whom a notice under this sub-section has been issued, fails to make the payment, he shall be deemed to be a person from whom duty and any other sums of any kind payable to the Central Government, an assessee in default.

Therefore, the person to whom such notice is issued has no option but to pay off all the dues to the Central Government on behalf of his debtor, to avoid any penal consequence on him. It is worth mentioning that the said inclusion is similar to Section 226(3) of the Income-tax Act, 1961 which provides provision for recovery under the said Act.

The provisions however have no saving provision for the bank or debtor who pays, who maybe proceeded against by assessee to recover the monies paid to the revenue.

Section 11A is the recovery provision in the case of duties not levied, short levied, not paid, short paid and erroneously refunded. The normal period of limitation for any demand is 1 year. However, under sub-section (4), the period of limitation is extended to *five years* in case any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of—fraud; or collusion; or any willful mis-statement; or suppression of facts; or contravention of any of the provisions of this Act.

Sub-section (7) provides that if any person pays

Section 11A is being amended in the Finance Bill 2013 to insert sub-section (7A) providing that service of a statement containing details of duty not paid, short levied or erroneously refunded shall be deemed to be a service of notice. The major impact of the above amendment is that the limitation period of one year or **five year, as the case may be, shall be computed from** the date of service of such statement.

the duty along with the applicable interest and penalty equal to one percent, *before service of show cause notice on him*, the Central Excise officer shall not serve any notice and all proceedings in respect of the said duty shall be deemed to be concluded. If such payment is short paid, he can proceed for recovery, in which case the limitation period of one year is computed from the date of receipt of information of payment.

Section 11A is being amended in the Finance Bill, 2013 to insert sub-section (7A) providing that service of a statement containing details of duty not paid, short levied or erroneously refunded shall be deemed to be a service of notice. The major impact of the above amendment is that the limitation period of one year or five years, as the case may be, shall be computed from the date of service of such statement. This would ensure that delayed issue of SCN whether due to complicity of the officers or deliberate tactics by unscrupulous assessees, would save the demand from being barred on limitation.

Section 11DDA deals with the situation of provisional attachment of property by Central Excise officer with the approval of the Commissioner of Central Excise during the pendency of any proceedings for the purpose of protecting the interest of the revenue. Clause 82 of the Finance Bill, 2013 has omitted the reference of sub-section (1) of Section 11A thereby extending the scope of provisional attachment to the entire Section 11A.

This extension of powers to lower authority has the potential to cause undue hardship to the tax compliant assessees, which without argument maybe necessary to recover from the tax evaders. A need to keep the registered tax payer who is filing returns regularly out of such draconian measures exists.

Stay Order by Appellate Tribunal

Section 35C (2A) provides that the Appellate Tribunal, where it is possible, to hear and decide every appeal within a period of three years from the date on which such appeal is filed. Where a stay has been granted in any of the proceedings, the Appellate Tribunal shall dispose of the appeal within a period of 180 days from the date of such order and is not disposed of within 180 days, the stay order shall stand vacated.

Finance Bill, 2013 proposes to introduce a *third proviso*, wherein if an application is made by a party and on being satisfied that the delay in disposing of the appeal is not attributable to such party, the Appellate Tribunal have the power to extend the period of stay to such further period, as it thinks fit, not exceeding 185 days, and in case the appeal is not so disposed of within the total period of 365 days from the date of order, the stay order stands vacated.

The CBEC had issued a circular (967/01/ 2013 – CX dated 01-01-2013) stating that where an appeal is filed with the CESTAT, along with a stay application against an *order in appeal* confirming the demand for the first time, the recovery proceedings shall be initiated within 30 days after the filing of appeal, if no stay is granted or after the disposal of stay petition, in accordance with the conditions of stay, if any, whichever is earlier.

However, if an appeal is filed with CESTAT along with a stay application against an Order in Appeal confirming the demand in the *order in original*, the recovery proceedings shall be initiated immediately on the issue of *order in appeal*.

The circular relied on the decision of the Supreme Court in case of *Collector of Customs, Bombay vs. Krishna Sales (P) Ltd [1994 (73) E.L.T 519 (S.C)]* has observed: *As is well known, mere filing of an Appeal does not operate as a stay or suspension of the*

As per the Finance Bill, 2013, even if the assessee is not in fault, the CESTAT does not have the power to grant stay beyond a period of 365 days. This means that recovery proceedings shall be initiated against the assessee after a period of 365 days from the date of passing the stay order. It does not matter whether the CESTAT has not heard the case at all, or the CESTAT bench is not sitting or the department has asked for adjournment, etc.

Order appealed against. This particular circular was challenged by Larsen & Toubro Limited [2013 – TIOL – 99- HC- Mum] and many others in the Bombay High Court wherein stay was granted to the assessee. The Court held that where the stay has been applied for and *remained pending for reasons beyond the control of the assessee, then the Circular cannot be applied.* This led several assessees who received recovery letters from the department approaching the High Court and obtaining stay.

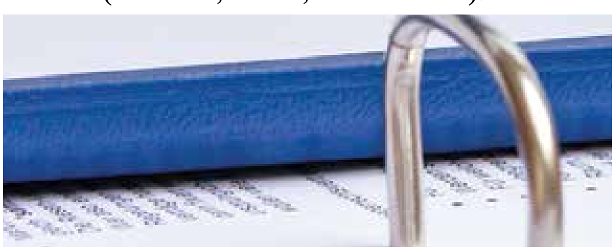
As per the Finance Bill, 2013, even if the assessee is not in fault, the CESTAT does not have the power to grant stay beyond a period of 365 days. This means that recovery proceedings shall be initiated against the assessee after a period of 365 days from the date of passing the stay order. It does not matter whether the CESTAT has not heard the case at all, or the CESTAT bench is not sitting or the department has asked for adjournment, etc.

There is an inbuilt unfairness in the proposed amendment as observed in the decision of the Supreme Court in the case of Commissioner of *Cus. & C. Ex., Ahmedabad vs. Kumar Cotton Mills Pvt. Ltd. 2005 (180) E.L.T. 434 (S.C.),* wherein it was held: *The sub-section …cannot be construed as punishing the assessees for matters which may be completely beyond their control. For example, many of the Tribunals are not constituted and it is not possible for such Tribunals to dispose of matters. Occasionally by reason of other administrative exigencies for which the assessee cannot be held liable, the stay applications are not disposed within the time specified.*

This provision seems to be unreasonable, in as much as, the appellant cannot be faulted for any delay on the part of the CESTAT. The appellants may now examine whether they can re-apply to the CESTAT immediately on completion of the said period or approach the courts in writ. This might lead to needless and numerous writ petitions equalling the total number of cases pending as on date.

Mode of Serving Notice, Summons etc.

Earlier Section 37C prescribed the mode of delivery of letter (decisions, orders, summons etc). There it is



All in all the budget estimates appear to be too optimistic and focusing on recovery of disputed dues [which may not be actually recoverable] which may harm the goose which lays the golden egg and in no **way is like the bee collecting honey from the flower.**

provided that the letter or document will be served by tendering [physical delivery] or by registered post with acknowledgement due …

The revenue at times was unable to proceed legally as the service was not as per the mode prescribed. In the case of *Amidev Agro Care (P) Ltd vs. Union of India [2012 (279) ELT 353],* the High court of Bombay, held that as per Section 37C(l)(a) of the Central Excise Act, 1944, it was obligatory on the part of the revenue, either to tender a copy of the decision to the assessee or to send it by registered post with acknowledgment due to the assessee or its authorised agent.

Now, the mode of courier approved by CBEC or speed post with proof of delivery would also be in addition to RPAD be considered a valid service. This is a welcome move on both sides, as communication by courier is the order of the day.

Are We Moving Towards GST?

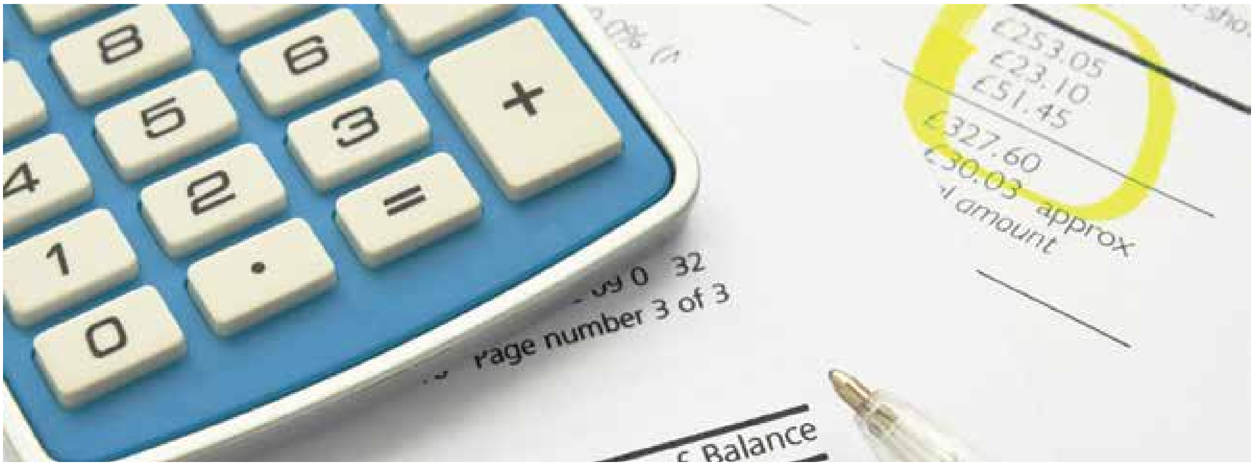
GST remains in the wish list and though some ground work is being done in terms of infrastructure and technology, the agreements with the States and the constitutional amendments are issues which are not so easy to resolve, considering the presence of coalition governments for quite some time and the same may continue in the coming years. GST to be implemented would require broad basing of taxation – minimum exemptions/exclusion from duty, moving all manufactured commodities to a merit, demerit and a base rate applicable which in the last few budgets have been given a go by.

The opportunity to bring clarity in the CENVAT Credit provisions, expand the same in lines of GST, clarifying on the impact of the landmark judgment of FIAT on past removals, rationalisation of procedures, further appears to have been pushed forward to the next year. Earliest possibility appears to be 2015-16.

Conclusion

All in all, the budget estimates appear to be too optimistic and focusing on recovery of disputed dues [which may not be actually recoverable] which may harm the goose which lays the golden egg and in no way is like the bee collecting honey from the flower. ■

Changes in Custom Laws in Finance Bill, 2013



The Honourable Finance Minister has introduced the Finance Bill, 2013 in the Lok Sabha on 28th February, 2013. Changes in Customs law and rates of duty have been proposed through the Finance Bill, 2013 (Clauses 54 to 77 for Customs). In order to prescribe effective rates of duty and to carry out changes in the Rules made under the Customs law, the notifications which are being issued include, under tariff, No. 9/2013-Customs to *No.15/2013-Customs,* dated 1st March 2013, under non-tariff *No. 25/2013-Customs(NT)* dated 1st March 2013. The changes which have been proposed in the Customs laws have been analysed here below, under the headings 'Proposed amendments in the Customs Act, 1962 ("the Customs Act")' and 'Proposed amendments in the Customs Tariff Act, 1975 ("the Customs Tariff")'.

CA. Bimal Jain

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A. Proposed Amendments in the Customs Act

a) **Power to prohibit importation or exportation of goods (Section 11):** "Designs and geographical indications" have been included along with patents, trade mark and copy rights, to enable the Central government to prohibit either absolutely or conditionally, the import or export of goods by amending Clause (n) of sub-section (2) of Section 11 of the Customs Act.

b) **No refund of Duty less than ₹100/- (Section 27):** Where the amount of refund claimed by any person of any duty or Interest paid/borne by him, is less than ₹100/-, the same shall not be refunded as per *proviso* inserted in Section 27(1) of the Customs Act.

c) **No issuance of Show Cause Notice where the amount involved is less than ₹100/- (Section 28):** A new *proviso* has been inserted in Section 28(1) of the Customs Act, whereby the proper officer shall not serve a show cause notice where the amount involved is less than ₹100/-.

d) **Provisional attachment to protect revenue in certain cases (Section 28BA):** This section is amended to include sub-section (4) of Section 28 of the Customs Act, in addition to sub-section (1) of Section 28, which provides for provisional attachment of property belonging to any person to whom notice has been served by the proper officer within five years from the relevant date, where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable, has not been paid, part-paid or erroneously refunded, by reason of, (a) collusion; or (b) any wilful mis-statement; (c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter.

e) **Advance Ruling to include new business of import or export [Section 28E(a)]:** The clause (a) of Section 28E of the Customs Act is substituted to include any new business of import or export proposed to be undertaken by the existing importer or exporter, as the case may be, for advance ruling purpose. In other words, it means that the importer or exporter may be allowed to seek advance ruling while starting a new line of business of import or export.

Section 28E(b) of the Customs Act defines advance ruling which means "the determination, by the Advance Ruling Authority, of a question of law or fact specified in the application regarding the liability to pay in relation to an activity which is proposed to be undertaken by the applicant".

f) In the Finance Bill, 2013, the Honourable Finance Minister has extended the power of the Board to ***allow landing of vessels or aircrafts at any place other than customs ports or airports (Section 29)***

g) **Delivery of Import and Export General Manifest (Section 30 and Section 41):** These Sections are amended to provide for compulsorily electronic filing of Import General Manifest/Export General Manifest. Further, it is also provided that where this is not feasible, the Commissioner of Customs may allow the delivery of such import or export manifest in any other manner.

h) **Period for payment of import duty for clearance of goods for home consumption (Section 47):** Interest free period for payment of import duty is amended from 5 days to 2 days. It is pertinent to note that where the importer fails to pay the import duty under sub-section (1) of Section 47, within two days as substituted in place of 5 days excluding holidays, from the date on which the bill of entry is returned to him for payment of duty, he shall pay interest at specified rate, as is being fixed by the Central Government, by notification in the Official Gazette, on such duty till the date of payment of the said duty.

i) **Storage of imported goods in warehouse pending clearance (Section 49):** It is proposed to provide a time limit of 30 days for storage of imported goods in a public or private warehouse pending clearances, in the interest of accountability and early finalisation of assessments. The Commissioner may further extend the period of storage for a period not exceeding 30 days at a time.

j) **Clearance of warehoused goods without payment of duty for exportation (Section 69):** The clause (a) is substituted in sub-section (1) of Section 69 of the Customs Act, to allow any warehoused goods that may be exported to a place outside India without payment of import duty if a shipping bill or a bill of export in the prescribed form or a postal export document *i.e.*, label or declaration accompanying the goods containing description, quantity and value of the goods as referred to in Section 82 of the Customs Act, has been presented in respect of such goods.

Section 82 of the Customs Act provides that in respect of import and exports through post, any label or declaration accompanying the packet or parcel containing details like description, quantity and value of the goods, is treated as entry for import or export of the goods and no separate manifest for such goods is required to be filed.

k) **Non-bailable offences [Section 104(6)]:** The substituted sub-section (6) of Section 104 of the Custom Act, provides that the following offences shall be non-bailable offences:-

i. evasion or attempted evasion of duty exceeding ₹50 lakh;

ii. prohibited goods notified under Section 11 which are also notified under sub-clause (C) of clause (i) of sub-section (1) of Section 135;

iii. import or export of any goods which have not been declared in accordance with the provisions of this Act and the market price of which exceeds ₹1 crore;

iv. fraudulently availing of or attempt to avail of drawback or any exemption from duty provided under this Act, if the amount of drawback or exemption from duty exceeds ₹50 lakh.

This amendment partially overcomes the Supreme Court judgment in *Om Prakash vs. UOI, 2011 (272) ELT 321 (SC),* wherein it was held that all offences in central excise or customs are bailable.

The newly introduced sub-section (7) provides that all the offences other than those provided in substituted sub-section (6) shall be bailable offences.

l) **Maximum period for Stay Order by Appellate Tribunal [Section 129B (2A)]:** A *proviso* is being inserted in sub-section (2A) of Section 129B of the Customs Act *vide* Clause 66 of the Finance Bill, 2013 to provide that in cases where the delay in disposing of the appeal is not attributable to the appellant, the Tribunal may extend the period of stay by a period not exceeding 185 days, subject to the condition that if the appeal is not disposed of within the total period of 365 days from the date of order, the stay order shall stand vacated.

    Prior to the proposed amendment, if the stay order is made in any proceeding by Tribunal, it would vacate after 180 days. Now, this period may further be extended by 185 days by Tribunal, if the delay is not attributable on the part of the appellant. However, total period would not exceed 365 days.

m) **Monetary limit of Single Member Bench increased from ₹10 lakh to ₹50 lakh [Section 129C(4)]:** It is being amended to enhance the monetary limit of the Single Member Bench of the Tribunal to hear and dispose of appeals from ₹10 lakh to ₹50 lakh, where -
    (a) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under Section 125; or
    (b) in any disputed case, other than a case where the determination of any question having a relation to the rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or
    (c) the amount of fine or penalty involved.

n) **Increase in threshold limit of specified evasion of duty or prohibitions [Section 135 (1) (i)]:** The threshold limit for punishment in an offence relating to evasion or attempted evasion of duty under Section 135 (1) (i)(B) or fraudulently availing of or attempting to avail of drawback or any exemption from duty in connection with export of goods under Section 135(1) (i)(D), has been increased from ₹30 lakh to ₹50 lakh.

o) **Recovery from other person of sums due to Government (Section 142):** A new clause (d) is inserted in Section 142 *vide* Clause 69 of the Finance Bill, 2013 to provide where any sum payable by any person to the Central Government then:
    i. a notice in writing can be sent for recovery of money due to the Central Government to any other person, other than the defaulter, after giving such other person a notice in writing,
    ii. the person to whom such notice has been issued shall be bound to comply, and
    iii. if the person to whom the notice is issued fails to comply, he shall be deemed to be a defaulter in respect of the amount specified in the notice.

p) **Withdrawal of Duty Deferment (Section 143A):** Section 143A relating to "Duty Deferment" has been omitted *vide* Clause 70 of the Finance Bill, 2013.

    Therefore, in accordance with the above amendment, the power of Customs Commissioner to provide "Duty Deferment" has been withdrawn.

q) **No duty on sample consumed or destroyed during testing, etc. [Section 144(3)]:** Sub-section (3) of Section 144 is amended whereby no duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination irrespective of any threshold amount. Earlier, it was ₹5 or more.

r) **Customs House Agents named as Customs brokers (Section 146):** This section is substituted to change the nomenclature of “customs house agents” to “customs brokers”, considering the global practice and internationally accepted nomenclature. Further, the Board can also make regulations for providing the manner of conducting the examination of goods. [Section 146(2)(d) of new provision].

s) **Authorised Representative (Section 146A):** This Section is amended so as to:-
    i. substitute the phrase "customs house agent" with the phrase "customs broker";
    ii. include any offence committed under the Finance Act, 1994, as a disqualification for a person to act as an authorised representative in customs matters.

t) **Liability of Principal and Agent (Section 147):** Sub-section (3) of Section 147 of Customs Act is amended to expand the scope of the liability of agents of the owner, importer or exporter of any goods.

Note: *It may be noted that the legislative changes would come into effect only upon the enactment of the Finance Bill, 2013.*

B. Proposed amendments in the Customs Tariff

1. The Finance Bill and the Tariff Notification No. 9/2013-Customs to 15/2013-Customs all dated March 1, 2013 has made the following changes in duty rates:

Product	Old basic customs duty (“**BCD**”) rate	BCD after amendment in budget	Old Counter Vailing duty (“**CVD**”)	CVD after amendment in the Budget	Change
Hazel Nuts falling under Chapter 8 of the Customs Tariff	30%	10%			⬇
De-hulled Oat grain falling under Chapter 11 of the Customs Tariff	30%	15%			⬇
Bituminous Coal falling under Chapter 27 of the Customs Tariff	5%	2%	6%	2%	⬇
Steam Coal falling under Chapter 27 of the Customs Tariff	Nil	2%	1%	2%	⬆
Raw silk falling under Chapter 50 of the Customs Tariff	5%	15%			⬆
Pre-forms of precious and semi-precious stones falling under Chapter 71 of the Customs Tariff	10%	2%			⬇
20 Specified machinery for use in leather or footwear industry as specified in S.NO. 390 read with List 29 of Notification 12/2012-Cus.	7.5%	5%			⬇
Textile machinery and parts thereof falling under 8444 to 8449 of the Customs Tariff	7.5%	5%			⬇
Set Top box falling under Chapter 85 of the Customs Tariff	5%	10%			⬆
Cars/motor vehicles falling under Chapter 87 of the Customs Tariff with CIF value more than US $ 40,000 or with engine capacity more than 3000 cc for petrol-run vehicles and more than 2500 cc for diesel-run vehicles or with both	75%	100%			⬆
Import of old cars	100%	125%			⬆
New motorcycles with engine capacity of 800cc or more	60%	75%			⬆
Yachts and other vessels falling under Chapter 89 of the Customs Tariff	10%	25%			⬆

2. Change in classification of “Peanut butter” from existing Tariff Item 1517 9020 of the Customs Tariff to 2008 1100 thereof to align the classification in terms of Harmonised System of classification.
3. Further, the concessional rate of BCD of 7.5% continues *vide* S.No. 88A of Notification 12/2012-Customs as amended by Notification 12/2013.
4. Amendment in export duty of certain specified

goods vide Notification No. 15/2013-Customs dated 1st March, 2013 is as under:-

Product	Export duty in terms of second schedule to the Customs Tariff	Effective duty vide Notification No. 27/2011-Cus. Dated 1st March, 2011 as amended by Notification 15/2013-Cus. Dated 1st March, 2013.
Raw/white/refined sugar falling under Chapter 17 of the Customs Tariff included in Second Schedule to the Customs Tariff	20%	"0"
Bauxite and ilmenite	30%	10% - Bauxite falling under Tariff Item 2606 0010 of the Customs Tariff and 2606 0020 thereof. 10% - unprocessed ilmenite falling under Tariff Item 2614 0010 of the Customs Tariff. 5% - upgraded ilmenite falling under Tariff Item 2614 0020 of the Customs Tariff.

5. Exemption from export duty granted to "*Flat rolled products of iron or non-alloy steel, plated or coated with zinc*" with retrospective effect from 1st March, 2011 which will come into effect from enactment of the Finance Bill, 2013.
6. The validity period of exemption granted to identified parts of hybrid and electric vehicles is being extended by two more years up to 31st March, 2015 vide Clauses (g) and (h) of *Proviso* to Notification No.12/2012-Customs, as amended by Notification No. 12/2013-Customs, dated 1st March, 2013.
7. BCD is being exempted on lithiumion automotive battery for manufacture of lithium ion battery packs for supply to the manufacturers of hybrid and electric vehicles vide Notification No.12/2012-Customs (S. No 438), as amended by Notification No. 12/2013-Customs, dated 1st March 2013.
8. A total withdrawal of export duty on de-oiled rice bran oil cake has been proposed.
9. Exemption from education cess and secondary and higher education cess is being withdrawn on aeroplanes, helicopters and their parts vide Notification No. 9/2013- Customs, dated 1st March 2013.
10. The time period for consumption/installation of parts and testing equipment imported for maintenance, repair and overhaul ("MRO") of aircraft by units engaged in such activities is being increased from three months to one year vide Notification No. 12/2013 –Customs dated 1st March, 2013.

11. Notification No 25/2013-Customs (NT), dated 1st March, 2013 seek to amend Notification No. 30/98-Cus.(NT) dated 2nd June, 1998 *vide* which value limit of jewellery allowed duty free to an Indian passenger who has been residing abroad for more than one year has been raised as under:

	Old value limit of Jewellery allowed duty free	New value limit of Jewellery allowed duty free
Gentleman passenger	₹10,000	₹50,000
Lady passenger	₹20,000	₹100,000

12. Further, presently under Rule 10 of the Baggage Rules, 1998, a crew member of the vessel/aircraft is allowed to bring duty free items like chocolates, cheese, cosmetics etc. for their personal or family use up to a value of ₹600. The duty free allowance is being increased from ₹600 to ₹1,500.
13. Full exemption from basic customs duty and additional customs duty is being provided to trophy imported by National Sports Federation recognised by the Department of Sports and Youth Affairs or any Sports Body registered under Societies Registration Act, in connection with any international tournament held in India vide Notification No. 14/2013 dated 1st March, 2013.

14. Details of Customs Tariff Notifications issued:-

Notification No.	Description
9/2013 – Customs	Seeks to amend *Notification No.69/2004-Customs*, dated 9th July, 2004, so as to review the existing entries there in and make necessary changes.
10/2013 – Customs	Seeks to amend *Notification No. 75/2005-Customs*, dated 22nd July, 2005 so as to make editorial changes in column (2) of S. No. 118, to align it with HS2012.
11/2013 – Customs	Seeks to amend *Notification No. 9/2012-Customs*, dated 9th March, 2012, so as to revise the variation limit in respect to height and circumference in case of reimport of cut and polished diamond.
12/2013 – Customs	Seeks to amend *Notification No. 12/2012-Customs*, dated the 17th March, 2012, so as to make necessary changes in the specified entries therein.
13/2013 – Customs	Seeks to rescind then *Notifications No.19/2012-Customs*, dated 17th March, 2012, and *Notification No. 20/2012-Customs*, dated 17th March, 2012.
14/2013 -Customs	Seeks to amend *Notification No.146/94-Customs*, dated 13th July, 1994, so as to exempt "Trophy" when imported into India by the National Sports Federation or any other registered sports body, for being awarded to the winning team in the international tournament to be held in India.
15/2013 -Customs	Seeks to amend *Notification No.27/2011-Customs*, dated 1st March, 2011, so as to specify effective rates of export duty on specified goods.

C. Sector Wise Impact of Changes in Customs Duties[1]

I. **Agriculture/Agro Processing/Plantation Sector:**
- Basic customs duty on dehulled oat grain is being reduced from 30% to 15%.
- Basic customs duty on hazel nuts is being reduced from 30% to 10%.
- Export duty of 10% on de-oiled rice bran oil cake is being withdrawn.

II. **Automobiles:**
- Basic customs duty on new passenger cars and other motor vehicles (high end cars) with CIF value more than $ 40,000 and/or engine capacity exceeding 3000 cc for petrol run vehicles and exceeding 2500 cc for diesel run vehicles is being increased from 75% to 100%.
- Basic customs duty on motor cycle with engine capacity of 800 cc or more is being increased from 60% to 75%.

III. **Metals:**
- Export duty is being levied on ilmenite unprocessed at 10% and on ilmenite, upgraded at 5%.
- Export duty is being levied on bauxite at 10%.
- Basic customs duty is being reduced from 10% to 5% on stainless steel wire cloth stripeand from 7.5% to 5% on wash coat for use in the manufacture of catalytic convertorsand their parts.
- Full exemption from export duty is being provided to galvanised steel sheets falling under certain sub-headings, retrospectively *w.e.f.* 01-03-2011.

IV. **Precious Metals:**
- Basic customs duty is being reduced from 10% to 2% on pre-forms of precious and semi-precious stones.

V. **Capital Goods/Infrastructure:**
- Basic customs duty on steam coal is being increased from Nil to 2% and CVD from 1% to 2%.
- Basic customs duty on bituminous coal is being reduced from 5% to 2% and CVD from 6% to 2%.
- Basic customs duty is being reduced from 7.5% to 5% on 20 specified machinery for use in leather and footwear industry.

VI. **Aircrafts & Ships:**
- Basic Customs Duty on yachts and motor boats is being increased from 10% to 25%.
- Time limit for consumption of imported goods by ship repair units is being extended from three months to one year.
- Time period for consumption/installation of parts and testing equipments imported for maintenance, repair and overhaul (MRO) of aircrafts by units engaged in such activities is being extended from three months to one year.
- Presently, the basic customs duty exemption is

[1] *Extract from Memorandum explaining the Finance Bill, 2013*

available to parts and testing equipments for maintenance, repair and overhaul of aircrafts. This exemption is now being extended to parts and testing equipments for maintenance, repair and overhaul of aircrafts and parts thereof.

VII. **Environment Protection:**

- Full exemption from basic customs duty is being provided to lithium ion automotive battery for manufacture of lithium ion battery packs for supply to the manufacturers of hybrid and electric vehicles.
- Time period of exemption (Nil BCD, CVD of 6% and Nil SAD) for the specified parts of electric and hybrid vehicles is being extended by two more years up to 31st March, 2015.

VIII. **Textiles:**

- Basic customs duty on raw silk (not thrown), of all grades is being increased from 5% to 15%.
- Basic customs duty is being reduced from 7.5% to 5% on textile machinery & parts.

IX. **Electronics/Hardware:**

- Basic customs duty on Set Top Boxes for TV is being increased from 5% to 10%.

X. **Miscellaneous:**

- Withdrawal of exemption from education cess and secondary & higher education cess on aircraft and aircraft parts, soyabean oil, olive oil etc.

Note: *Unless otherwise stated, all changes in rates of duty take effect from the 1st March, 2013.*

Conclusion

This budget has not proposed any changes in peak rate of Customs duty for non-agricultural products and has not introduced any sweeping reforms but there are certain provisions introduced in the Customs laws, which are contrary to non-adversarial tax administration as promised by the Honourable Finance Minister in para 120 of his budget speech that *"When I took over in August 2012, I made a statement that "clarity in tax laws, a stable tax regime, a non-adversarial tax administration, a fair mechanism for dispute resolution, and an independent judiciary will provide great assurance". That statement is the underlying theme of my tax proposals, both on the direct taxes side and on the indirect taxes side.":-*

- Certain offences are made non bailable in terms of Section 104 read with Section 135 of the Customs Act. The proposed amendment seeks to overcome a ruling of the Hon'ble Supreme Court in the case of *Om Prakash Choith Nanikram Harchandini vs. Union of India [2011-TIOL-95-SC-CX-LB]* wherein it has been held that offences under the Customs Act and the Excise Act are Non-Cognisable and bailable.
- Repressive Recovery Provisions introduced in Customs laws under Section 142 of Customs Act, which provides for recovery from a third person or banks or post office, etc., where the assessee holding deposits. The Department can recover such dues from third person by just writing a simple letter.
- Section 129B of Customs Act are amended whereby the power of Tribunals to grant stay is curtailed and it gets automatically vacated after one year even though the case is not decided in a scenario when average time for a case to come up for final hearing after granting stay is about three to four years.

It may be noted that if the above proposals are accepted on the enactment of the Finance Bill, proper instructions will have to be issued to implement the above powers reasonably and no powers should be misused by the Revenue officials to demonstrate the true spirit of message conveyed by the Hon'ble Finance Minister.

Further, it is appreciable that now existing importer/exporter would be able to seek advance ruling while starting new line of business of import/export. Furthermore, the Board can allow landing of vessels/aircraft at any place other than specified customs port/airport, this will assist importer and reduce the burden on existing designated ports/airports, thus will increase the overall efficiency in imports.

As well, it is also appreciated to enhance the monetary limit of the Single Member Bench of the Tribunal to hear and dispose of appeals from ₹10 lakh to ₹50 lakh.

Hence overall the Finance Minister has made an attempt to lure *aam admi* considering its pre-poll budget and also tried to maintain a balance between changes in duty rates and the procedures involved in import/exports. ■

Service Tax - Amendments In Finance Act, 1994 & Exemptions

"We navigate the Indian economy through a crisis that has enveloped the whole world and spared none". **These are the words of the Honourable Finance Minister (FM), while presenting the budget for the fiscal year 2013-14. The challenge of managing the economy in troubled times, fiscal deficit, compulsion to raise resources and elections round the corner, it was like walking on eggs without breaking them and to a larger extent the Finance Minister emerged successful.**

Contrary to all expectations of a rise, the rate of service tax is retained at 12%. The Finance Bill, 2013 also surprised many with minor changes to the provisions dealing with taxation of services. Though not through the finance bill, the amendments to the mega exemption notification is an attempt to garner the increase in revenue estimated for the fiscal year 2013-14. In the following paragraphs, an attempt is made to present, in a lucid language, the amendments that have been made through the Finance Bill, 2013 and also through issue of notifications.

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Section 65 - Interpretations

Modular employable skill course approved by State Council for Vocational Training is inserted in the term "approved vocational skill course". Education as a part of approved vocational education course is covered in negative list and consequent to this, amendment skill courses approved by State Council will be exempted. However, courses run by institute affiliated to the National Skill Development Corporation set up by the Government of India is deleted within the meaning of approved vocational skill course, thereby bringing the said courses within the tax net.

The process amounting to manufacture on which duty is leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 is inserted, thereby including the said manufacture in the negative list.

Section 66B and 66BA - Charge of Service Tax on or after Finance Act, 2012

The *Explanation* in section 66B has been omitted and section 66BA has been introduced with retrospective effect from 1st July, 2012. The said section prescribes that any reference to Section 66 in the Finance Act, 1994 shall be construed as reference to Section 66B thereof. This amendment is to avoid litigation on this count in the near future.

Section 66D – Negative list

The term "seed" has been deleted in sub- clause (i) of Clause (d) of Section 66D. Consequent to this amendment, all forms of agricultural testing is brought within the ambit of negative list, thereby exempting the services provided in this category.

Section 73 – Recovery of Service Tax not levied or paid or short levied or short paid or erroneously refunded

A new sub-section 2A is inserted in Section 73. The said sub-section prescribes that if the clause relating to extended period of limitation is not established, then the service tax due shall be calculated for a period of eighteen months. The extended period of limitation for five years is invoked when the tax default is on account of fraud, collusion, willful misstatement, suppression of facts or contravention of any of the provisions of the Finance Act, 1994 or the rules made thereunder with an intention to evade payment of service tax.

Section 77 – Penalty for contravention of rules and provisions of Act for which no penalty is specified elsewhere

The penalty for non registration which is currently ₹10,000/- or two hundred rupees for every day of failure to register is being substituted with a fixed penalty, which may extend to ₹ 10,000.

Section 78A – Penalty for offences by director, etc. of company

Section 78A is proposed to be introduced, whereby for the first time, levy of personal penalty is being contemplated on a director, manager, secretary or any other officer of such company. If service tax is evaded, invoice is issued without service being provided, credit is utilised without receipt of service or goods or where service tax collected is not deposited within six months from the due date, then the aforesaid person or persons who at the time of such contravention was in charge of, and was responsible to the company for the conduct of business of such company and was knowingly committed, the said contravention will be liable to a penalty of a sum up to ₹ 1 lakh.

Section 83 – Applications of certain provisions of The Central Excise Act

Certain sections of The Central Excise Act, 1944, are made applicable to the Finance Act, 1994. In this context, instead of the existing Section 9A of the Central Excise Act, 1994, Section 9A(2) is being made applicable. The said section contains provisions relating to compounding of certain non-cognisable offences.

Section 86 – Appeals to Appellate Tribunal

An amendment is being made to empower the Appellate Tribunal to admit an appeal filed after the prescribed due date.

Section 89 – Offences and Penalties

This section provides for punishment in the form of imprisonment for contravention of provisions of the Finance Act, 1994. An amendment is proposed to increase the maximum period of imprisonment from three years to seven years, when the service tax exceeding 50 lakh is collected but not remitted to the Government account beyond a period of six months from the date on which such payment fell due. While retaining the maximum period to three years in certain types of offences, a new provision is also being inserted to provide a maximum period of imprisonment of up to one year for all other offences, other than those specifically provided in Section 89.

Section 90 - Cognisance of offences

Section 90 which was deleted by Finance (No. 2) Act, 1998 is being reintroduced. This section seeks

The Finance Bill, 2013 also surprised many with minor changes to the provisions dealing with taxation of services.

to enforce strict action against tax evaders. Offences will be cognisable in certain cases and in certain cases the offences committed will be non-cognisable and bailable.

Section 91 – Power to arrest

The Government has reaped an enormous bonanza in the form of collection of service tax to the tune of about 1,30,000 crore and the majority of this amount has been through voluntary compliance. The scenario being such introduction of this section which empowers the Commissioner of Central Excise to arrest a person for an offence committed under the Act, does not augur well in a regime where trust and confidence is the foundation stone of the Act. The Power of arrest shall be exercised by the Commissioner through an officer not below the rank of the Superintendent of Central Excise.

Section 95 – Power to remove difficulties

The Central Government is empowered to remove difficulties that may arise in giving effect to the amendments made by the Finance Act, 2013. The difficulty shall be removed by an order published in the official gazette. The order to remove the difficulty shall not be inconsistent with the provisions of the Finance Act, 1994. However, no such order shall be made after the expiry of a period of one year from the date on which the Finance Bill, 2013 receives the assent of the President.

The amendments in service tax, especially tax on air-conditioned restaurants, educational institutions, charitable activities, etc. will be a challenge for implementation, given the man power and the resources currently at the disposal of the Government.

Section 99 – Railways Granted

An emergency exit has been provided to the Indian Railways. Through the insertion of this section, service tax dues from the Indian Railway for the period prior to 1st July, 2012 shall not be levied nor collected to the extent notices have been issued up to the period ended 28th February, 2013.

Amendments carried out through Notifications

Notification Nos. 2, 3 and 4 have been issued in the side lines of the budget. This could well go down in the history as the least number of notifications that may have been issued in the recent past, coinciding with the union budget. Notification Nos. 2 and 4 are effective from 1st March, 2013 and the Notification No. 3 will take effect from 1st April, 2013.

Notification 02/2013 dated 1st March, 2013

Two tier abatement is introduced for the activity relating to construction of complex, building, civil structure or a part thereof. For residential units having carpet area up to 2000 square feet or where the amount charged is less than Rupees one crore, the abatement is pegged at 75% and in all other cases the abatement will be 70%. Service tax will become payable on the value in excess of the abatement.

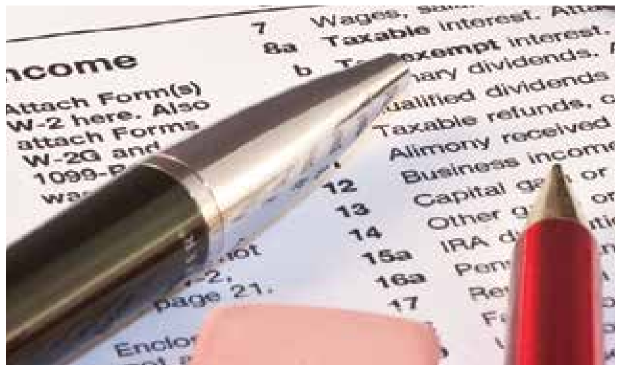
Notification 03/2013 dated 1st March, 2013

Notification No.25/2012 dated 20th June, 2012, is termed as the mega exemption notification, as it contains all those activities on which payment of tax is exempted. Through Notification No. 3/2013 dated 1st March, 2013, amendments have been carried out in certain entries, thereby either withdrawing the existing exemption or exempting activities currently taxable.

- All Educational Institutions which were providing "auxiliary educational services or renting of immovable property" services were exempted from payment of service tax. This exemption will now be available only up to 31st March, 2013. The term *"auxiliary educational services" is defined to mean any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme* *sponsored by Government, or transportation of students, faculty or staff of such institution.*

- The benefit of exemption in relation to copyrights for cinematograph films will continue to be available to films exhibited in a cinema hall or theatre under Section No 15 of the notification. However, if cinematograph films are exhibited in a place other than cinema hall or theatre, then it will be taxable. This will allow service providers to pass on input tax credits to taxable end-user.
- The words *"a license to serve alcoholic beverages"* are removed in the Entry No. 19 thereby exempting only those restaurants, which do not have the facility of air-conditioning or central air-heating. The effect of this amendment will see a surge in service tax registrations as all restaurants which are air-conditioned or centrally air-heated will be liable to tax.
- Exemption available for transportation of petroleum and petroleum products, postal mail or mail bags and household effects by rail or a vessel from one place in India to another is withdrawn. Thus, extending the scope of service tax on transportation of the aforesaid items.
- The scope of exemption is increased to following areas in relation to services provided by a goods transport agency, by way of transport in a goods carriage of, by modifying the Entry No. 21 which is as follows:
  - ➢ agricultural produce;
  - ➢ foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages;
  - ➢ chemical fertiliser and oilcakes;
  - ➢ newspaper or magazines registered with the Registrar of Newspapers;
  - ➢ relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
  - ➢ defence or military equipments.
- Charges collected for parking of vehicles by the general public will become taxable from 1st April, 2013 as the exemption currently available stands withdrawn as Entry 24 is being deleted.
- An amendment to Entry No. 25 will bring to tax the service of repair or maintenance of aircraft provided to Government, a local authority or a governmental authority.
- An amendment which needs a roll back is the withdrawal of benefit provided to the charities in the form of *"any other object of public utility"*.

It would be better if a fast, efficient and speedy information technology mechanism is put in place which would result in the least interface between the department and the assessee and man hours of the administering authority can be put to use to implement the law in letter and spirit.



Currently, services which are in this nature enjoy an exemption up to a value of ₹ 25 lakh. An amendment made to the definition of the term "charitable activity" removes the benefit currently available.

Notification 04/2013 dated 1st March, 2013

Empowered by sub-clause (iii) of clause (b) of Section 96A the Central Government has notified "resident public limited companies" as class of persons who will be eligible to approach "advance ruling authority" with effect from 1st March, 2013.

Conclusion

The amendments, especially tax on air-conditioned restaurants, educational institutions, charitable activities etc. will be a challenge for implementation, given the man power and the resources currently at the disposal of the Government. In this situation, it would be better if a fast, efficient and speedy information technology mechanism is put in place which would result in the least interface between the department and the assessee and man hours of the administering authority can be put to use, to implement the law in letter and spirit. In the changed scenario, not only the assessee but also the department will require intensive training to understand the nuances and ensure fair collection of the taxes rightfully due to the Government. ■

Service Tax Voluntary Compliance Encouragement Scheme, 2013

According to the Service Tax Department, there are about 17 lakh Service Tax Assessees registered with it. However, only about seven lakh assessees are filing their Service Tax Returns with it. To say it differently, remaining about 10 lakh assessees have either not filed their Service Tax Returns at all or have stopped filing their Service Tax Returns. In order to encourage such non-filers or stop-filers of Service Tax Returns to voluntarily comply with various applicable statutory provisions [and Rules] pertaining to Service Tax, Finance Bill, 2013 proposes to introduce a scheme which may be called *Service Tax Voluntary Compliance Encouragement Scheme, 2013.* It is noteworthy that Rules for implementing the Scheme have not yet been notified by Central Government, by virtue of Notification in the Official Gazette. As a consequence, until such Rules are notified, complete clarity may not be available in respect of certain issues [particularly procedural in nature] of the Scheme.

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Before explaining the features of Service Tax Voluntary Compliance Encouragement Scheme (the Scheme), 2013, it is necessary to understand the meaning (definition) of important terms used in the Scheme. Accordingly, the following succinct table has been prepared:

Term	Meaning (Definition) of Term
Declarant	It means any person who makes a Declaration[in pursuance of this Scheme] under Section 97(1) of Finance Act, 1994[hereinafter abbreviated as 'Act']

Term	Meaning (Definition) of Term
Designated Authority	It means an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise for the purposes of this Scheme.
Prescribed	It means prescribed by Rules made under this Scheme.
Tax Dues	It means the Service Tax due or payable under Chapter V of the Finance Act, 1994 or any other amount due or payable under Section 73A for the period beginning from the 1st day of October, 2007 and ending on 31st December, 2012 including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013.

The salient features of the Scheme are detailed below:

1. Date of Application of the Scheme

The scheme is proposed to come into force from the date of enactment of Finance Bill, 2013.

2. Period for which the benefit of the scheme can be availed

This benefit of the Scheme can be availed only for the tax dues for the period beginning from 01-10-2007 and ending on 31-12-2012. Here, an interesting situation arises. According to Section 70 of the Act read with Rule 7 of Service Tax Rules, 1994, service tax return for the *half year* beginning from *01-10-2007* and ending on *31-03-2008* was required to be filed by 25-04-2008. Thus, the Department cannot issue a show cause notice in respect of said half year after the expiry of five years from the *relevant date* in terms of proviso to Section 73(1) of the Act. Further, the explanation to Section 73, *inter alia*, provides that for the purpose of Section 73, "relevant date" means the date on which service tax return is filed by the assessee. However, if no service tax return is filed by the assessee, the last date on which such return is to be filed will be considered as "relevant date". Resultantly, in the present context, if the assessee submitted his return, the date of submission will be relevant date. On the other hand, if no service tax return was submitted by the assessee, then 25-04-2008 will be considered as relevant date. Therefore, in case of all those assessees who either did not submit their returns or submitted their returns on 25-04-2008, the Department cannot issue a show-cause notice after 25-04-2013. Thus, it is quite likely that these service tax assessees will not declare and pay any tax dues for the half year beginning from 01-10-2007 and ending on 31-03-2008.

Additionally, tax dues for any period after 31-12-2012 are required to be settled in accordance with normal applicable provisions of the Act and Rules made thereunder.

3. Persons who cannot avail the benefit of the scheme

(i) Any person to whom a Notice or Order of Determination has been *issued before 01-03-2013*[in respect of his tax dues for any period beginning from 01-10-2007 and ending 31-12-2012] under any of the following sections:

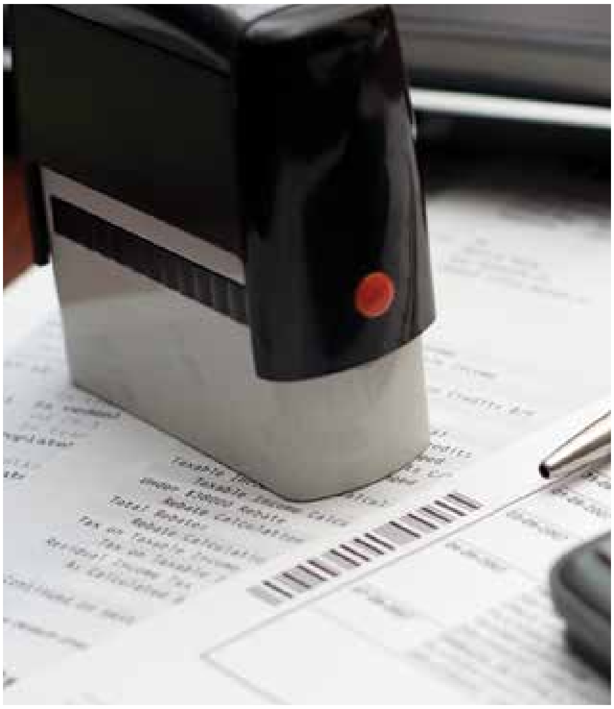
(a) Section 72 (which empowers Central Excise officer to make the assessment of the value of taxable service to the best of his judgement and determine the sum payable by the assessee on the basis of such assessment. It is worth highlighting that provisions of Section 72 can be invoked only in those cases where any person liable to pay service tax fails to furnish the return under Section 70 of the Act or having made a return, fails to assess the tax in accordance with the provisions of the Act or rules made thereunder.)

(b) Section 73 (recovery of service tax not levied or paid or short levied or short paid or erroneously refunded)

(c) Section 73A (service tax collected from any person but not deposited with Central Government)

(ii) Any person who has *furnished his Service Tax Return* [in accordance with provisions of Section 70 of Finance Act, 1994 read with Rule 7(1) of Service Tax Rules, 1994] and *disclosed his true liability but has not paid the disclosed amount of Service Tax or any part thereof*. In simple words, if any person truly discloses his service tax liability in his service tax return and submits such return

Notwithstanding anything contained in any provisions of the Act and Rules made thereunder, the declarant shall get immunity from penalty, interest, or any other proceeding under the Act or Rules made thereunder provided he makes payment of tax dues and interest (if any) in accordance with time-limits **specified hereinbefore.**



to the Department but fails to pay the disclosed amount of service tax either fully or partially, he will become *ineligible* to avail the benefit of the Scheme. Further, such a person will not be eligible to claim the benefit of the Scheme *for the period covered* by the Return.

(iii) Any person to whom a Notice or Order of Determination has been *issued* [under any of the above mentioned specified sections i.e., Section 72, Section 73 and Section 73A of Act] in respect of *any period on any issue,* then such person can not take benefit of the Scheme *on the same issue for any subsequent period.*

4. Procedure for making declaration and payment of tax dues

(i) Subject to the provisions of the Scheme, a person may make a declaration to the designated authority on or before 31-12-2013 in the prescribed form and prescribed manner. Both the foregoing prescribed form and manner may be notified, by Central Government, in the Rules in due course of time.

(ii) The designated authority shall acknowledge the declaration in the prescribed form and prescribed manner [which may be notified in the Rules subsequently].

(iii) The declarant shall, on or before 31-12-2013, *pay not less than 50% of the tax dues so declared and submit the proof of such payment* to the designated authority. In simple words, it is necessary on the part of the declarant to pay *at least fifty per cent* of the tax dues by 31st December, 2013. The tax dues or part thereof remaining to be paid after the aforesaid payment shall be paid on or before 30-06-2014. However, if the declarant fails to pay remaining amount of tax dues on or before 30-06-2014, then in addition to the amount of outstanding tax dues he will be required to pay interest at such rate as fixed under Section 75 or as the case may be, Section 73B of Finance Act *for the period of delay* starting from 01-07-2014 and ending on the date of actual payment.

Since necessary Rules to implement the Scheme have not yet been notified, it can not be stated categorically right now whether declaration is to be submitted firstly and thereafter at least fifty per cent of tax dues are to be paid by 31st December, 2013 or *vice-versa* i.e., whether at lease fifty per cent of the tax dues are to be paid first and thereafter declaration is to be submitted by 31st December, 2013. However, the author of this article is of the opinion that declaration is to be submitted firstly. Subsequently, at least fifty per cent of tax dues so *declared* [in the declaration] are to be paid by 31st December, 2013. In addition, it is presently not clear whether entire amount of declared tax dues are to be deposited only in one or two instalments. To put it differently, whether the assessees will be permitted to make the payment of declared tax dues in more than two instalments will become clear only when Rules are notified by Central Government.

(iv) The declarant shall furnish to the designated authority *details of payment* of tax dues and interest (if any) *made from time to time* under this Scheme along with a copy of acknowledgement issued to him. In simple words, the declarant is required to furnish details of the instalments by which he has paid tax dues and interest, if any.

5. Issue of Acknowledgement of Discharge of Tax Dues

On receipt of the details of full payment of declared tax dues and the interest, if any, the designated authority shall issue an *acknowledgement of discharge of such*

Where declaration has been made by declarant under the Scheme, but fails to pay the tax dues, *either fully or in part*, **as declared by him, then such tax dues along with interest thereon shall be recovered under the provisions of Section 87 of the Act.**

dues to the declarant in the *prescribed form and in prescribed manner* [which may be notified in the Rules subsequently].

6.Circumstances under which Declaration shall be rejected

In case where inquiry or investigation has been initiated [in following ways] and the same is pending as on 01-03-2013, designated authority *shall reject* the declaration by passing an order in writing, giving reasons for such rejection:

a) Search have been conducted of the premises of a person in accordance with provisions of Section 82 of the Act; or
b) Summons has been issued under Section 14 of Central Excise Act, 1944; or
c) Any notice requiring production of accounts,documents or other evidence under the Act or Rules made thereunder, has been issued; or
d) Any audit has been initiated.

A careful perusal of these provisions substantiate the opinion of the author that the assessee is required to file a declaration before depositing at least 50% of the declared tax dues by 31st December, 2013. The reason is that, once the declaration is made by a person against whom an inquiry or investigation in respect of a service tax not levied or not paid or short-levied or short-paid has been initiated by any of the four ways mentioned above, then such declaration *shall be rejected* by the designated authority by virtue of an order specifying the reasons for rejection. On receipt of such rejection order, such a person will not deposit an amount of at least 50% of the tax dues declared by him. Here, an attention-grabbing situation may arise. If the person on receiving the rejection order finds that his declaration has been wrongly rejected, then will he be given an opportunity to appeal against the order of the designated authority [an officer not below the rank of Assistant Commissioner of Central Excise as notified by the Commissioner of Central Excise (CCE) for the purpose of the Scheme]?

7. Immunity from Penalty, Interest and other proceeding

(i) Notwithstanding anything contained in any provisions of the Act and Rules made thereunder, the declarant shall get immunity from penalty, interest, or any other proceeding under the Act or Rules made thereunder, provided he makes payment of tax dues and interest (if any) in accordance with time-limits specified hereinbefore.

(ii) Nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity of the declarant other than benefit, concession or immunity mentioned above.

In a nut-shell, the Scheme is advantageous for those Service Tax Assessees who are lucky in the sense that, **they have not been issued any Order of Determination before 01-03-2013 in respect of their tax dues for the period beginning with 01-10-2007 and ending with 31-12-2012 under Sections 72, 73 and 73A of the Act. On the** contrary, this Scheme is disadvantageous for honest Service Tax Assessees who have timely discharged **their tax dues.**

8. When the Declaration becomes conclusive

Barring a case where the declaration made by a declarant under the Scheme is found to be *substantially false by* the CCE, a declaration made by the declarant under the Scheme shall become *conclusive* upon *issuance of Acknowledgment of Discharge* by the designated authority. As a result, no matter shall be reopened thereafter in any proceedings under the Act before any Authority or Court, relating to the period covered by such declaration.

9. Issue of Show Cause Notice by CCE under certain circumstances

As mentioned above, if the CCE has reasons to believe that the declaration made by a declarant under the

Scheme was *substantially false*, he may, for reasons to be recorded in writing, serve *notice* on the Declarant in respect of such declaration, requiring him to *show cause* why he should not pay the tax dues *not paid or short-paid*. The foregoing show cause notice [SCN] by the CCE can be issued within one year *from the date of Date of Declaration* by the declarant. Moreover, the SCN shall be deemed to have been issued under Section 73 or, as the case may be, under Section 73A of the Act and the provisions of the Act shall apply accordingly.

10. Refund of Service Tax paid under the Scheme

Any amount paid in pursuance of a declaration under the Scheme shall not be refundable under any circumstances.

11. Tax dues declared but not paid

Where declaration has been made by declarant under the Scheme, but fails to pay the tax dues, *either fully or in part*, as declared by him, then such tax dues along with interest thereon shall be recovered under the provisions of Section 87 of the Act.

12. Power to make Rules

The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of the Scheme. The foregoing Rules may provide for all or any of the following matters, namely:

(a) The form and the manner in which a declaration may be made by the declarant;

(b) The form and the manner of acknowledging the declaration by the designated authority;

(c) The form and the manner of issuing the acknowledgment of discharge of tax dues by the designated authority;

(d) Any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by Rules.

13. Power to remove Difficulties

If any difficulty arises in giving effect to the provisions of the Scheme, the Central Government may, by order [which is not inconsistent with the provisions of the Scheme] remove the difficulty. However, no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Scheme come into force. Further, every such order, after it is made, shall be laid before each House of Parliament as soon as possible.

14. Concluding Remarks

The Scheme has been framed with a view to collect tax dues from approximately ten lakh non-filers or stop filers of Service Tax Returns. However, a large number of Service Tax assessees engaged in providing *Renting of Immovable Property Services* who availed the benefit of Section 80(2) of the Act by paying amount of Service Tax *along with Interest* [during the period beginning with 28-05-2012 and ending with 27-11-2012] in respect of aforementioned renting of immovable property services must be feeling cheated. Still worse is the position of those service tax assessees engaged in providing renting of immovable property services who paid not only service tax but also the *amount of Interest and Penalty* [during the period beginning with 28-11-2012 and ending with 28-02-2013] in respect of renting of immovable property services.

Thus, whereas the Scheme may prove a boon for non-filers or stop filers of service tax returns, it may have adverse effect on the morale of regular-filers of service tax returns who have honestly discharged their tax dues. Further, such regular-filers may also get discouraged because the Scheme provides amnesty even to those service tax assessees who have not deposited service tax with the Central Government even after collecting the same. Therefore, *possibility of challenge* to the Scheme [on the grounds of discriminatory in nature to the honest tax-payers] before appropriate Hon'ble Courts can not be ruled out.

Another peculiar aspect of the Scheme is that Central Government has given a period of nearly two years [From 28-02-2013 to 31-12-2014] to the defaulting service tax assessees for availing the benefit of the Scheme. Looking from a different angle, Central Government will get the tax dues and interest, if any, arising out of the Scheme *in two Financial Years* i.e. 2013-14 and 2014-15. The rationale of splitting the revenue [arising out of the Scheme] over a period of two years and allowing time of nearly two years for taking the benefit of the Scheme is not understood by the author.

In a nut-shell, the Scheme is advantageous for those service tax assessees who are lucky in the sense that, they have not been issued any Order of Determination before 01-03-2013 in respect of their tax dues for the period beginning with 01-10-2007 and ending with 31-12-2012 under Sections 72, 73 and 73A of the Act. On the contrary, this Scheme is disadvantageous for honest service tax assessees who have timely discharged their tax dues. ■

Overview of Macroeconomic Aspects of Budget 2013-14

The budget for the year 2013-14 was presented when the economy was in a downtrend and was experiencing severe fiscal stress. The growth rate had declined from 9.3% in 2010-11 to a projected level of 5% in the current year. The third quarter GDP growth was even lower at 4.5%. The macroeconomic indicators like surging current account deficit, high inflation, declining savings and investment rates, and falling consumption, indicate the deep malaise into which the Country has slipped. The political atmosphere was charged with looming elections in 2014 and expectations of a budget catering to populist demands both on tax and expenditure fronts. Under these circumstances, the budget for 2013-14 was presented with expectations of achieving fiscal consolidation, providing impetus to economic growth and stimulating investment. By desisting from giving in to the pre-election expenditure demands and tax cuts, the budget 2013-14 made a sensible approach to the economic management. Achieving fiscal consolidation was given top priority, to provide an enabling environment for revival of the economy. The emphasis on growth to deliver the socio-economic development, has been the core theme of the budget. Read on to know more…

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In the Union Budget for 2013-14, while concerted attempt was made to lower the fiscal deficit in 2013-14, the budget provides resources for inclusive social development. It has facilitated avoiding a downgrade from the rating agencies that would have resulted in immediate outflow of foreign investment. The impact of this budget on improving growth rate and achieving

The Government announced a revised fiscal correction path by targeting the fiscal deficit of 5.3% and 4.8% of GDP in 2012-13 and 2013-14 respectively and reducing it by 0.6 percentage point to reach at 3% in 2016-17.

the fiscal targets, however, will depend upon the overall governance and effective implementation of the Government's plans and policies.

After recovering from the slowdown in 2008-09 due to the global financial crisis, the Indian economy managed to achieve a growth rate of 8.6% and 9.3% respectively in 2009-10 and 2010-11. The fiscal and monetary stimulus provided by the Government played a crucial role in the recovery process. However, the sharp decline in the next two years and particularly to a low of 5% in 2012-13, speaks volumes about the management of the Indian economy. The industry sector declined to 3.5% and 3.1%, services declined to 8.2% and 6.6% in 2011-12 and 2012-13 respectively. The despondency is clear and deterioration is unambiguous. The Economic Survey for the year 2012-13, which rather gave an impartial view of the State of the economy, indicated several factors that contributed to this decline. The considerable decline in private final consumption expenditure from 8% in 2011-12 to 4.1% in 2012-13, due to higher inflation had adversely affected the production sector. The stronger monetary policy since 2011-12, as the RBI started raising policy rates to rein in inflation, made it difficult for private investment. The corporate and infrastructure investment started slowing down due to high policy rates and other investment bottlenecks. The external factors such as downturn in the global economy due to crisis in Euro area and fiscal uncertainties in the United States have had their impact on India's economy as well due to slowing export growth. While external factors explain part of the story, the lack of clear policy interventions and large-scale governance problems that bugged down the decision making process during the last few years should also be stated in this context.

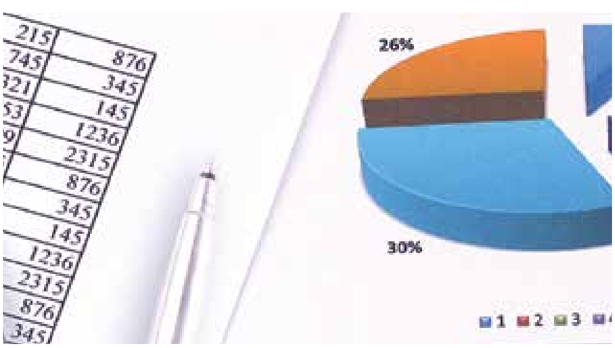
The deterioration in growth rate needs to be understood from the point of view of a sharp drop in saving and investment, which also aggravated the current account imbalance and fiscal deficit. The spectacular rise in domestic savings from an average of 23% of GDP in 1990s to 36.8% in 2007-08 highlights the impact of the fiscal consolidation and growth during that period. The gross domestic savings have eroded since then, to reach a level of 30.8% in 2011-12. All its three components, viz. households, the private corporate sector, and the public sector show decline during this period. There was also a compositional shift in household savings from financial savings to physical savings in gold and real estate to circumvent the effect of inflation. Lower returns and higher volatility on financial savings in the recent years coupled with high inflation, affected the preference of the household to gold as a safe haven. When household savings were declining, the slowdown in the industrial sector also resulted in falling private corporate savings. The public sector savings that played crucial role in the growth phase, eroded sharply from 5% to GDP in 2007-08 to 1.3% in 2011-12, as the Government provided larger resources through fiscal stimulus in response to the global financial crisis. The gross capital formation, which is the combination of the public and private investment as share of GDP, slowed down to 35% in 2011-12 as against 36.8% in 2010-11. The sharp decline in the private investment could be attributed to increase in policy rates, lower demand for Indian exports, and the deterioration in investment environment. Many large projects are stalled due to several bottlenecks that include environmental permissions, fuel linkages, or carrying out land acquisition. The economic survey rightly prescribes to adopt policies to ease the investment climate, pursuing structural reforms investment, and adopting accommodative monetary policy, as inflation abates to encourage productive investment.

The gap between savings and investment, the former shrinking sharply, has resulted in widening current account deficit (CAD). The CAD has increased from 2.8% to GDP in 2010-11 to 4.6% in 2012-13. The Government's effort to discourage gold imports by raising the tariff from 4% to 6% has not helped much. With export growth falling sharply, which

On the fiscal front, a starting has already been made, as the fiscal deficit for the year 2012-13 was limited to 5.2% of GDP as compared to the budgeted level of 5.3%. Expenditure control during the final months of financial year 2012-13 seems to have resulted in controlling the fiscal deficit.

has become negative in 2012-13, the pressure on the balance of payment is only going to grow. As the growth in exports will depend heavily on economic performance of industrial countries, the options to correct BoP imbalance and reducing CAD are few. Lower inflationary pressure, however, will bring in some stability by reviving domestic investment.

One of the major macroeconomic challenges facing the country has been the high inflation that vitiated the private investment climate stalling the growth prospects and heaped misery on common people. Headline WPI inflation, although moderated from a high of about 10% in 2010-11, remained at 7.6% in the current financial year. The CPI inflation in which the food price is the primary component, however, remained unabated at 10% due to very high food inflation. Higher food inflation was attributed mostly to supply side constraint in terms of lower production of key food grains and structural bottlenecks. This has the tendency to fuel the headline inflation upwards. Moderating food inflation remains important, as the monetary intervention through higher policy rates to combat the inflationary pressure, has worked adversely on the growth front. The higher CPI inflation influences the public perception regarding the credibility of the Government's ability to manage the economy and particularly controlling the prices. The Government's approach to control the inflation usually should be through fiscal consolidation and removing the supply bottlenecks as the scope for controlling the food inflation through monetary policy is limited. Easing supply side constraints and removing structural bottlenecks, are easier said than done as controlling factors like production pattern, policies on prices and procurement, and behavior of monsoon, cannot be achieved in a short run. Inflation, however, needs to be abated, to allow the RBI lower the policy rates, to rejuvenate the investment sentiments.



Achieving fiscal consolidation after the difficult years of 2008-09 and 2009-10 when the fiscal deficit increased to 6% and 6.5% of GDP respectively, has remained the biggest challenge for the Government. Improvement in fiscal situation in 2010-11 along with improved growth performance riding high on Government's stimulus package, saw the fiscal deficit declining to 4.8% of GDP. As the growth declined after that, the fiscal deterioration persisted for the next two years. The fiscal deficit widened to 5.7% of GDP in 2011-12 and the Fiscal Responsibility and Budget Management (FRBM) targets were summarily breached. The declining collection of central revenues due to slowing industrial activities and outputs and continued pressure on expenditure due to rise in subsidies in fuel, fertiliser, and food, exacerbated the fiscal problems. High fiscal deficit resulting in elevated level of Government borrowing tends to heighten inflation, reduces room for monetary policy actions, and dampens private investment. The Fiscal restructuring path chalked out by the 13th FC and accepted by the Government, which recommended reducing the fiscal deficit to 4.2% of GDP in 2012-13 and contain at 3% level thereafter, is certainly found to be unachievable. The Kelkar Committee in their fiscal roadmap to achieve consolidation, projected a rise in fiscal deficit to the extent of 6.1% in the current year in a business-as-usual scenario. The Committee's reform recommendations that included adopting GST, reviewing the Direct Tax Code, administrative measures to improve tax collection, adopting

The budget plays the right note by taking initiatives to boost investments in infrastructure and industry, where the growth has been declining. The proposal of an investment allowance at the rate of 15% to manufacturing companies that invest more than Rs.00 crore in plant and machinery is expected to improve the industry sectors.

new models for disinvestment, rationalisation expenditure by pruning subsidy, found favour with the Government. The Government announced a revised fiscal correction path by targeting the fiscal deficit of 5.3% and 4.8% of GDP in 2012-13 and 2013-14 respectively and reducing it by 0.6 percentage point to reach at 3% in 2016-17. While the fiscal correction path was stretched longer, even compared to that of the Kelkar committee's projections, achieving the targets depends heavily on the Government's ability to control the subsidies and achieving higher tax-GDP ratio. The slippage on public finance needs to be corrected to establish credibility of Government policies, to improve domestic savings to finance the investment. Prolonging the imbalance would put pressure on domestic savings and expand the CAD given a level of investment.

The budget for the year 2013-14, thus, was presented when the country has been facing several macroeconomic challenges. The budget seems to have taken a realistic approach, by refraining from being overtly populist when the general election is due in 2014-15. Fiscal consolidation and reviving investment climate have been the major focuses of the budget. On the fiscal front, a starting has already been made, as the fiscal deficit for the year 2012-13 was limited to 5.2% of GDP as compared to the budgeted level of 5.3%. Expenditure control during the final months of financial year 2012-13 seems to have resulted in controlling the fiscal deficit. The budget aims for 4.8% fiscal deficit in the year 2013-14, in line with the 'red lines' drawn before the budget announcements. This is expected to rejuvenate the confidence of the private sector and ward off the spending demands. Reversing the trend of rising subsidies by restricting it to 2% of GDP, at 2007-08 level, was the key element of planned fiscal consolidation. The fiscal math includes aggregate expenditure projected to grow by 16% and tax revenue by 19%, a full 2% higher than that of the current

trend. The Government also expects higher income from disinvestments for which non-tax revenue grows sharply in the budget projections. While tax slabs remained unchanged, the higher growth of tax revenue would depend on a projected 13.5% nominal growth rate. Some other tax increases include a surcharge on income above ₹1 crore for a year, surcharge on companies, widening of tax base by applying TDS to the transfer of property over ₹50 lakh at a rate of 1%, and the commodity transaction tax. Rationalisation in tax laws relating to royalty is proposed to enhance the tax base. The commodity transaction tax is expected to create a level playing field between trading in equities and trading in non-agricultural commodities.

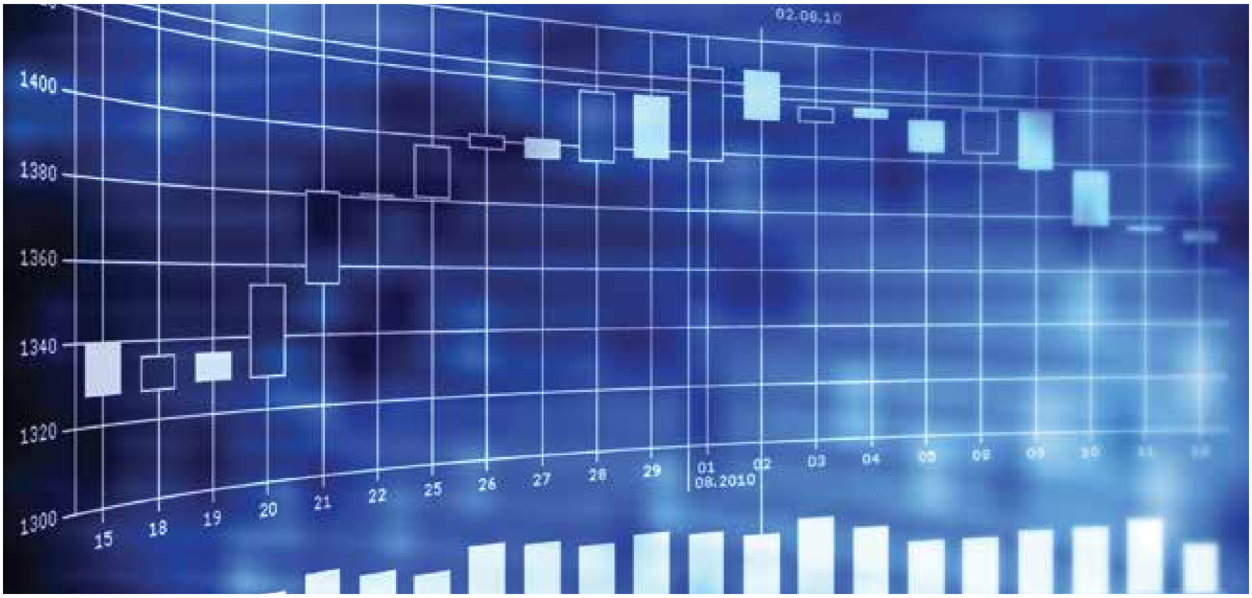
The budget plays the right note by taking initiatives to boost investments in infrastructure and industry, where the growth has been declining. The proposal of an investment allowance at the rate of 15% to manufacturing companies that invest more than ₹100 crore in plant and machinery is expected to improve the industry sectors. The progress in stalled infrastructural projects will make an improvement. In the sectors like textiles, leather, and electronics, several measures have been announced. The budget also stressed upon the financial sectors by introducing several regulatory measures and enhancing the possibility of infusion of additional resources. Particularly the focus on housing sectors is expected to boost low cost housing sector and related industries. The expansion of Rajiv Gandhi Equity Savings Scheme provides the scope for promoting capital markets and other measures are proposed to enhance the participation of FIIs. The budget also indicates that the recommendation of the Financial Sector Legislative Reforms Commission (FSLRC) will be analysed and implemented, which will introduce a number of reform measures in financial regulations. The budget also proposed to set up a Council of Experts to analyse the international competitiveness of Indian Finance and propose measures to improve it.

Collecting revenue in non-distortionary manner and spending public resources responsibly, efficiently, and effectively are major activities pursued through the budget to achieve fiscal discipline, improving prioritisation for allocative efficiency, and establishing good operational management to deliver public services.

Converting the intents to results is fraught with risks. The uncertainties regarding the World economy, current lack of momentum in the Indian economy and raging CPI inflation will continue to come in the way of many budget projections. The fiscal consolidation around which the revitalisation efforts are placed, will depend upon achieving the ambitious projections of revenues and expenditure controls. If the optimistic projection of 19% tax revenue growth does not materialise, the plan expenditure will have to be reduced to achieve the 4.8% fiscal deficit. The key will be the ability of the Government to control the subsidy bill to the projected level of 2% of GDP. The control on fuel subsidy is based on the arithmetic involving already decontrolled petrol price, cap on subsidised LPG and the expectation of some kind of settlement on diesel pricing linked to the market prices. The delay in settling issues relating to diesel pricing correction will further compound the scale of correction in future. The assumption that directing the fuel and food subsidies to eligible beneficiaries using Aadhar number will control the subsidy bill by removing corruption and irregularities may not fructify, given the fact that the cash transfers has not been expanded for food as yet. Fiscal consolidation is important, as it will bring in a virtuous cycle of lower government borrowing, accommodating monetary policy involving lower policy rates, improvement of investment climate due to lower interest rates, and growth. The fiscal discipline will enable the Government to fulfill many of it promises made in the budget relating to social sector development. On the other side of the fiscal story is the delayed infrastructure project worth thousands of crores due to many institutional bottlenecks that vitiates the investment climate. Although the Cabinet Committee on infrastructure has been constituted in July 2009, it has not made much headway to clear the mess surrounding the stalled projects. The new regulatory framework suggested in the budget in infrastructure sector needs to show the way. Thus, the proactive participation of ministries and departments other than the Ministry of Finance, in creating an enabling environment for investment is crucial.

Collecting revenue in non-distortionary manner and spending public resources responsibly, efficiently, and effectively are major activities pursued through the budget to achieve fiscal discipline, improving prioritisation for allocative efficiency, and establishing good operational management to deliver public services. The sound public financial management system gives emphasis to performance management both in terms of financial compliance through expenditure control and delivering quality public services. In recent years, accomplishing fiscal discipline and macroeconomic balance have remained paramount and budget management is construed more from the point of view of controlling fiscal deficit and government borrowing to limit their adverse impacts. The requirements of allocating resources in accordance with the strategic priorities, efficient and effective use of resources to implement the programmes, evaluating the results in a transparent manner, and establishing an accountability framework to achieve the results have remained in the periphery. The conventional budget, though indicates the resources allocated, gives little to understand the use of those resources to achieve certain agreed results. The Government of India has established the 'outcome budget', which are tabled by the departments separately in the budget session. The outcome budget signals the need to move beyond conventional line item budgeting system by converting outlays to outcomes. However, this requires measurement of realistic performance indicators and use of the performance information in resource allocation decisions. The building blocks of the outcome budget, measurement of performance indicators, specification of standards, costing of programmes, monitoring and evaluation system are still evolving in India. The outcome budget is yet to emerge as a robust fiscal instrument to influence the decisions over public finances and provide an accountability framework to judge the performance of the government in delivering the public services. ■

Presentation of Forex Transactions in Revised Schedule VI



The Ministry of Corporate Affairs, Government of India issued a Notification No. S.O. 447(E) amending the Schedule VI to the Companies Act, 1956 on 28th February, 2011, thereby providing a fresh and revised Schedule VI, prescribing a specific format for Balance Sheet, Statement of Profit & Loss Account and the disclosures to be made therein. Revised Schedule VI derives its importance statutorily through Section 211 of the Companies Act, 1956 which prescribes that the financial statements should comply with the requirements of Schedule VI, as far as they are applicable thereto. As per the amendment made by Notification No. S.O. 653(E) dated 30th March, 2011, the revised Schedule VI is applicable for the financial years commencing on or after 1st April, 2011. For the companies engaged in transactions in foreign currency, there are some specific presentation and disclosure requirements which include 'Presentation of Foreign Currency Monetary Item Translation Difference Account,' `Classification and Presentation of Foreign Exchange Fluctuation Loss/Gain,' `Disclosure of Expenditure in Foreign Currency,' `Disclosure of Dividend Remitted in Foreign Currency,' `Disclosure of Earnings in Foreign Currency' etc. Read on…

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Applicability of the Revised Schedule VI

The revised Schedule VI is primarily based on the presentation principles in the so-contemplated universal accounting language, International Financial Reporting Standards (IFRS).

Revised Schedule VI derives its importance statutorily through Section 211 of the Companies Act, 1956 which prescribes that the financial statements should comply with the requirements of Schedule VI, as far as they are applicable thereto. Hence, the revised format is supposed to be applicable to all the companies registered under the Act except Banking, Insurance and Electricity Companies, whether the converged Indian Accounting Standards (Ind-AS) are applicable to the company or not. Further, where a specific exemption has been provided to the company to comply with the provisions of Schedule VI, the exemption would prevail.

As per the amendment made by Notification No. S.O. 653(E) dated 30th March, 2011, the revised Schedule VI is applicable for the financial years commencing on or after 1st April, 2011.

For the companies engaged in transactions in foreign currency, there are some specific presentation and disclosure requirements[1] which are as follows:

1. Presentation of Foreign Currency Monetary Item Translation Difference Account
2. Classification and Presentation of Foreign Exchange Fluctuation Loss/Gain
3. Disclosure of Expenditure in Foreign Currency
4. Disclosure of Dividend Remitted in Foreign Currency
5. Disclosure of Earnings in Foreign Currency

These requirements are being discussed in brief below.

Presentation of Foreign Currency Monetary Item Translation Difference Account

In a major respite to the Corporate India, the Ministry of Corporate Affairs had extended the earlier allowed relaxation vide Para 46 of AS-11 to immediately debit/credit the foreign exchange translation differences on long term foreign currency monetary items to the statement of profit & loss till 31st March, 2020 vide Notification No. GSR 913(E) dated 29th December, 2011 and further allowed the entities which did not opt for such relaxation earlier to opt for such relaxation, by inserting a new Para 46A in AS-11 and allowing them to defer the foreign exchange translation differences on long term foreign currency monetary items.

In terms of Para 46 and Para 46A of AS-11, if the borrowing was taken for acquisition of a depreciable capital asset, such translation differences had to be adjusted in the cost of the concerned asset to be depreciated over the balance life of the asset and in other cases, such differences had to be accumulated in "Foreign Currency Monetary Items Translation Difference Account" (FCMITD A/c) and amortised over the balance period of such long term monetary items.

ASB Guidance in the form of FAQs on AS-11 Notification had further clarified various issues in the application of Para 46 of AS-11, when the relaxation was provided for the first time. One of such issues was regarding the presentation of "Foreign Currency Monetary Item Translation Difference Account" in the financial statements. In this regard, it was clarified that *"the 'Foreign Currency Monetary Item Translation Difference Account' should be shown as a separate line item in the Balance Sheet, in line with treatment given to Deferred Tax Asset/Liability, i.e. after the head 'Investments' or after the head 'Unsecured Loans' as the case may be and separately from current assets and current liabilities."*

> While the Revised Schedule VI has retained certain disclosures as in pre-revised Schedule VI, many new disclosures have been added in the 'old wine' of Revised Schedule VI. By adding current/non-**current classification, the lawmakers have focused on the liquidity aspect of the financial statements. Such classification and the new added disclosures** are expected to help in presenting the same set of information in more fresh and more useful information.

On the principles enunciated in the ASB Guidance which was based on pre-revised Schedule VI, the FCMITD A/c created as per Para 46/46A of AS-11 can be presented in line with the presentation requirements of Deferred Tax Asset/Liability, which has to be classified as non-current only. Further, the final XBRL taxonomy released by the Ministry of Corporate Affairs for the financial year 2011-12 as per revised Schedule VI also places FCMITD Asset/Liability A/c immediately below the deferred tax asset/liability and classifying it as non-current, thereby substantiating the interpretation.

Classification and Presentation of Foreign Exchange Fluctuation Loss/Gain

According to the General Instructions for Preparation of Statement of Profit & Loss issued by Ministry of Corporate Affairs, Government of India, net exchange gain/loss on foreign currency borrowings to the extent considered as an adjustment to interest cost needs to be disclosed separately as finance cost. Dealt in Para 4(e) of AS-16 and Accounting Standard Interpretation, it covers exchange differences on the amount of principal of the foreign currency borrowings to the extent of difference between interest on local currency borrowings, had such foreign currency borrowings

[1] *The list may not be treated as exhaustive.*

not taken place and interest on such foreign currency borrowings. Any such exchange differences would need to be disclosed under this head.

The net loss on foreign currency translation (other than considered as finance cost) should be classified as 'Other Expenses' and disclosed separately. Alternatively, such loss can be shown as a separate line-item on the face of Statement of Profit & Loss taking into account the materiality concept. Guidance Note on Revised Schedule VI further states that net foreign exchange gain should be classified as Other Income. This is because, such gain or loss arises purely on account of fluctuation in exchange rates and not on account of sale of products or services rendered, unless the business of the company is to deal in foreign exchange.

Disclosure of Expenditure in Foreign Currency

Clause (b) of Note 5(viii) of General Instructions for Preparation of Statement of Profit & Loss issued by the Ministry of Corporate Affairs, Government of India provides for a disclosure of expenditure in foreign currency during the financial year, on account of royalty, know-how, professional and consultation fees, interest, and other matters. It should be noted that the disclosure is to be given on the basis of accrual system of accounting which is the amount of expenditure incurred & recorded in the books and not on the cash basis, by disclosing the actual amount of foreign exchange remitted during the year. For the provisions made for foreign exchange expenditure, appropriate translation in rupee terms may be done for the purpose of this disclosure requirement in accordance with Indian GAAP, which would normally be the closing rate on the reporting date.

Further, it has been suggested in the Guidance Note on the Revised Schedule VI that in cases where deduction of tax at source is involved, the preferable course would be to disclose the gross expenditure that has been incurred by the company. However, the author has the opinion that since the tax has been deducted from source, and this liability will ultimately be settled in the local currency, the disclosure of "expenditure in foreign currency" should be strictly limited to the amount remitted/to be remitted in foreign currencies. This opinion further gains strength from Para 11.2.7

of the Guidance Note on the Revised Schedule VI which states that *"disclosure is to be limited only to those cases where the company itself incurs a foreign currency expenditure. Where an expenditure involves foreign currency but the original payment by the company itself is in rupees, no disclosure is necessary."*

Disclosure of Dividend Remitted in Foreign Currency

Clause (d) of Note 5(viii) of General Instructions for Preparation of Statement of Profit & Loss issued by the Ministry of Corporate Affairs, Government of India provides for a disclosure of total amount remitted during the year in foreign currencies on account of dividends with a specific mention of the total number of non-resident shareholders, the total number of shares held by them on which the dividends were due and the year to which the dividends related. Since the disclosure requirement is with regard to the "amount remitted" during the year, the disclosure has to be made in the year of actual payment rather than in the year in which the provision has been made in the books of accounts. Further, it has been clarified in the Guidance Note that if the dividend has been paid to the non-resident shareholder in Indian Rupees, this disclosure would not be necessary.

Disclosure of Earnings in Foreign Currency

Clause (e) of Note 5(viii) of General Instructions for Preparation of Statement of Profit & Loss issued by the Ministry of Corporate Affairs, Government of India provides for a disclosure of earnings in foreign exchange. Foreign exchange earnings have to be classified under the following heads:

1. Export of goods calculated on F.O.B. basis
2. Royalty, know-how, professional and consultation fees
3. Interest and dividends, and
4. Other income (indicating the nature thereof)

The disclosure in respect of the above has also to be made on the accrual basis of accounting and subsequent receipt of the accruals should be ignored.

Further, in line with the issue arising in case of disclosure related to expenditure in foreign currency in cases of tax deducted at source by the payer, the issue has been addressed in the Guidance Note on the Revised Schedule VI by stating that the more appropriate basis of disclosure would be disclosing the earnings amount gross of tax, with a mention of net of tax earnings and tax deducted at source. This opinion seems logical, in the view that the Income Tax statute and various judgements have also held that the tax deducted at source is the deemed receipt of income.

Further, Revised Schedule VI has also maintained the supremacy of the Companies Act, including Accounting Standards as applicable for the **companies over itself which is expected to make the** path to convergence of Indian Financial Statements towards Ind-AS would become a lot smoother, and such a transition to not even call for any further amendment in the Schedule VI. Hence, the farsightedness of the regulatory authorities has to be appreciated.

Revised Schedule VI - New Wine in New Bottle

While the Revised Schedule VI has retained certain disclosures as in pre-revised Schedule VI, many new disclosures have been added in the 'old wine' of Revised Schedule VI. By adding current/ non-current classification, the lawmakers have focused on the liquidity aspect of the financial statements. Such classification and the new added disclosures are expected to help in presenting the same set of information in more fresh and more useful information.

Further, Revised Schedule VI has also maintained the supremacy of the Companies Act, including Accounting Standards as applicable for the companies over itself which is expected to make the path to convergence of Indian Financial Statements towards Ind-AS to become a lot smoother, and such a transition would not even call for any further amendment in the Schedule VI. Hence, the farsightedness of the regulatory authorities has to be appreciated. ■

Taxation and Accounting Aspects of Sales Return

Sales return is a situation when customers are not satisfied with a product, and return the product, expecting to receive the full amount (against its return) at which that product had been purchased. Situations of sales return come up due to a variety of reasons. Also known as *returns inwards*, these situations are a normal part of business. Goods are returned when these have defects or when these are not up to the expectations of buyers, as perceived at the time of purchase. Such situations are not as simple as they appear to buyers or customers. There is a need to account for sale returns, as it appears that there has not been any sale at all, in the first place. Factors, like sale on credit or by cash, affect the accounting and taxation aspects of this process. Read the article to understand these aspects in details…

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Sales return is a part of business. Situation occasioning return of sale may arise for variety of reasons. If we dissect the word 'return', it consists of two words, i.e. *re* and *turn*. Return as verb means *to come back to a former place or state*, or, *to give, take, or carry back.* Existence of same goods which were subject matter of original sale is a pre-requisite to call second movement as transaction of sales return. Even if goods which are sent back are of same variety or make as of original sale, yet if the goods are different, this will not be return but barter. For taxation purposes, this would be regarded as two separate transactions involving transfer of property in goods, wherein the parties, by mutual consent, only have agreed to adjust the price of goods to settle accounts. Kerala High Court in *Grasim Industries Limited vs. State of Kerala [1995] 96 STC 285* considered the concept of sales return and observed:

> *…a sales return means a return of the very goods purchased by the buyer in whole or in part. It*

is a reversal of the sale, as if the sale had not taken place in respect of the returned goods, and therefore contemplates a return before the goods are appropriated and used by the buyer. A return of the left overs after use cannot be equated with a sales return. The return should be of goods of the same nature and quality as those supplied.

However, in case of transaction for loan of goods, parties, by virtue of express agreement, may agree to accept the goods other than that of same variety or make. It is common in trade to borrow speciality chemicals, etc., from fellow manufacturers for use by way of consumption with a promise of return of goods of same variety, make and properties but of different batch. Each of such transactions will have to be examined in the light of peculiar facts and circumstances of each case, to ascertain whether it was a single transaction of loan or two inter-linked transactions of sale and purchase. In a transaction of sales return, it is not necessary that goods must come back to the place from where the sale originated. Madras High Court in *Madras Petro-Chem Limited vs. State of Tamil Nadu [1998] 109 STC 233 (Madras)* held that, there is nothing in Section 8A of the Central Sales Tax Act, 1956 (the CST Act) warranting that the goods must be returned to the State from which the sale originated. The section does not in any way contemplate that the goods must be returned to the place of despatch.

Difference between Sales Return and Unfructified Sale

All discussions about sales return presuppose that there was a sale at some earlier point of time. If there was no sale, movement of goods in return journey may be anything but sale return. It is necessary to understand when sales get complete. As per Section 4(3) of the Sale of Goods Act, 1930 (the Act), *where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale.* Section 19 of the Act further provides that property passes when intended to pass. Parties to the contract of sale, through express provision in the contract, may agree to a point of time when the property in goods will pass. To constitute a valid sale, there must be a concurrence of the following:

1. parties competent to contract;
2. mutual assent;
3. a thing the absolute or general property in which is transferred from the seller to the buyer; and
4. price in money paid or promised.

In *Metal Alloy Company Private Limited vs. Commercial Tax Officer reported in [1977] 39 STC 404*, a learned single member bench of the Calcutta High Court succinctly brought out the difference between *return of goods and rejection of goods.* The headnote of the case reads:

Return of goods and rejection of goods stand on different footings. Return of goods is a bilateral transaction brought about by the consent of the seller and the purchaser, which consent may have been effected either prior to the delivery of the goods or subsequent to such delivery. Rejection of goods, on the other hand, is a unilateral transaction governed by the provisions of the Contract Act or the Sale of Goods Act, open only to the purchaser.

Transaction in this case was for the supply of stirrup pumps to Governments of Madhya Pradesh and Rajasthan. The contract stipulated that the pumps so supplied would be checked at unit level and payments would be made if they were according to specifications and were perfectly in order. Some of the pumps so supplied by the selling company were rejected by the buyers on the ground that they were not according to the stipulated specifications. The assesse argued that there was no completed sale in view of the admitted rejection of the goods, so the authorities concerned were not empowered to impose a levy of the tax. Concurring with the contention of the assesee, it was held that the very act of rejection gave a go-by to the transactions which were in furtherance of a supposed sale.

In *Peico Electronics & Electricals vs. State of Tamil Nadu [1990] 78 STC 88 (Madras),* purchaser failed to retire the documents from the bank to enable him to take delivery of the goods from carrier. Revenue rejected the claim of *unfructified* sale, taking a view that once the ascertained goods had already moved to the customers as a result of an earlier contract of sale, and invoices raised therefore, and the accounts of the customers debited, there will be transfer of goods, notwithstanding the rejection of the goods by the customers. Therefore, it will be only a case of sales return and not *unfructified sale.* Division bench of Madras High Court applied Judgement of Calcutta High Court in *Metal Alloy Company Private Limited vs. Commercial Tax Officer (supra)* to hold that there was nothing to suggest that there was any understanding or a term of contract which might be construed that the property in the goods passed to the purchaser as soon as the goods were put in common carrier. The High Court allowed appeal of the assesse and held that the turnover in question represented the unfructified sales and, therefore, the tax paid on those 'unfructified sales' was liable to be returned.

In *K Mohan & Co vs. State of Tamil Nadu [2002] 128 STC 279 (Madras HC),* goods were dispatched from Madras to the buyer in Calcutta. The buyer failed to take delivery of the goods by retiring the documents. Goods sold to another buyer in Calcutta was held to be an interstate sale, as goods were sold before termination of interstate movement, as the first buyer did not take delivery from the carrier.

In *Consolidated Coffee Limited and Another vs. Coffee Board, Bangalore 1980 AIR 1468; [1980] 46 STC 164 (SC); 2002-TIOL-678-SC-Misc,* it was argued that the word *sale* means an agreement to sell for which reliance was placed upon Section 4 of the Sale of Goods Act, 1930 wherein a contract of sale of goods is defined as contract, whereby the seller either transfers or agrees to transfer the property in goods to the buyer for a price. Rejecting the argument, the Supreme Court held that wherever the word sale occurs in the CST Act, it is the definition given in Section 2(g) of the CST Act that will be applicable and therefore the sale in Section 5(3) of the CST Act must mean transfer of the goods by one person to another for cash or for deferred payment or for any other valuable considerations; it cannot mean *agreement to sell*.

In *Nagarjuna Construction Company Limited, Bangalore vs. State of Karnataka and Others* reported in *2010(69) Kar.L.J. 97 (HC),* the Division Bench of the Karnataka High Court struck down Section 7 of the Karnataka VAT Act and held:

> *…this section, which creates a legal fiction that a transaction of sale is completed for the purposes of the Act when payment is received as advance is akin to bringing to tax, an agreement to sell goods, even before the property in the goods passes to the buyer.*

While delivering this decision, the Karnataka High Court also went into the validity of the Explanation to Section 3 of the Karnataka VAT Act, 2003, which requires the works contract to include any amount received as advance, as part of the consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, in the month, in which execution of such works contract commences and has held this Explanation to be unconstitutional.

In *Sales tax Officer, Pilibhit vs. Budh Prakash Jai Prakash 1954 AIR 459,* a Constitution Bench of the Supreme Court held that the liability to be assessed to sales tax can arise only if there is a completed sale under which price is paid or is payable and not when there is only an agreement to sell, which can only result in a claim for damages. Definition of sale in Uttar Pradesh Sales Tax Act, to the extent it treated forward contracts as completed transaction of sale, was held to be *ultra vires*. In *State Of Rajasthan And Anr vs. Rajasthan Chemist Association [2006] 147 STC 542 (SC)*, levy of sales tax on the basis of MRP printed on packaging *dehors* of actual price charged or chargeable was under challenge. The Court emphasised that the tax on sale or purchase must be on occurrence of taxing event of sale transaction. Entry 54 in List II of Seventh Schedule, empowers the State Legislature to impose and collect taxes on sale of goods. The measure to which tax rate is to be applied must have a nexus to taxable event of sale and not divorced from it. It was held that every transaction of sale is independent and can be subject to levy of tax and the components and the measure which can make the tax levy effective must have nexus with the taxable event. By devising a methodology in the matter of levy of tax on sale of goods, law prohibits taxing of a transaction which is not a completed sale and also confine *sale of goods* to mean sale as defined under the Act. This cannot be overridden by devising a measure of tax which relates to an event which has not come into existence when tax is *ex-hypothesi* determined, much less which can be said a completed sale and which cannot be subject of legislation providing tax on sale of goods, by transplanting a sum related to as *likely price* to be charged for subsequent sale to be taxed by the devise of measuring tax for the completed transaction which has become subject of tax.

In trade, generally, goods subject to sale are unascertained goods. When contract of sale is made on the basis of description of goods, without identifying particular piece physically, goods subject to sale remain unascertained goods. As per Section 23(1) of the Sale of Goods Act, 1930 in a contract for the sale of unascertained or future goods by description, property in goods passes when the goods of that description and in a deliverable state are unconditionally appropriated to the contract. Section 4(2)(b) of the CST Act provides that a sale or purchase of goods shall be deemed to take place inside a State if the goods are within the State, in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer. Section 4(2)(b) of the CST Act unlike the Section 23(1) of the Sale of Goods Act does not talk of unconditional appropriation with the assent of the other party or of passing of property. It is, therefore, not necessary for application of Section

4(2)(b) that the goods should be unconditionally appropriated to the contract,with the assent of the other party or that the property should have passed at the time of appropriation. It is sufficient for Section 4(2) (b) if the goods are appropriated by the seller and the other party assents to it later. However, the above position of Section 4(2) (b) of the CST Act need not be confused with the point of time when sale completes. Section 4 of the CST Act has a limited role of deciding *situs* of sale, i.e., naming the State, which would be competent to collect tax on such sale. The point of time when sale gets completed, will be decided on the basis of the Sales of Goods Act, 1930. Section 23(1) of the Sale of Goods Act is subject to Section 19(3) of that Act. Section 19(3) provides that rules contained in Sections 20 to 24 of that Act, are subject to a different intention of the parties to the contract. Thus, parties to a contract can very well agree to a particular point of time, when sale will get completed.

Intention is a state of mind. Intention is an inference to be drawn from the relevant facts[1]. No person can make out the state of mind of another person. State of a person's mind can only be determined by deducing the facts of a case. Section 14 of the Indian Evidence Act, 1872 provides:

> *Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.*

Explanation 1 of the Section provides that a *fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally but in reference to the particular matter in question.* It is thus necessary that intention of the parties, as to the point of time when property in goods will pass, to call a transaction to be a completed transaction of sale, must be clearly discernible from the terms of the contract.

In the modern style of business, such as e-commerce, where majority or significant percentage of sale happen on *cash on delivery* (COD) basis, understanding the difference between sale return and unfructified sale is very important. In *Prem Payari Aggarwal vs. Punjab State AIR 1967 P H 130; [1966] 18 STC 150 (P H) Division Bench* judgment dated 16-02-1966, it was observed that in a sale by V. P. P., there is an order placed by the buyer on the seller. The seller despatches the goods by postal parcel and the goods are to be delivered by the postal authorities to the buyer on payment of their price. In some cases, goods may even be sent by V. P. P. without an order. Property in the goods would pass and the sale would be complete on the buyer paying the price of the goods and not before that. Therefore, where the buyer does not accept the goods and returns them, there is no sale and the question of levying any sales tax thereon does not arise. The question of levy of sales tax only arises in those cases where the goods have been accepted by the buyer and the postal parcel has been paid for. It was held that the goods sent by V. P. P. from Punjab to Uttar Pradesh are liable to Central sales tax and such tax is leviable by the Punjab authorities. In *Agrim Sampada Ltd And Another vs. Union of India And Others [2004] 168 ELT 15 (Delhi HC)*, it was held that when importer of the goods in India fails to pay for the goods which were dispatched to him on *cash against delivery* basis and abandons them, the ownership of the goods continue to vest in the foreign supplier, unless he is proved to be a party to any fraud or the payment for the goods stands guaranteed to him by virtue of a letter of credit or otherwise. Reliance was placed on *Union of India vs. Sampat Rai Dugar [1992] 58 ELT 163 (SC)*, wherein the Apex court observed that it might be that for such act of abandonment, action might be taken against the importer for suspension/cancellation of license or might be, some other proceedings could also be taken against him, but certainly he could not be treated as the owner of the goods.

Accounting for Sales Return

Concept of sales return would arise only after the goods are sold. Thus, in a situation of sales return, there are two independent transactions, i.e. that of sale and return. The former involves transfer of property in goods from seller to buyer, whereas the later involves restoration of that property from buyer to seller. Both these independent transactions need to be accounted separately. However, if the nature of business is such where sales returns are inevitable or part of contract of sale, an appropriate provision for impact of future sales return on statement of profit and loss should be made. In an opinion by the Expert Advisory Committee of The Institute of Chartered Accountants of India[2], the querist company was in the business of manufacture of readymade garments. Readymade garment industry is subject to change in trends of fashion and as such, some of the goods were returned and the company as a

[1] CIT vs. Vikram Cotton Mills Ltd [1988] 169 ITR 597 (SC) – *Matter involved taxation under the head 'Income from House Property'.*

[2] *The Chartered Accountant, March, 2012, pp.1355-1357.*

Division bench of Madras High Court applied Judgement of Calcutta High Court in *Metal Alloy* ***Company Private Limited vs. Commercial Tax Officer*** *(supra)* to hold that there was nothing to suggest that there was any understanding or a term of contract which might be construed that the property in the goods passed to the purchaser as soon as the goods were put in common carrier.

matter of contract, accepted them back as sales returns. On the basis of the past trend, sales returns worked out to be approximately 20 to 22% of the sales for the year. The company had a policy of accounting for the sales returns received up to the balance sheet date.

The Committee opined that the existence of right of return by customer would give rise to a present obligation on the company. It noted the definition of the term *provision* as defined in paragraph 10 of Accounting Standard (AS) 29, *Provisions, Contingent Liabilities and Contingent Assets*, and opined that since obligation in respect of sales return can be estimated reliably on the basis of past experience and other relevant factors, such as, fashion trends, etc., in the extant case, a provision in respect of sales returns should be recognised. The Committee opined that the present policy of the company regarding recognising sales returns after the date of the balance sheet in the books of account upon the physical receipt of goods from the customer is not correct. It further opined that the company should recognise a provision in respect of sales returns at the best estimate of the loss expected to be incurred by the company in respect of such returns, including any estimated incremental cost that would be necessary to resell the goods expected to be returned, on the basis of past experience and other relevant factors. Necessary adjustments to the provision should be made for actual sales return, after the balance sheet date up to the date of approval of financial statements.

Deduction/Adjustments for Sales Return under Income-tax Act

In *Bayer Bio Science P Ltd vs. Additional Commissioner of Income Tax [2012] 148 TTJ 73 (ITAT-Mumbai) AY 2007-08*, the assesse, *inter-alia*, claimed deduction of provision for sales return in respect of the sales made in the current year, which were returned by the customers in the subsequent year before the finalisation of books. The Assessing Officer was of the view that since sales returns have actually been made in the subsequent year, the same should have been accounted in the subsequent year itself.

The Tribunal noted that the Section 145 of the Income-tax act, as it stands now, *inter alia*, lays down that business income has to be computed *in accordance with the cash or mercantile system of accounting as regularly employed by the assessee*. The only rider to this statutory requirement regarding method of accounting is that *the Central Government may notify, in the official gazette from time to time, accounting standards* and the applicable accounting standards will have to be followed by the assessee in the method of accounting followed. One of these mandatory accounting standards, notified vide notification no. 9949 dated 25th January, 1996, *inter alia* provides that *provisions should be made for all known liabilities and losses even though the amount cannot be determined with certainty and represents only a best estimate in the light of available information*. This approach requires all anticipated losses to be taken into account in computation of income taxable under the head *profits and gains from business and profession*. Unlike in the pre-amended Section, as it stood before 4th April, 1997, which provided that *in any case where the accounts are correct and complete to the satisfaction of the Assessing Officer but the method employed is such that, in the opinion of the Assessing Officer, the income cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Assessing Officer may determine*, there is no enabling provision now which permits the Assessing Officer to tinker with the profits computed, in accordance with the method of accounting so employed under Section 145 and as long as the mandatory accounting standards are duly followed. It is not the case of Assessing Officer that the mandatory accounting standards were not followed.

It was held that analysis of Section 145, read with applicable accounting standards, apart, even on first principles, deduction in respect of anticipated losses, as a measure of prudent accounting principles, cannot be declined. It is only elementary that the accountancy principle of conservatism, which has been duly recognised by the Courts, mandates that anticipated losses are to be provided for in the computation of income, but it does not permit anticipated profits to be taken into account till the profits actually arise. Even an anticipated loss, even if it may not have crystallised in the relevant previous year, is to be allowed as a deduction in the computation of business profits. As there was no dispute that sales have been returned in the subsequent year and this fact was known before the date of finalisation of accounts, it was held that there is no point in first taking into account income on sales, which never reached finality, and then accounting for loss on sales return in the subsequent year, i.e. in which sales return did take place. The approach of the assessee was held to be in consonance with the well-settled accountancy principles and provision for sales return was held to be an allowable deduction.

In the same judgement, provision was made for special discount to be passed on to customers against sale made during the year under assessment. There was no dispute about the fact that provision was made by the assesse on a scientific basis and not on an *ad hoc* basis.

Deduction/Adjustments for Sales Returns under Sales Tax/VAT Acts

Section 8A(1)(b)(ii) of the CST Act permits deduction from the turnover of the selling dealer, of the sale price of goods returned within a period of six months from the date of delivery. Facility of adjustment is subject to production of satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price thereof. The time-limit of Section 8A(1)(b) has no application in case of rejection of goods, because the very act of rejection gave a go-by to the transactions which were in furtherance of a supposed sale.

Most of the State VAT Acts also provide for deduction for sales return. These State VAT Acts have set their own time limits for return of goods to be eligible for deduction of same from taxable turnover which is generally six months from the date of sale. Andhra Pradesh has a period of 12 months [*Rule 28(3)(a)*] whereas Odisha has a period of three months [*Rule 7(2) &7(3) (d)*]. Another fine distinction to be noted between CST Act and State VAT Acts in this regard is that whereas CST Act counts period of six months from the date of *delivery*, state VAT Acts generally count such period from the date of *sale or purchase*.

State VAT Acts generally treat sale return and unfructified sale as one and the same [see Andhra Pradesh Rule 16(1)(3); Gujarat Section 8(1)(a); Odisha Rule 7(3)(a); Tamil Nadu Section 14(2)] and therefore, time limit for being eligible for adjustment of tax in case of sale return applies to unfructified sale also. Tamil Nadu has prescribed two time-limits, six months for sales return [*Rule 10(6)(b)(i)(B)*] and three months for unfructified sale [*Rule 10(6)(b)(ii)(B)*]. In *Advani Oarlikon (P) Ltd vs. State of Tamil Nadu [2000] 119 STC 25 (STT-Tamil Nadu)*, the assesse claimed deduction from turnover on account of unfructified sale. Section 4-D of Tamil Nadu General Sales Tax Act, 1959 at the relevant time provided that, where goods are returned for the reason that they were not taken delivery of by the person for whom they were intended, claim for refund of tax on such unfructified sale should be preferred within a period of thirty days of the receipt of the goods returned. Rejection of claim for adjustment of tax due to unfructified sale, made beyond the period of thirty days, was confirmed by the Tribunal, holding that when the provision contemplates time-limit for claiming sales return or refund or unfructified sale, then necessarily the time limit has to be adhered to while claiming the relief in the relevant assessment year. The position that unless there is completed sale, tax on first event was not chargeable, was not urged with force before the Tribunal.

In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. Motor Industries Co. 1983 AIR 370; [1983] 53 STC 48 (SC)*, the apex Court held that deduction in respect of the goods returned by the purchasers must be claimed in the assessment year in which the goods were sold and not in the succeeding year when goods were returned. It was held:

> *…the deduction in respect of sales return has to be allowed in the assessment relating to the financial year in which the sales of the returned goods had taken place and even where assessment for that year is completed, the Department has to comply with the demand for adjustment or refund by making necessary rectification in the order of assessment, provided that other conditions are satisfied.*

Decision in *Motor Industries case (supra)* was followed in *State of Maharashtra vs. BASF (India) Limited [2000] 117 STC 543 (SC)*.

However, the above position applies to sales made in the course of inter-State trade or commerce only for the reason that, most of the State VAT Acts now specifically provide that adjustment on account of sale return or de-escalation of price shall be allowed in the return of tax period in which cause for such adjustment arise, on exchange of debit and credit notes between the buyer and seller [Delhi Section 8(2); Gujarat Section 8(2); Karnataka Section 30(3); Maharashtra Section 63(6)]. However, in absence of specific provision in State VAT Act, the position that adjustment need to be claimed in the year in which original sale took place shall prevail. ■

Sale, Service and Works Contract: Searching for the Blurred Lines

This article, written primarily from sales-tax viewpoint, analyses the scope of "sale", "service" and "works contract". While income tax provisions are considerations, the principles emerging from the discussion could be relevant for the purpose of tax laws as well, particularly on applicability of withholding taxes on contracts such as EPC contracts.

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Introduction

From a comprehensive sales-tax regime and no tax on services, to a tax on limited services, to a comprehensive tax on services, we have travelled a long way. However, what we have not been able to achieve so far is an integrated tax regime, so that the tax structure on sales and services remains fragmented. The world of commerce has grown more complicated over time: there are lots of contracts where the borderline of sales and services are not clearly defined. There are several composite contracts which have strands of both sales and services – works contracts are one of these – which fall under both sales-tax law and service-tax law. The implications of whether a contract is sale or service are multifarious – sales-tax law is obviously one of them, but there are other immediate consequences – applicability of TDS and withholding tax in international transactions, issues pertaining to accrual of income, etc.

In case of composite contracts, the borderlines of sales and services may not be clear at all, and the massive tax consequences of either treatment, expose tax payers to a substantial risk. The question remains involved, and far from clarity despite years of court rulings.

Meaning of sale, service and works contracts

Sale

In general parlance "sale" means a transaction where one person transfers property in goods to another person in lieu of a consideration paid by the latter. "Goods" normally mean movable property, which may be tangible or intangible. "Sale", as defined under Section 4(1) of the Sale of Goods Act, is a "***contract*** whereby the seller transfers or agrees to **transfer the property in goods** to the buyer for a price." Therefore, the essence of sale is that *the property in goods must pass on from one person to another*. Benjamin's oft-cited ingredients of a sale are illustrated in Figure I-Essential Ingredients of Sale. In addition, since a "sale" is necessarily a "contract", all the requisites of a valid contract are essential for a "sale" to be considered as such.

Figure I: Essential Ingredients of Sale

Necessary ingredients of a "sale" have been discussed by courts in several rulings, illustratively: *M/S New India Sugar Mills Ltd vs. Commissioner of Sales Tax*[1], *Bhopal Sugar Industries Ltd. vs. D. P. Dube*[2], *Century Club and Others. vs. The State of Mysore and Another*[3], etc.

While the above is the common-law meaning of the word "sale", for sales-tax purposes, the term "sale" has got wider dimensions, after the insertion of clause 29(A) under Article 366 vide 46th Constitutional Amendment. This definition expanded the meaning of the term "sale" to include 6 transactions which are not sales under the common law definition cited above, but deemed to be sales ("deemed sales") for sales-tax purposes. Post the Constitutional amendment, State laws in different states were changed over a period of time beginning from 1984 to include these deemed sales, though the Central Sales-tax Act was amended much later i.e. in the year 2002. However, currently, all sales-tax laws include the extended meaning of sale such as the definition in Section 2(g) of the Central Sales Tax Act, 1956 (CST Act) as under:

> **"Sale"**, with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,–
>
> (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
>
> (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
>
> (iii) a delivery of goods on hire-purchase or any system of payment by instalments;
>
> (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
>
> (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
>
> (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

Each of the 6 clauses included in the generic meaning of word "sale" are deemed sales.

Service

Section 65B of the Finance Act, 1994 (as effective from 1st July, 2012) defines the term "service" as follows:

> ***"Service"*** *means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-*
>
> *(a) an activity which constitutes merely,-*
>
> *(i) a transfer of title in goods or immovable*

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[1] [1963 AIR 1207, 1963 SCR Supl. (2) 459]
[2] [14 STC 408 (SC)]
[3] [(1965) 1 MysLJ]

property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of Article 366 of the Constitution; or

(iii) a transaction in money or actionable claim

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

This definition casts a very wide net for the term service, and holds every activity, understandably economic activity, to be a service, with exceptions of:

- a transfer of movable property;
- a transfer of immovable property;
- deemed sales as discussed above;
- a transaction in money or actionable claims
- personal services by an employee to an employer
- fees charged by judicial or quasi judicial bodies.

As is obvious, the above definition does not lay down what a service is; it lays down what a service is not. However, with basic commonsense, it is possible to lay down the following ingredients for a "service contract": (a) it is a contract, and hence, satisfies all basic requirements of a contract, including duality of parties, consideration, free asset, etc; (b) consideration may be cash or kind; (c) the involvement of the servicer by an "activity" need not imply a personal engagement model – it may even be by way of a facility, equipment or infrastructure – for example, renting of property does not involve any "activity" of the landlord as such, but is still a service.

Works Contract

Sales and services are mutually exclusive – a sale cannot be a service and a service cannot be a sale. Works contracts, as discussed below, fall in both the regimes, but one must take that as a case of an overlap, since the goods element of a works contract is taken to be sale, and the service element is taken to be a service. Likewise, a catering contract is a case of sale of goods as well as services, but here again, bifurcation is done and the two taxes apply to their respective domains. In essence, there is no way a single contract could be one of sale and service both.

Before coming to the issue of taxability of such contracts, one needs to have an understanding of the meaning of "works contract". To understand the meaning of the term, one may look at the definition given in the CST Act in context of sales-tax laws, in the Finance Act, 1994 in context of service tax, and authoritative writings in general.

Works Contract under Sales Tax Law

I. Definition of Works Contract in the CST Act and implication thereof

Section 2(ja) of the CST Act defines works contract as follows:

"(ja) **"works contract"** means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property."

The seemingly exhaustive definition (works contact *means*) is rendered inclusive, once it reads on – "any work which *includes*". Therefore, it is not possible to find the exact meaning of scope of the expression "works contract" from the above definition. It is safe to say that what the law gives are examples of works contracts. Three main characteristics of works contracts as can be inferred from the definition are:

1. It is a contract for carrying out *any work*.
2. "Work" includes (but is not limited to) assembling, construction, building, altering, processing, manufacturing, erection, fabrication, fitting out, making improvements, repairs or commissioning.
3. The "work" may be in respect of movable property or immovable property. Point to be noted here is: though the work may be in respect of movable or immovable property, sales tax is chargeable on transfer of property in *goods* involved in the execution of works contract. *Goods*, under the sales tax law, are essentially movable property only. See discussion below on this.

The first limb of the definition is not suggestive – since not every work can be a works contract. The second part is the heart of the definition, but as it gives an illustrative list, it is not possible to deduce an exhaustive meaning of the expression from the definition.

II. The 46th Constitutional Amendment and taxability of Indivisible Composite Contracts

As mentioned earlier, transfer of property in goods involved in the execution of a works contract is "deemed sale" coming from the 46th Constitutional Amendment that inserted Article 366(29A) to include a "transfer of property in goods involved in works contract" within the ambit of "sales". Thus, it is not enough for a transaction to be a works contract – a works contract must result into a transfer of property in goods. As noted above, the term "goods" is confined to movable properties. It is notable that the third limb of the definition of "works contract" in CST Act includes works done with regard to immovable properties as well. There is no conflict between the principle that only transfer of property in "goods" is chargeable to sales-tax, and the third limb of the CST definition. In fact, if goods, that is, movable property, are acceded at the time of construction of an immovable property, the transfer of property in such goods is taken as a works contract. That is to say, prior to accession to a contract, if the property was movable, and becomes immovable by virtue of such annexation, it is still chargeable to tax as a "works contract". On the other hand, the immovable property itself that gets transferred, even if under a works contract, cannot be chargeable to sales-tax. For instance, if a building is repaired, the movable property such as concrete or cement that goes into the repair is chargeable to works contract tax, but not the building itself.

Works contracts and composite contracts

To reiterate, works contracts have combined ingredients of "sales" and "service"; as such they fall under the category of Composite Contracts: Works Contract is *specie* of Composite Contracts. Composite Contracts are transactions that involve an element of transfer of title of goods as well as an element of provision of service; these two elements are so inextricably linked that they form part of the same transaction. No separate rights arise out of the constituent contract of sale and contract of service. The same has been illustrated in Figure II-Composite Contracts.

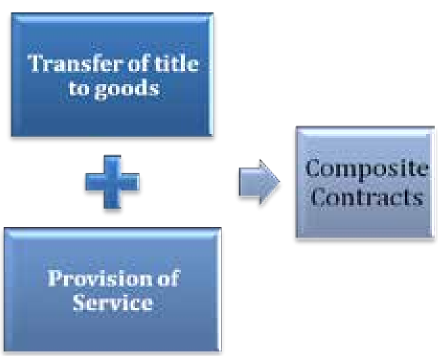

Figure II: Composite Contracts

Every works contract is a composite contract, but every composite contract is not a works contract. The 46th Constitutional Amendment, by insertion of Article 366(29A), created a legal fiction so as to impart divisibility to composite contracts, if such composite contract is a works contract. Thereby, transfer of property in goods involved in the works contract and catering services were given the status of deemed sales such that the material (i.e. "the transfer of goods") portion in these services can be subjected to sales tax.

Therefore, for taxation purposes, one has two broad categories of composite contracts, as depicted in Figure III-Types of Composite Contracts.

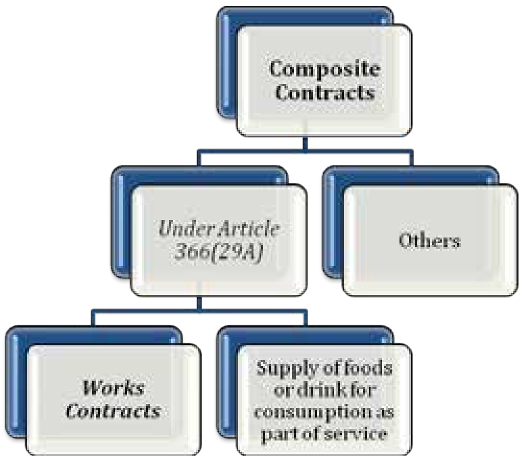

Figure III: Types of Composite Contracts

Since composite contracts are not limited to works contracts, Figure III: Types of Composite Contracts illustrates two types of composite contracts which have been captured within the deeming fiction laid by the 46th Amendment. This does not eliminate the existence of any other composite contract, which has not been captured by the 46th Amendment. If such contract is not a works contract as per statutory definition of the CST Act, nor is it a contract for supply of food and drinks, and still is a composite contract providing for supply of goods and services under an indivisible contract, there is no machinery under the law to bifurcate such a composite contract. Then which law applies to such a contract? If the contract is not divisible, no fiction can be superimposed on the contract to divide what the contracting parties have not divided. In view of composite consideration, such a contract is not a service, and is not a sale. So the inescapable conclusion is – there is no machinery in law to tax such a contract, and hence, such a contract is not taxable, even under the negative list of service tax. If such a contract was "service", it would be caught by the negative list. If such a contract was "sale of goods", it would be caught by sales-tax law which has always had a negative list of exempted items. But if it is a composite contract, it can be said to be neither a sale nor a service.

In the world of commerce, several such contracts exist very naturally. One instant example is the service of a taxi driver – he fuels the taxi, and operates the taxi, and charges one single consideration for both. This is not a works contract, nor is it a service. Nor can it be said that the dominant intent is to provide fuel or provide driving. It is a combination of man, machine and the fuel with an impossible benchmark to decide the dominant intention.

The Judicial Precedents on Works Contracts

Judiciary has dealt with issues pertaining to "works contract" at length: before and after the 46th Constitutional Amendment. An important case is *Builders Association of India & Others vs. Union of India and Others*[4], where the Supreme Court answered the question of Constitutional validity of the 46th Amendment and power of the States to levy tax on the transfer of property in goods involved in the execution of works contracts. The contracts in question were building contracts. However, the Supreme Court was very clear with the fact that works contract is a genetic concept which consists of various species; "building contracts" is one of them. The Supreme Court observed,

> "We, however, make it clear that the cases argued before and considered by us relate to one *specie* of the genetic concept of 'works contracts'. The case-book is full of the illustrations of the infinite variety of the manifestation of 'works-contracts'- Whatever might be the situational differences of individual cases, the constitutional limitations on the taxing-power of the state as are applicable to 'works contracts' represented by "Building-Contracts" in the context of the expanded concept of "tax on the sale or purchase of goods" as constitutionally defined under Article 366(29A), would equally apply to other species of 'works-contracts' with the requisite situational modifications."

As regards the nature of works contract, the Court referred to *Building Contracts and Practice*[5] wherein the learned author views that vesting of property in materials can take place by affixing materials, etc. to the freehold: "As soon as materials of any description are built into a building or other erection, they cease to be the property of the contractor and become that of the freeholder". Further, in *Benjamin's Sale of Goods*[6], it is stated that,

> "Chattel to be affixed to land or another chattel.------Where work is to be done on the land of the employer or on a chattel belonging to him, which involves the use or affixing of materials belonging to the person employed, the contract will ordinarily be one for work and materials, the property in the latter passing to the employer by accession and not under any contract of sale. Sometimes, however, there may instead be a sale of an article with an additional and subsidiary agreement to affix it. The property then passes before the article is affixed, by virtue of the contract of sale itself or an appropriation made under it."

Therefore, an observation that can be made here is that in a works contract, the property in the goods *"passes on"* to the contractee by *"accession"*; the transfer of property in materials is not the result of a separate contract or appropriation. Most suitable example here would be that of a building contract: if you engage a contractor to build a house for you; you are not buying cement, bricks, etc. individually. The contractor has to use these materials to build the house for you; his ultimate work is "to construct" the house and deliver the same to you: the materials just "pass on" from the contractor to the you in the process of delivering the end product, i.e. the house.

Nature of works contract was also discussed in the *State of Madras vs. Gannon Dunkerley & Co.*[7] in which the Supreme Court cited interesting rulings of English Courts on the subject matter, one of which was *Clark vs. Bulmer*[8]. In this case, the plaintiff entered into a contract with the defendant to build an engine. Different parts of the engine were constructed at the plaintiff's manufactory and sent in parts to the defendant's colliery where they were fixed piecemeal and were made into an engine. The Honourable judge Parke B. observed:

> "The engine was not contracted for to be delivered, or delivered, as an engine, in its complete state, and afterwards affixed to the freehold; there was no sale of it, as an entire chattel, and delivery in that character; and therefore it could not be treated as an engine sold and delivered. Nor could the different parts of it which were used in the construction,

[4] *1989 SCALE (2)768*
[5] *Building Contracts and Practice: Bmden and Watson; (6th edition), p. 229-230*
[6] *Benjamin's Sale of Goods: 3rd edition, para 43, p.36*
[7] *1958 AIR 560, 1959 SCR 379*
[8] *(1843) 11 M & W. 243; 152 E- R. 793.*

and from time to time fixed to the freehold, and therefore became part of it, be deemed goods sold and delivered, for there was no contract for the sale of them as moveable goods; the contract was in effect that the plaintiff was to select materials, make them into parts of an engine, carry them to a particular place, and put them together, and fix part to the soil, and so convert them into a fixed engine on the land itself, so as to pump the water out of a mine."

Another interesting case pertained to building contract: *Tripp vs. Armitage*[9] in which a builder entered into an agreement with certain trustees to build a hotel. The buider became bankrupt and dispute arose as to the title to certain wooden sash-frames which had been approved on behalf of the trustees but had not yet been fitted in the building. The trustees claimed the same on having approved them; but the Judge remarked,

"this is not a contract for the sale and purchase of goods as movable chattels; it is a contract to make up materials, and to fix them; and until they are fixed, by the nature of the contract, the property will not pass." Further, "but in this case, there is no contract at all with respect to these particular chattels: it is merely parcel of a larger contract. The contract is, that the bankrupt shall build a house; that he shall make, amongst other things, window-frames for the house, and fix them in the house' subject to the approbation of a surveyor; and it was never intended by this contract, that the articles so to be fixed should become the property of the defendants, until they were fixed to the freehold."

The Court, in *Gannon Dunkerley's case (supra)* thus concluded that there is no sale of materials used in a building contract and that works contract is entire and indivisible.

In view of the indivisibility of the works contracts, a legal fiction was created to impose tax on transfer of property in goods involved in the execution of works contract by the 46th Constitutional Amendment.

Works Contract under Service Tax Law

A works contract has been defined under Section 65B (54) of the Finance Act (as effective from 1st July, 2012) as follows:

"works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property"

Regarding the applicability of service tax on such Works Contracts, Section 66E of the Finance Act (as effective from 1st July, 2012) includes "service portion in the execution of a works contract" in the list of "declared services"; therefore, service part is to be segregated from the whole works contract and the same has to be subjected to service tax.

Earlier Definition of Works Contract under the Service Tax Law

Prior to the amendment made by the Finance Act, 2012, Section 65(105)(zzzza) of the Finance Act included services rendered to any person in relation to the execution of a works contract in the taxable services, subject to certain exclusions. The relevant section read as follows:

"(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.—For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,—

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

[9] *(1839) 4 M & W. 687 ; 15o E.R. 1597.*

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

A keen observation of the definitions under the new and the old service tax regimes will reveal that the definition introduced by the Finance Act, 2012 is all the more comprehensive and pervasive: instead of giving numbers to count on fingers and specifying each type of work to be classified as works contract, this time the definition enlarges the scope of works contract. Now, the contract may pertain to erection, commissioning, installation, etc. of both movable or immovable properties. It is also notable that the new definition is dependent on the definition in the CST Act, since it is clear from the definition that the service element of a works contract is taxable only where it is a sale. Accordingly, for service tax to be imposed on works contract, three essential requirements are to be met:

1. There should be transfer of property in goods involved in the execution of the contract which is leviable to tax as sale of goods.
2. The transfer of property in goods shall be taxable as sale of goods.
3. The purpose of the contract is to carry out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or any other similar activity.

The third element seems to suggest that every activity may be a works contract, but given the fact that it is conditioned by the first two conditions, the scope of "works contract" for service tax can be no wider than the scope under CST Act.

Going by the clarification provided by the Department in the *Taxation Guide*[10], it can be stated that transfer of property in goods involved in the execution of the contract is quintessential to classify the contract as "works contract", though service tax would be levied only on the service portion of such a contract. As such, labour contracts, in which there is no transfer of property in goods involved in the execution of the contract, will not qualify as works contract; though such contracts will fall under the category of pure service contracts and chargeable accordingly. On similar lines, one can say that repairs and maintenance of motor vehicles, cars, etc; construction of a pipeline or a conduit, painting, repair, renovation of building, wall tiling, flooring, or similar activities are works contracts, *provided these contracts involve provision of materials as well*.

'A' approaches 'B' to paint his house. A provides the paint for the purpose. B's work is limited to painting the house according to A's instructions, using his own tools and equipments. In this case, no transfer of property in goods takes place from B to A. B rendered a pure service. So, this is not a works contract.

However, in the above example, if B would have been asked to supply the paint also, it would have been a case of works contract.

There is one more critical issue involved. Even if there is transfer of property in goods involved in the sale of goods alongwith provision of services, the same may not qualify as works contract owing to the possibility that the transfer of such property in goods may not be taxable as sale of goods. So, the taxability of service portion of a works contract is dependent on taxability of sale portion of the same.

Identifying the Border Line

In layman's language, when a person buys a material that the supplier already has, it is sale. When he buys an activity from the supplier, it is service. When he contracts with the supplier to provide what the supplier is not ready with, but supplier can provide the same after "working" for it, then it is a "works contract". This, however, is overtly simplified version of the distinction. One needs to go through each of the principles discussed above to come to concrete conclusions.

Having discussed in length the meaning and scope of "sale", "service" and "works contract", it is now important to look into the taxability aspect of these transactions. Taxability of a transaction to sales tax or to service tax depends entirely on the nature of transaction-whether it is a "sale" or "a service". Sometimes, there are complicated contracts where the distinction between sale and "service" get blurred – leading to questions as to whether it is a sale or a service or a composite contract. In such cases, *what is to be seen is the dominant nature of the transaction* – that is, predominantly, have the parties intended providing a service, or simply intended transfer of property in goods. Detecting such predominant intention may not be easy – subjecting the transaction to controversy. However, when it comes to composite contracts covered by Article 366(29A), then the predominant

[10] *Taxation of Services: An Education Guide; issued by CBEC.*

nature principle will not work because of the deeming fiction of the law. The discussion that follows tries to focus on this aspect: the authors have tried to imbibe the judicial views taken in the matter and various clarifications issued by the taxing authorities so as to reach a conclusion.

Judicial Precedents

Bharat Sanchar Nigam Limited and another vs. Union of India and Others

The milestone case relevant to the context is *Bharat Sanchar Nigam Ltd. and Another. vs. Union of India and Ors.*[11] where the Supreme Court coined the term **"dominant nature test"** to determine the taxability of composite contracts-the contracts having elements of both "sales" and "service", as can be stated here-

> *"The test therefore, for composite contracts* ***other than those mentioned in Article 366 (29A)****, continues to be – did the parties have in mind or intend separate rights arising out of the sale of goods. If there was no such intention there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is `****the substance of the contract****'. We will for want of a better phrase, call this the* ***dominant nature test****."*

The Court stated ***that it is only in the cases of works contract and catering services where splitting of the transaction into "sale" and "service" has been constitutionally permitted***, there is no other service that has been permitted to be split. The Court cited an example of hospital services or professional services of lawyers-it be said that there is a sale of goods when a doctor writes out and hands over a prescription or a lawyer drafts a document and delivers it to his/her client.

> *"Strictly speaking, with the payment of fees, consideration does pass from the patient or client to the doctor or lawyer for the documents in both cases."*

But these services do not involve a sale for levy of sales-tax, reason being *"if there is an instrument of contract which may be composite in form in any case other than the exceptions in Article 366(29-A), unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale"*.

The principle was enunciated in *M/s. Gannon Dunkerley & Co. & Ors. vs. State of Rajasthan & Ors.*[12]

Indian Railways Catering & Tourism Corporation Limited vs. Government of NCT Delhi and Others

In *Indian Railways Catering & Tourism Corporation Limited vs. Government of NCT Delhi and Others*[13], the question was: whether the supply of food and beverages is a contract of providing service, or a contract only for sale/supply of goods, or a composite contract of providing services and selling goods. Here a distinction was made between the services rendered in a restaurant or hotel and the services rendered by outdoor caterers. When a person goes to a restaurant, orders food and pays for it; and the food items are supplied to him, it would simply be case of transfer of property in goods to the customer. The rendering of services there is merely incidental to the sale of food, which the dominant object. The Delhi High Court came up with these well-defined legal propositions-

a) States have the right to levy tax on the whole of the consideration in the transaction of sale of goods (e.g. supply of food in restaurant, irrespective of the fact that there is an incidental element of service necessarily involved in sale of goods of this nature)

b) In cases of transactions covered under Article 366(29A) [e.g. Works contract], States have the power to levy and collect sales tax/VAT on the value of goods involved in the execution of the transactions. However, levying sales tax/VAT on the service component of the transactions is, in no way, permissible.

c) Coming to the composite contracts that are not covered under Article 366(29A), the State would have the power to separate the agreement involving sale of goods, from the agreement to provide services, and impose tax on the sale component of the transaction, only ***if the intention of the parties was to segregate the element involving sale of goods from the element involving providing the service*** and ***actually the transaction represents distinct and clearly visible or discernable contracts***.

Therefore, if the intention is not found or the transaction does not involve distinct contracts, it is not permissible to disintegrate such composite

[11] *[145 STC 91 (SC)]*
[12] *[(1993) 1 SCC 364]*
[13] *[W.P. (C) No. 5483/2008] (2010-TIOL-517-HC-DEL-ST)*

contract so as to levy sales tax/Value Added Tax on that component which involves sale of goods, during the course of the transaction. Now, in order to decide whether the intention of the parties is present, the test would be to ascertain: what is the dominant nature of the transaction between the parties?

The Delhi High Court held the transaction between IRCTC and Indian Railways is a transfer of goods by the former to the latter for consideration and the property in the goods also passes to Indian Railways- clearly a sale of goods under the provision of "Sale of Goods Act as well as Delhi Value Added Tax Act". The element of service, say heating the food, heating/ cooling the beverages, and then serving them to the passengers, is purely incidental and minimal effort required to sell the food and beverage (just like in the case of restaurants). Therefore, the transaction of providing meals and snacks to the passengers is not a composite contract of service and sale but is ***pre-dominantly a transaction of outright sale*** by IRCTC to the Indian Railways.

Imagic Creative Private Limited vs. Commissioner of Commercial Taxes & Others

In *Imagic Creative Private Limited vs. Commissioner of Commercial Taxes & Others*[14], the question before the Supreme Court was whether the charges collected towards the services for evolution of prototype conceptual design (i.e. creation of concept), on which service tax had been paid under the Finance Act, 1994 as amended from time to time is liable to tax under the Karnataka Value Added Tax Act, 2003. The company was an advertising agency, that created original concept and design advertising material for their clients and design brochures, annual reports, etc. Considering the entire ambit of activity of the dealer, the authority under the Karnataka VAT Act held that it is a comprehensive contract or supply of printed material developed by the company and that the sale of printed material with a background of providing the concept is an indivisible activity liable to tax at 4% as a whole. The Company preferred an appeal to the Apex Court, wherein it vehemently contended that it being an advertising agency, i.e., providing professional services, is not liable to pay Value Added Tax (VAT) upon application of dominion nature test or otherwise. The Court admitted that the Company is a service provider and *"It is also not in dispute that the orders received by it to provide such services is party specific and issue specific; be it for issuance of a brochure or a year book or for any other purpose."*

The Supreme Court referred to decisions laid down in cases of *Builders Association of India & Ors. vs. Union of India & Ors.*[15] and *M/s.Gannon Dunkerley & Co. & Ors. vs. State of Rajasthan & Ors*[16], and viewed that Article 366(29A), with respect to works contract, creates a legal fiction to alter an indivisible contract into a divisible contract so as to make the supply of goods involved in a works contract, subject to tax. However, the transaction in the present context was not contemplated there. A reference was made to the case of *Bharat Sanchar Nigam Limited (supra)*. Further, the Court emphasised on drawing a distinction between an indivisible contract and a composite contract. Ultimately, the Court decided that payments of service tax and VAT should be held to be applicable, having regard to the respective parameters of service tax and sales tax as envisaged in a composite contract as contradistinguished from an indivisible contract. The contract may consist of different elements consequently attracting different nature of levy. *"It is, therefore, difficult to hold that in a case of this nature, sales tax would be payable on the value of the entire contract; irrespective of the element of service provided."*

State of Andhra Pradesh vs. M/s Kone Elevators (India) Limited

The Supreme Court in *State of Andhra Pradesh vs. M/s Kone Elevators (India) Limited*[17] brought out the distinction between a contract of sale and a works contract. As it observed,

> "It can be treated as well settled that there is no standard formula by which one can distinguish a "contract for sale" from a "works-contract". The question is largely one of fact depending upon the terms of the contract, including the nature of the obligations to be discharged thereunder and the surrounding circumstances. If the intention is to transfer for a price a chattel in which the transferee had no previous property, then the contract is a contract for sale. Ultimately, the true effect of an accretion made pursuant to a contract has to be judged not by artificial rules but from the intention of the parties to the contract. *In a "contract of sale", the main object is the transfer of property and delivery of possession of the property, whereas the main object in a "contract for work" is not the*

[14] [(2008) 2 SCC 614]
[15] [(1989) 2 SCC 645]
[16] [(1993) 1 SCC 364]
[17] [(2005) 3 SCC 389]

transfer of the property but it is one for work and labour (emphasis supplied). Another test often to be applied to is : when and how the property of the dealer in such a transaction passes to the customer: is it by transfer at the time of delivery of the finished article as a chattel or by accession during the procession of work on fusion to the movable property of the customer? If it is the former, it is a "sale"; if it is the latter, it is a "works- contract". Therefore, in judging whether the contract is for a "sale" or for "work and labour", the essence of the contract or the reality of the transaction as a whole has to be taken into consideration. The pre-dominant object of the contract, the circumstances of the case and the custom of the trade provides a guide in deciding whether transaction is a "sale" or a "works- contract". Essentially, the question is of interpretation of the "contract"."

Clarification from the Taxing Authority

Support can be drawn from the *Taxation Guide*[18] issued by the Central Board of Excise and Customs. In order to determine the taxability of composite transactions, the Guide too looks up to the *BSNL's case* (*supra*). It has been explicitly stated in the Guide that the taxability of composite transactions will be judged on the basis of the dominant nature test laid down in *BSNL's case* (*supra*) and it has been clarified that:

> "Although the judgement was given in the context of composite transactions involving an element of transfer in title of goods by way of sale and an element of provision of service, the ratio would equally apply to other kind of composite transactions involving a provision of service and transfer in title in immovable property or actionable claim."

The Taxation Guide then discusses the principles that emerge from the judgment given in *BSNL's case* (*supra*). The principles are laid down as follows:

1. Except in cases of works contracts or catering contracts [exact words in Article 366(29A) being – 'service wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the service'] ***composite transactions cannot be split into contracts of sale and contracts of service***.
2. The test whether a transaction is a 'composite transaction' is that *did the parties intend or have in mind that separate rights arise out of the constituent contract of sale and contract of service.* ***If no then such transaction is a composite transaction even if the contracts could be disintegrated.***
3. The ***nature of a composite transaction***, except in case of two exceptions carved out by the Constitution, ***would be determined by the element which determines the 'dominant nature' of the transaction.***
   a. If the dominant nature of such a transaction is sale of goods or immovable property, then such transaction would be treated as such.
   b. If the dominant nature of such a transaction is provision of a service, then such transaction would be treated as a service and taxed as such, even if the transaction involves an element of sale of goods.
4. In case of works contracts and 'service wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the service', the 'dominant nature test' does not apply and service portion is taxable as a 'service' This has also been declared as a service under Section 66E of the Act.

   (**Author's Note:** Section 66E lists down the "declared services". Clause (h) includes "service portion in the execution of a works contract"; therefore service portion of a works contract is chargeable to service tax)
5. *If the transaction represents two distinct and separate contracts and is discernible as such then contract of service in such transaction would be segregated and chargeable to service tax if other elements of taxability are present.* ***This would apply even if a single invoice is issued.***

Taxability Issue

On the basis of the analysis made above, the conclusion that can be derived is as follows: Where the transaction is clearly classifiable as a sale, charge sales tax. In case the transaction is a service, charge service tax. In case the transactions involves both "sale" and "service", see whether it is a works contract. If the same is a works contract, split the contract into two components, charge sales tax on the transfer of property in goods and service tax on the service portion. In case the contract is not works contract, identify the dominant nature of

[18] *Taxation of Services: An Education Guide; issued by CBEC.*

the transaction and accordingly determine taxability without splitting the contract. If it is not possible to identify the dominant nature, no tax is leviable.

Figure IV-Taxability of Sale, Service, Works Contract depicts the manner of determining the taxability of the transactions in a lucid way.

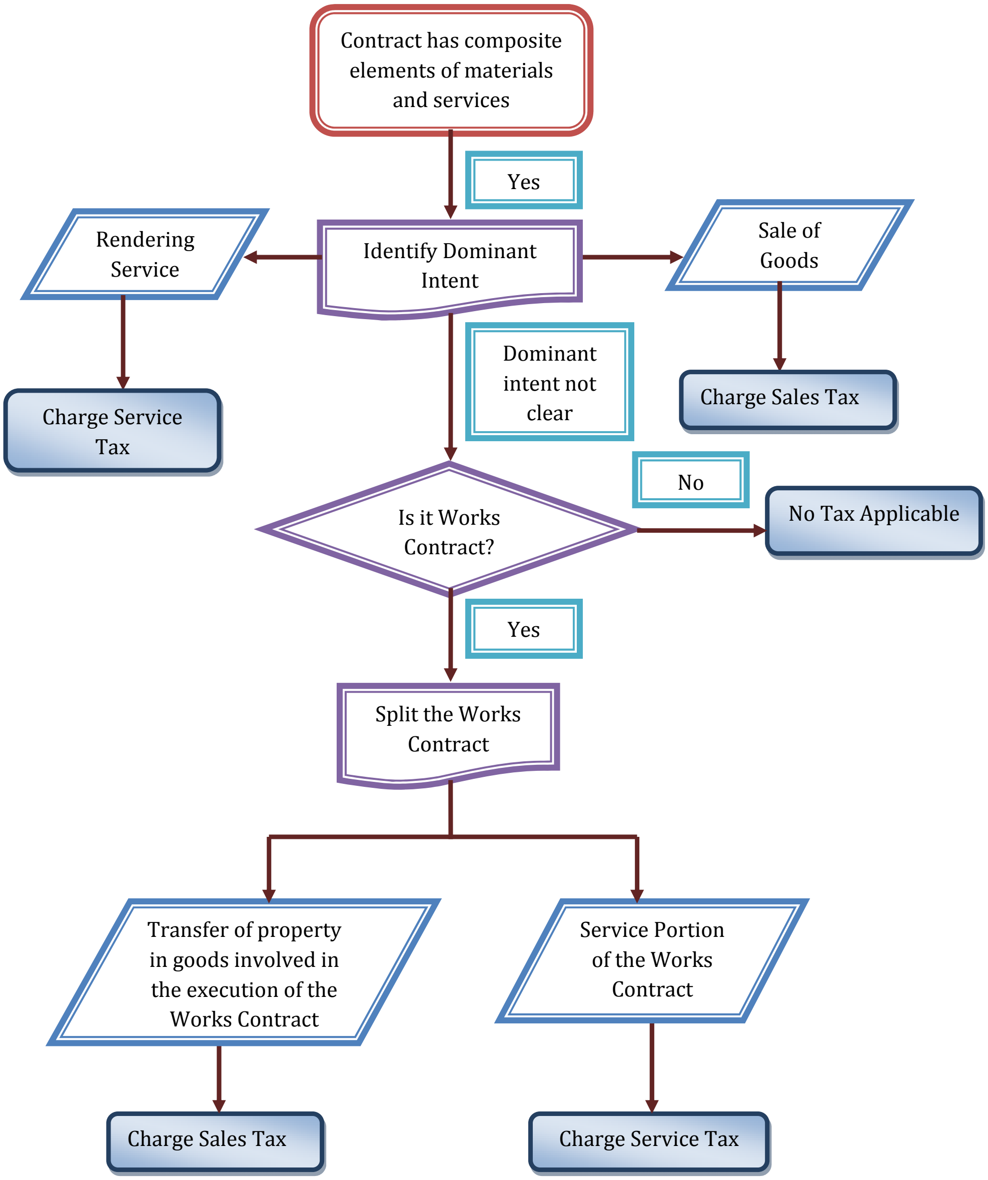

Figure IV: Taxability of Sale, Service, Works Contract

The issue gains all the more significance because once the transaction gets classified into sale or service or works contract, it is important to determine whether the tax is leviable as per jurisdictional principles.

The Final note

Thus, one needs to have a clear view of the substance of the transaction to determine its nature, which in turn will help in determining the taxability thereof. "Sales", "service" and "works contract", all three have unique characteristics, which seem to get blurred sometimes, owing to complexity of those characteristics. Application of right principles and thorough understanding of the transaction in question can help a lot to clear the blur and present a clear picture. ■

Partners in Nation Building: Emerging Opportunities for CA Professionals

It is quite likely that CA professionals may be engaged nationwide for financial audit of the direct democratic institutions and Implementing Agencies. This is, no doubt, a new challenge; but surely can become a great opportunity for the CA professionals to strengthen the hands with government machinery in the nation building process. Effective audit of receipts and expenditure accounts, balance sheets, cash flow statements and supporting books of accounts, reconciliation statements, schedules and vouchers of Urban Local Bodies, Panchayati Raj Institutions and Implementing Agencies for all the flagship programmes of the Government of India and State Governments and UTs will surely pave the way for establishing proper accountability framework and good governance in the country. Read on to know more…

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In the over arching accounting, auditing and accountability framework of the nation, the Institute of Chartered Accountants of India (ICAI) has been occupying a predominant position since its establishment in 1949. Chartered Accountants have been working wholeheartedly in professional and individual capacities since then, as partners in the nation building process, by providing impeccable professional advice in accounting, auditing, taxation and consultancy in related disciplines. Many members of the profession have been rendering distinguished service in different capacities in the entire gamut of public life, including as ministers, parliamentarians, legal luminaries, corporate honchos and politico-economic-socio-cultural-techno-specialists.

The ICAI has come a long way since its establishment as a regulator for the profession. The institute of the professional accountants has grown, embracing brilliant minds from all walks of life. The CA profession is much coveted; but is not like many other comparable professions which are generally accessible, affordable and exclusive primarily to the affluent. Securing the first rank in this year's CA final examination by a girl from the poorest of the poor sections of the society demonstrates beyond any iota of doubt that CA examination is conducted only on merit and is open to any hardworking and competent aspirant without any discrimination whatsoever.

The institute has, by now, spread its wings almost everywhere, outreaching in many world forums of accountants and auditors in different continents of the Planet Earth. The institute is currently the second largest professional accounting body in the globe in terms of membership; second only to the American Institute of Certified Public Auditors; even though it has to incessantly strive hard to excel and keep occupying prestigious positions in every world body of accounting and auditing professionals by its exceptional insight and empirical soundness of approach in dealing with live complex accounting and audit related challenges being encountered by the world.

New Opportunities for Partnership in Nation Building

Challenges are not new and always welcome to hard core CA professionals. CAs are traditionally known for taking on complex challenges and convert them into momentous opportunities. A great opportunity has opened up recently for the ICAI, to join hands with the government in building sound accountability framework for the third tier of the Government and the direct democracy institutions set up in the form of Urban Local Bodies and Panchayati Raj Institutions and allied government establishments, consequent to 73rd and 74th Amendments to the Constitution of India in 1992. The Government of India, state governments, union territories, and the urban local bodies and PRI set up are collectively working in tandem towards building a new inclusive India Inc with a human face, having essential human livelihood amenities to be relieved from the crippling clutches of poverty, illiteracy and chronic diseases.

The Approach Paper of the 12th Five Year Plan (2012-17) shows the extent of flow of funds to 13

> A great opportunity has opened up recently for the ICAI, to join hands with the government in building sound accountability framework for the third tier of the Government and the direct democracy institutions set up in the form of Urban Local Bodies and Panchayati Raj Institutions and allied government establishments, consequent to 73rd and 74th Amendments to the Constitution of India in 1992.

flagship development programmes in the 11th Five Year Plan period: the total allocation was ₹691,976 crore. In the 12th Five Year Plan period the allocation would be obviously higher. Currently, there are more than 14 central and state flagship development programmes under implementation in the country, to achieve multifaceted objectives aiming at resolution of fundamental development concerns of the growing population of the country: Pradhan Mantri Gram Sadak Yojana(PMGSY); Accelerated Irrigation Benefit Programme(AIBP); Rajiv Gandhi Gramin Vidyutikaran Yojana(RGGVY); Accelerated Power Development & Reforms Programme(APDRP); Indira Awaas Yojana - (IAY); National Rural Employment Guarantee Scheme (NREGS); National Horticulture Mission(NHM); Rashtriya Krishi Vikas Yojana(RKVY); Sarva Shiksha Abhiyan (SSA); Mid Day Meal Scheme (MDM); Integrated Child Development Scheme- (ICDS); National Social Assistance Programme(NSAP); National Rural Health Mission (NRHM); Jawahar Lal Nehru National Urban Renewal Mission (JNNURM); Total Sanitation Campaign (TSC); and National Rural Water Supply Programme (NRWSP).

Need for New Accountability Regime for Flagship Programmes

How does our parliamentary democracy ensure that funding under the plan and non plan schemes for the nation building is used for the purpose on time? Are those programmes and projects completed as per the scheduled outlay and outcome? Is there proper accounting and financial reporting and accountability regime? The responsibility of certification of accounts of the three tier grass root level institutions of democracy assumes greater significance in the light of the much quoted statement of our former Prime Minister Shri Rajiv Gandhi about the possibility of even 85% pilferage of funds in these development schemes when it reaches from the central government to states to local bodies and finally to the beneficiary in the Gram Panchayat (GP) level. This is a new challenge and a great opportunity hitherto not available for the CAs who are genuinely looking towards participating in the nation building process, helping to revamp the accountability frame work in the country and thereby contributing to good governance and creating a new India Inc.

Certification of Accounts of Gram Panchayats on Mahatma Gandhi Rural Employment Guarantee Scheme (MGNREGS)

To begin with, Ministry of Rural Development issued a circular in July 2012, making mandatory for the Gram Panchayat accounts of MGNREGS to be certified by CA firms in accordance with the scheme guidelines. The certification job will commence from financial year 2013-14 onwards; but pilots have already been launched in 10% of GPs of highest spending districts in all States, based on accounts of 2011-12. These GPs have been selected from all blocks in the districts arranged alphabetically and picked up randomly to give it an adequate representation and fair distribution.

In accordance with the provisions of Section 24(2) of Mahatma Gandhi National Rural Employment Guarantee Act, 2005, the accounts of the scheme shall be maintained in such form and in such manner as may be prescribed by the state government. GPs are required to maintain accounts in the prescribed formats by the respective state regulations. The books of accounts to be maintained are prescribed in the Operational Guidelines: Cash Book, Receipt and Payment Statement, Muster Roll Receipt Register, Job Card Issue Register, Employment Register, Works Register, Asset Register, Monthly Allotment and Utilization Watch Register. The Utilisation Watch Register should contain date-wise details of allotment fund, expenditure, availability of balance etc. It should be supported by maintenance of other subsidiary records like monthly reconciliation statements with banks, post offices and Implementing Agencies (IP).

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The GPS cannot escape keeping supporting books, schedules, corresponding muster rolls issued by the Programme Office (PO) relating to payments.

Detailed Guidelines and Audit Checklists

The Ministry has provided detailed check lists for MGNREGA for Social Audit in addition to the existing arrangements for Social Audit and National Level Monitors at central level, state level for planning, registration, execution of works, payment of wages and Unemployment Allowance, Finance and Accounts, monitoring, grievance redressal. There are detailed checklists for other flagship programmes too.

In accordance with extant guidelines, MGNREGA funds at the district level are to be audited by CA firms, who are expected to do a check of the receipts and payment statements of the GPs. The GP accounts are normally internally audited by officials at the Block level and later by the Local Fund Auditors (nomenclature varies from State to State). In some cases, there is considerable time lag between closure of accounts and audit by Local Fund Auditors. Not every GP may be audited by the Local Fund Auditor every year. The status of the MGNREGA accounts being maintained by GPs may vary in quality across the states. In order to improve the accounting of MGNREGA funds and to ensure transparency and accountability of GPs the ministry of rural development lays out, pursuant to the provisions of Section 24(1) of MGNREGA, definite scheme for certification of MGNREGA accounts at GP level and financial audit thereof.

Scope of Audit certification

The CAs are asked to examine and certify whether the books of accounts/documents maintained by the GP viz. Cash book, Receipt and Payment Statement, bank and post office reconciliation statements, utilisation certificates issued are in the form and in the manner specified by the state government and in accordance with the provisions of Section 24(2) of MGNREG Act. It is to be seen whether GPs are maintaining the required books of accounts and supporting documents like Muster Rolls, vouchers and bills and not swindling development funds by creating ghost workers as reported earlier in some states.

Besides, the CA must check all registers prescribed for MGNREGA and comment on the quality of accounts, in the light of the laid down policy guidelines and the legal entitlements of right to work and livelihood security of the people. In the financial statement attestation process, the CA is mandated

In the first year of MNREGS accounts for 2012-13, the ministry proposes only a pilot project where **financial attest certification of accounts of 10% GPs** in each State is scheduled to be undertaken. The 10% GPs will be selected on the basis of criteria decided by the ministry in consultation with the states. After **evaluating the results, efficacy and usefulness of the** audit system, the ministry may decide on extending these provisions to other GPs/Implementing Agencies.

to identify and list out deficiencies and gaps after subjecting the system to a sort of SWOT analysis and identify systemic and procedural deficiencies and suggest how to improve the systems, procedures, and controls. He is asked to verify the material-wage ratio and comment on works taken up by the GP and certify whether MGNREGA funds have been deployed only on admissible activities and works. Of course, being an expert chartered in the financial discipline for certification of accounts, his valuable comments on funds management and other matters having significant impact on implementation of MGNREGA will be helping the government to fine tune the system.

Visit to GPs by CAs

The auditor cannot function in an isolated ivory tower. A good auditor is not happy just seeing the books of accounts kept in a corner, as it is his mandated responsibility to oversee and evaluate the control environment, internal control systems and existing checks and balances *vis-a-vis* the ground realities in the audited organisation. It is, therefore, envisaged that the CAs must visit the GP headquarter for the certification. To facilitate the visits, the CA can give an advance tour programme to the District Programme Coordinator (DPC) before commencing the certification process indicating the proposed dates of visit. The DPC is responsible to ensure that all necessary documents are provided to the CA firms for the certification and concerned GP officials are available to the CA when he/she visits the GP. For this purpose, the DPC will be assisted by respective POs.

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Selection Procedure and Certification of Accounts

The selected CAs will be entrusted with certification of accounts of GPs receiving funds under MGNREGA selected by the State Governments. They are selected from the empanelled list available with C&AG/State AGs. The remuneration for certification of accounts of GPs will be fixed by the ministry in consultation with the office of C&AG within the parameter of keeping the expenditure to 6% administrative cost. The ICAI may like to rationalise the fee structure, taking into account the overall governing framework of the scheme and financial outlay available for the certification process.

The CA is required to submit the report to the PO accompanied by the certification for each GP visited by him/her in the prescribed format of certification within 15 days of completion of the work. The report should contain the records verified; discrepancies noticed, adequacy of documentation and findings on the items based on the comprehensive check list for the programme. In addition, a consolidated summary for all GPs taken up for certification and assigned to the CA within a district will be submitted to the DPC within 15 days of completion of certification for all such GPs. In the consolidated summary, the CA will indicate the GPs visited, including the dates of the visit with issues which require immediate attention of the DPC. Besides, she/he may provide adverse observations and value addition by valuable suggestions for improvement in implementation of the programme.

During the course of certification, any defalcation or misappropriation of funds noticed shall be immediately brought to the notice of the DPC to take necessary action. District wise summary of observations made by CAs will also be included as an annexure to the audit report of the State Employment Guarantee Fund. While auditing the MGNREGA funds at the district level, the auditor will have to take into cognisance the certification and observation of the CAs made earlier if any, while certifying GP accounts.

The Secretary/Commissioner, MGNREGA at the State level and the DPCs at the district level will be responsible to ensure that the accounts of selected GPs are certified by the empanelled CAs within a given time frame. DPC will submit to the State Government an Action taken Report (ATR) on the observations of the CA and likewise, the State Government will submit to this Ministry by 30th September each year, a consolidated ATR for all the districts that have GPs that have been audited by CAs under this arrangement. This certification, observations and the Action taken reports will be examined by the Ministry while releasing funds to the State Government.

Period of Appointment and Period of audit

The period of assignment of CAs will be not more than two years. The assignment for the second year will be renewed only upon satisfactory performance in the first year. Preferably one CA will be selected and appointed for each district. In case ministry and the states are of the view that it is not feasible for one CA to certify accounts of all GPs selected in a district, more than one CA may be appointed. It is also possible that a CA may be assigned more than one district where adequate number of CAs available on the panel in any state/district.

The process of selection of GPs for certification and CAs for audit assignment to districts/GPs are scheduled to be completed before March, 2013 so that the work can commence from May 2013 and CAs can submit reports by end of July 2013.The certification reports and the action taken report of the State will be a consideration for release of the second installment of MGNREGA funds during 2013-14. The Principal Secretary, RD/State Commissioner, MGNREGA and the DPC shall be responsible for monitoring the progress of the certification, taking corrective action and submitting ATRs to the concerned authority. Besides, detailed check list for audit of accounts of GPs has been prepared along with format of Certification of GPs.

The CAG empanelled CAs/CA firms will be selected for allocation of the Certification of GPs. Supplementary Audit on the lines of audit of the Public Sector Undertaking is likely to be prescribed for oversight by CAG auditors to ensure adherence to the guidelines, applicable standards and procedures.

Emerging Accounting, Auditing and Accountability Framework

In order to improve the accountability framework, there needs to be proper coordination, purposeful communication and interaction among the key players of accounting, auditing and accountability framework of institutions of direct democracy working at the grassroots. Most of the GPs, Social Audit Mechanism is being institutionalised. Trained village community personnel examine the accounts and, if necessary, conduct investigations and public hearings as per the laid down procedures for evaluating the physical progress, assets created and outcome expected with reference to the prescribed guidelines. CAs' Certification of GPs accounts will surely revamp the mechanism of Social Audit further.

The integration of certified accounts of local body accounts by CA professionals with the findings and observations of Social Audits at micro-level with CAG's macro level financial audit, compliance audit and performance audit frameworks will give a synthesised and integrated perspective on financial discipline and accountability mechanism. To make the system fool proof, it is imperative that there should be effective communication and coordination with the government functionaries at all levels from central, state and local bodies and implementing agencies who receive funds from different sources. The efficacy and reliability of the management information system meant to provide updated, reliable electronic data flow on fund management and monitoring may get validated in the audit process.

Concluding Remarks

Based on the experience from the pilot, it is quite likely that CA professionals may be engaged nationwide for financial audit of the direct democratic institutions and Implementing Agencies. This is, no doubt, a new challenge; but surely can become a great opportunity for the CA professionals to strengthen the hands with government machinery in the nation building process.

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Effective audit of receipts and expenditure accounts, balance sheets, cash flow statements and supporting books of accounts, reconciliation statements, schedules and vouchers of Urban Local Bodies, Panchayati Raj Institutions and Implementing Agencies for all the flagship programmes of the Government of India and State Governments and UTs will surely pave the way for establishing proper accountability framework and good governance in the country.

The CAs certification of the accounts will provide assurance and valuable inputs to policy makers. The audit opinion based on sound audit assertions about the true and fair state of accounting of the plan cum non-plan funds flow from central to state to parastatal authorities to Implementing Agencies and beneficiaries under different flagship development programmes of varied ministries, will improve financial discipline and transparency.

The overarching integrated accounting, certification of accounts of local bodies by CAs, social audit and CAG audit and accountability framework should be helping the government with valuable inputs for strengthening the planning process and policy formulation for effective delivery. These arduous responsibilities will be surely adding a new dimension to CA professionals' value addition and continuing contribution to the nation building efforts as partners. Facilitating the government in outreaching the targeted beneficiaries and thereby facilitating achievement of the desired outputs and outcomes of the flagship development programmes as envisaged in the policy guidelines, will be recognised as a great nation building service for inclusive growth, development with human face and good governance for the emerging super economic power India Inc. ■

High Court Upholds Tax Relief to US Company

The Delhi high court recently dismissed a writ petition filed by the tax department relating to transfer of shares of an Indian listed company between two non-resident entities. In this case, US-based GoodyearBSE 0.12 % Tire and Rubber Company transferred its holding of 74% shares in Goodyear India BSE 0.12 % to its Singapore subsidiary without any consideration. The Authority for Advance Rulings (AAR) had ruled in 2011 that this particular transaction would not be subject to tax in India. The tax department filed a writ petition in the high court challenging the ruling. Long-term capital gain on the sale of listed shares in the country is exempt from tax in India. Only securities transaction tax is paid on such deals. Capital gain is considered to be long-term if the shares listed in India are sold after a holding period of 12 months. Given the facts of the case, the AAR had held that even if the 74% shareholding was transferred for a consideration and capital gains had arisen, it would be exempt from tax in India. Goodyear India was listed in India and the shares were a long-term capital asset in the hands of the US company, which was the transferor. The high court accepted AAR's view. While dismissing the writ petition, the high court emphasised that it was not exercising any appellate jurisdiction. The tax authorities by filing a writ had only invoked the extra-ordinary jurisdiction granted under the Constitution to the high courts.

*(**Source:** www.businessline.com)*

I-T Department to Crack Whip on Big TDS Defaulters

The Income Tax department has decided to crack the whip on big companies and organisations that do not remit TDS money even after deducting it from their workers' salaries. The Central Board of Direct Taxes (CBDT), the controlling and administrative authority of the department, has asked all I-T ranges to identify such cases where revenue implication is large and initiate prosecution in competent courts. The action will be taken under Section 276B of the Income-tax Act which deals with "failure to pay tax to the credit of central government (I-T department)" and punishment under the said provision carries a rigorous imprisonment varying from three months to seven years of jail along with a fine. "The department has detected some big cases of non-compliance in depositing tax stipulated under the TDS (Tax Deducted at Source) category. The department has taken this violation seriously and I-T authorities have been asked to initiate prosecution in cases of high revenue and blatant violation of TDS remittance laws," a senior department official said.

*(**Source:** http://www.business-standard.com/india/)*

Pay Income Tax Dues to Get Penalty Waiver: Finance minister

Finance minister P Chidambaram has said the income tax department may waive penalty if non-payers volunteer to clear their dues. "The tax authorities can take a benign view and waive the penalty," Chidambaram said recently. "They have done so in numerous cases in the past. This is your opportunity to file your returns, pay your tax and interest, if any, and apply for waiver of penalty." Chidambaram said the 35% jump in filing of income-tax returns was evidence that efforts to increase tax compliance had begun to pay off. A seventh of the 70,000 assessees who were sent reminders have so far disclosed their income and filed taxes. "These letters have had salutary effect. Over 10,000 recipients, of the first two lots of letters, have filed their returns and paid their tax dues," Chidambaram said. For the current fiscal, the revenue department has targeted a collection of ₹5.65 lakh crore under the direct taxes category.

*(**Source:** http://www.economictimes.com)*

Tax Officials Dig Out Old Cases to Meet Target; Speed Up Probe

Tax evaders beware! Old cases are being dug up and pending investigations expedited by issuing demand notices to defaulters. As the current fiscal year draws to a close, tax evasion is being tackled head on to meet the indirect tax collection target for 2012-13. According to latest data, a shortfall of about ₹88,000 crore still exists to meet the ₹5.05 lakh crore target set by Finance Ministry for indirect tax collection, comprising service tax, excise and customs duties, in the current fiscal year. Officials in intelligence units under the Revenue department—Central Economic Intelligence Bureau (CEIB), Directorate General of Central Excise Intelligence (DGCEI) and Directorate General of Revenue Intelligence (DRI), among others—are on fast track to sniff out service tax, customs and excise duty evaders, sources said. About ₹4.17 lakh crore as indirect tax has been collected between April 2012 and February this year, it said.

*(**Source:** http://www.expressindia.com)*

New Publication from IFAC Helps Professional Accountants Implement Effective Business Reporting Processes in Organisations

Principles for Effective Business Reporting Processes, new International Good Practice Guidance from the Professional Accountants in Business (PAIB) Committee of the International Federation of Accountants (IFAC), helps organisations enhance their reporting processes. This guidance was written for all organisations, regardless of their size or structure, private or public, to address the need for effective reporting processes to produce high-quality reports. Professional accountants in business are often involved in the implementation—including design, planning, execution, audit, evaluation, and improvement—of their organisations' reporting processes. The key issues they need to address when implementing effective reporting processes in their organisation are discussed in the guidance. At the heart of the new guidance are 11 key principles for evaluating and improving business reporting processes. These principles are complemented by practical guidance that outlines the critical arrangements that need to be in place for effective business reporting.

The guidance also includes a limited list of relevant resources from IFAC, its member bodies, and other relevant organisations. It can be downloaded free of charge from www.ifac.org/paib.

(**Source:** http://www.ifac.org/)

IAESB Issues Revised IES 5, Initial Professional Development–Practical Experience

The International Accounting Education Standards Board (IAESB) has issued the revised International Education Standard (IES) 5, *Initial Professional Development—Practical Experience*. IES 5 aims to assist educational organisations, employers, regulators, government authorities, and any other stakeholders who support the practical experience of professional accountants. The revised IES 5, which is effective from 1st July, 2015, recognises that practical experience is relevant in developing the competence of an aspiring professional accountant. Also, promoting greater flexibility in measuring practical experience; permitting practical experience supervisors to direct, advise, and assist an aspiring professional accountant's experience; and requiring practical experience to be recorded in a verifiable and consistent form is of great relevance. The release of the revised IES 5 represents the fourth IES released by the IAESB in a project to revise its suite of eight IESs. Recently, IES 1, *Entry Requirements to Professional Accounting Education Programs*, IES 6, *Initial Professional Development – Assessment of Professional Competence, and* IES 7, *Continuing Professional Development* were published in accordance with the clarity drafting conventions outlined in the *Framework of International Education Standards for Professional Accountants* (2009). The current timetable envisages that all IESs will have been revised and redrafted, or redrafted only, by the fourth quarter of 2013.

(**Source:** http://www.ifac.org/)

EC Report Calls IPSASs "Indisputable Reference" for ASB

In its report issued recently, the European Commission found that International Public Sector Accounting Standards (IPSASs) "represent an indisputable reference for potential EU harmonised public sector accounts." The report highlights that harmonised accruals-based government accounting improves transparency, accountability and the comparability of financial reporting in the public sector. Furthermore, a Commission staff working document that accompanied it discusses the advantages of IPSASs, including that "transparency provided by high-quality accruals standards such as IPSASs also provides for better-informed capital markets, in which government financial activity plays a much greater role than is often acknowledged." Currently, 15 European Union (EU) Member States incorporate IPSASs to some extent, with nine of these having national standards based on or in line with IPSASs. The European Commission's report will be followed by a conference, "Towards Implementing European Public Sector Accounting Standards," to be held 29th and 30th May in Brussels.

(**Source:** http://www.ifac.org/)

IAASB Seeks Input on Strategic Review

The International Auditing and Assurance Standards Board (IAASB) recently released an online survey seeking public comment, insights, and views from all stakeholders, to help shape its future direction for 2015 and beyond. It is seeking the input of interested parties at this early stage, to identify key issues for discussion. The survey also asks for feedback on the appropriateness of the IAASB changing its future strategy period to five years (2015–2019) instead of three years as it has done in the past. The IAASB believes that extending its strategy period will enable stakeholders to better understand its medium to longer-term priorities, and provide a suitable context for decisions on specific initiatives. Responses to the survey will inform the development of a formal consultation paper on the IAASB's Strategy and Work Program for the period commencing 2015. The consultation paper is scheduled to be issued in late 2013. The Board invites all stakeholders to complete the online survey. To access the survey, visit the IAASB's website at www.iaasb.org. Comments are requested by 7th May, 2013.

*(**Source:** http://www.ifac.org/)*

Global Accountancy Leaders Identify Major Themes for 2013

The International Federation of Accountants (IFAC), the global organisation for the accountancy profession with 173 members and associates in 129 countries, recently released the results of its *2012 IFAC Global Leadership Survey of the Accountancy Profession*.

The survey elicited respondents' opinions regarding perceptions of the accountancy profession and the most significant issues facing global accountancy in 2013. Of the 22 issues that were presented for consideration, respondents identified five top concerns: the needs of small and medium-sized practices and small and medium-sized entities; the reputation and credibility of the profession; issues related to the European Union (EU) draft legislation; public sector financial management and sovereign debt issues; and the difficult global financial climate.

*(**Source:** http://www.ifac.org/)*

IFAC Welcomes G-20 Focus on Public Sector Financial Management, EC Report on Accrual-based Accounting

The International Federation of Accountants recently praised the G-20 Finance Ministers and Central Bank Governors for addressing government borrowing and public debt sustainability at their recent meeting. It also applauded the European Commission (EC) report, issued this week, which called for "harmonised public sector accruals-based accounting standards" as a tool to build trust and financial stability. The G-20 recap and communiqué state that " in pursuit of our goal of strengthening the public sector balance sheet, work is needed to better assess risks to public debt sustainability.

The EC report states that the sovereign debt crisis has underlined the need for governments to clearly demonstrate their financial stability and for more rigorous and more transparent reporting of fiscal data. It underscores the need for international comparability, as well as governments' public interest obligation to owners of government debt securities, potential investors, citizens, and other stakeholders, to provide timely, reliable, and comparable information on their financial performance and position, in the same way that listed companies have obligations to equity market participants. In addition, it recognises IPSASs as the only internationally recognised set of public-sector accounting standards, and their foundation in the International Financial Reporting Standards, which are widely applied by the private sector.

*(**Source:** http://www.ifac.org/)*

Revised Standards Call for Practical Experience as Prerequisite to Accountants' Professional Development

The International Accounting Education Standards Board has issued a set of revised standards for the initial professional development of accountants emphasising that practical experience plays a key role in developing the competence of fledgling accountants.

International Education Standard 5, Initial Professional Development—Practical Experience aims to assist educational organisations, employers, regulators, government authorities and other stakeholders who support the practical experience of professional accountants. The revised IES 5, which is effective from 1st July, 2015, recognises that practical experience is relevant in developing the competence of an aspiring professional accountant while also promoting greater flexibility in measuring practical experience. The revised standard also permits "practical experience supervisors" to direct, advise and assist an aspiring professional accountant's experience; and requires practical experience to be recorded in a verifiable and consistent way. The IAESB operates under the auspices of the International Federation of Accountants, of which the American Institute of CPAs is a member body. The release of the revised IES 5 represents the fourth standard released by the IAESB as part of a project to revise its suite of eight International Education Standards. Recently, IES 1, Entry Requirements to Professional Accounting Education Programs, IES 6, Initial Professional Development – Assessment of Professional Competence, and IES 7, Continuing Professional Development were published in accordance with the clarity drafting conventions outlined in the Framework of International Education Standards for Professional Accountants (2009). The current timetable envisages that all the education standards will have been revised and redrafted, or redrafted only, by the fourth quarter of 2013.

*(**Source:** http://www.accountingtoday.com/)*

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers received during February-March 2013 for the reference of Faculty/ Students & Members of the Institute.

1 ACCOUNTING

Gap in Gaap: Virtual Certainty vs. Convincing Evidence by Dolphy D'Souza, *BCAJ*, Feb. 2013, pp.78-79.

How to Drive Partner Accountability & Unity by Dom Cingoranelli etc. *Journal of Accountancy*, Feb. 2013, pp.33-37.

IFRS: Ind AS 105 –Non-current Assets held for Sale & Discontinued Operations by Jamil Khatri & Akeel Master. *BCAJ*, Feb. 2013, pp.75-77.

Navigating your way through the New AASB 13 Fair Value Standard by Suzanne Maris. *Charter*, Feb. 2013, pp.42-43.

Observations on Selected Financial Reporting Issues by Michael Kavanagh. *Accountancy Ireland*, Feb. 2013, pp.21-23.

Principles for Effective Business Reporting Processes by Vincent Tophoff. *Accountancy Ireland*, Feb. 2013, pp. 26-27.

What have IASB & FASB Convergence Efforts Achieved? by Paul Pacter. *Journal of Accountancy*, Feb. 2013, pp.50-59.

2 AUDITING

Cloud Computing: Overview & Risk Analysis by Fatima A. Alali & Chia-Lun Yeh. *Journal of Information Systems*, Fall 2012, pp. 13-33.

Designing Continuous Auditing for a Highly Automated Procure-to-pay Process by A. Faye Borthick. *Journal of Information Systems*, Fall 2012, pp.153-166.

Enhancing Audit Quality by Michael Austin. *CA Magazine*, March 2013, pp. 22-28.

Where to now for Auditor Reports? by IAASB. *In The Black*, Feb. 2013, pp. 70-71.

3 ECONOMICS

Challenges to Financial Inclusion in India: the Case of Andhra Pradesh by S. Ananth & T. Sabri Oncu. *Eco & Pol. Weekly*, Feb. 16, 2013, pp.77-83.

Current Economic Slowdown in India: An Empirical Analysis by Anup Kumar Saha & Sreelata Biswas. *The Management Accountant*, Feb. 2013, pp. 190-193.

FDI in Multi-brand Retail in India – a Cost-Benefit Analysis by Tapas Saha. *The Management Accountant*, Feb. 2013, pp.184-189.

Financial Liberalization, Financing Constraint & India's Manufacturing Sector by Sankalpa Bhattacharjee & Debkumar Chakrabarti. *Eco. & Pol. Weekly*, Feb. 9, 2013, pp.61-67.

Growth Versus Inflation: How RBI has Missed the Bus by S.L. Shetty. *Eco & Pol. Weekly*, Feb. 23, 2013, pp. 70-72.

Infrastructure finance (IF) – Way to Achieve Economic Development by Susanta Kanrar. *The Management Accountant*, Jan. 2013, pp.27-33.

The New World of Business Banking by Neil Slonim. *Charter*, Feb 2012, pp. 24-27.

Regulating Microfinance Institutions by Renuka Sane & Susan Thomas. *Eco. & Pol. Weekly*, Feb. 2, 2013, pp.59-67.

Understanding Infrastructure & Some Options for its Financing by Shyamal Banerjee. *The Management Accountant*, Jan. 2013, pp.11-19.

4 INFORMATION TECHNOLOGY

The Dark side of Online Knowledge Sharing by Antoinette L, Smith etc. *Journal of Information Systems*, Fall 2012, pp. 71-91.

The Financial Performance of Global Information and Communication Technology Companies by Tim D. Bauer etc. *Journal of Information Systems*, Fall 2012, pp. 119-152.

5 INVESTMENT

Capital Raising Through Qualified Institutional Placement (QIP) by Meenu Pandey. *Chartered Secretary*, Feb. 2013, pp. 151-155.

Changing the Investment Policy Menu by Smitha Francis. *Eco. & Pol. Weekly*, Feb. 2, 2013, pp.68-73.

Corporate Restructuring & Insolvency by M. Kurthalanathan. *Chartered Secretary*, Jan. 2013, pp. 41-45.

Intangible assets – Impact on Mergers & Amalgamations by V. Ahalada Rao. *Chartered Secretary*, Jan. 2013, pp.37-40. ■

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

Industrial Training – Articled Assistant

CA Regulations, 1988 provide scope for Industrial Training facilitating articled assistants real life exposure in office workings at industry and service organisations in order to develop their professional acumen. Industrial Training is highly benefiting to articled assistants in terms of practical knowledge & learning. The period of Industrial Training may range between nine months to twelve months during last year of the prescribed period of Practical Training under CA Course.

An articled assistant who has passed Intermediate (Integrated Professional Competence) Examination/ Intermediate (Professional Competence) Examination/ Professional Education (Examination-II)/Intermediate Examination may serve as an Industrial Trainee in any of the financial, commercial, industrial undertakings under an eligible member of the Institute working with such organisation. A list of registered orga-nisations permitted to Impart Industrial Training is available at the ICAI website.

Members are requested to inform and encourage their articled assistants to pursue industrial training by fulfilling above eligibility. Detailed information and prescribed application forms are available on ICAI website www.icai.org as well as may be obtained from concerned regional offices of ICAI.

Members serving in such organisations / Industries are also requested to apply separately in the prescribed form for empanelment of their organisation with the Institute for imparting Industrial Training.

Secondment of Articled Assistants

CA Regulations, 1988 provide scope for Secondment of articled assistant facilitating an opportunity for gaining practical experience in multi-disciplinary work and variety of business situations. A principal may second an articled assistant to other member/s with a view to provide him/her training in the areas where the principal/ articled assistant may require. Secondment can also be availed during Industrial Training.

Such Secondment can be done under an eligible member whether in practice or in employment. A member can provide secondment to maximum two articled assistants at time. The minimum period of secondment shall be four months and the maximum period shall be one year which may be served with more than one member. During the period of secondment, the member with whom the articled assistant is seconded shall pay stipend at the rates prescribed under CA Regulations. A record of training imparted during secondment will be properly maintained.

For Secondment, a statement in the form containing particulars of training needs to be filed with the Institute within 30 days from the date of commencement of training on secondment.

Members may inform their articled assistants regarding secondment and encourage them to undergo secondment with an eligible member for training in the desired field. Detailed information and prescribed application form of secondment is available on ICAI website www.icai.org as well as may be obtained from concerned regional offices of ICAI.

ICAI Online e- Learning for Intermediate (IPC) Course and Common Proficiency Course

As you may be aware that the Board of Studies of the Institute has made available e-Learning facility for (a) Intermediate (IPC) Course and (b) Common Proficiency Course on the Students Learning Management System (LMS) at http://studentslms.icai.org.

This e-Learning facility aims to provide quality education for learning, re-learning and revising anytime and anywhere in an affordable manner through a self learning/ development facility.

Some of the Salient Features of this e-Learning facility are as follows:

- Anytime/ Anywhere Online Learning
- Foundation for understanding concepts and Self Study of Study Materials
- Examination Oriented
- Online Self-Assessment Quiz
- Quality Lectures by leading Faculty
- Uniform training across the country
- Multimedia Lectures
- Presentation & Podcast Download

This e-Learning facility takes learning and development to the doorsteps of students and they can now learn at their convenience from their homes/ offices, even in smaller cities and moffusil towns.

Students of the Common Proficiency Course and Intermediate (IPC) Course of the Institute interested in pursuing the e-Learning can register themselves on the Students LMS using their Student Registration Number and start using the e-Learning facility.

I would earnestly request my fellow members to encourage their articles to start making use of this useful facility for their benefit.

CA. Vijay Kumar Garg
Chairman
Board of Studies

Announcement – GMCS Course

The Council has decided that the General Management & Communication Skills (GMCS) Course, presently being organized for 15 days for the CA students shall be organized twice during the period of articled training as under:

(i) GMCS-I (15 days)	- during 1st year of practical training
(ii) GMCS-II (15days)	- after completion of 18 months of training but before completion of practical training

In view of the above, students, who have registered for Articleship Training on or after 1st May, 2012 are required to undergo GMCS-I Course during the 1st year of articled training. However, students who have registered for articleship training prior to 1st May, 2012 shall be governed by the existing curriculum.

GMCS Course has been designed to develop effective communication and conversational skills, to inculcate business acumen and improve public relations skills of the students. The inputs on Strategic Decision Making, Articulation Skills, Data Analysis and Research Methodology, Group Discussion and Preparation of Project Report etc. are essential for the students to face the upcoming challenges of the professional environment.

In view of the above, you will appreciate that articles who undergo GMCS-I course as early as possible during the currency of practical training shall proved to be more useful in discharging their responsibilities.

Please encourage/release the articled trainee(s) working under your guidance to complete the GMCS-I Course during the 1st year of articleship training and ensure that they complete the course in time.

CA. Vijay Garg
Chairman
Board of Studies

Empanelment as a Technical Reviewer - Quality Review Board

Revised Announcement for Empanelment as a Technical Reviewer with the Quality Review Board

Government of India has, in exercise of the powers conferred by Sec. 28A of the Chartered Accountants Act, 1949, constituted a Quality Review Board to perform the following functions:-

(a) to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including audit services; and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

2. In exercise of the powers conferred by clauses (f) and (g) of Sub-section (2) of Section 29 A read with Section 28C of the Chartered Accountants Act, 1949, Government of India has also issued 'Chartered Accountants (Procedures of Meetings of Quality Review Board, and Terms and Conditions of Service and Allowances of the Chairperson and Members of the Board) Rules, 2006'. As per its Rule 6, in the discharge of its functions, the Board may evaluate and review the quality of work and services provided by the members of the Institute in such manner as it may decide and lay down the procedure of evaluation criteria to evaluate various services being provided by the members of the Institute and to select, in such manner and form as it may decide, the individuals and firms rendering such services for review.

3. In terms of the aforesaid Rule 6, the Quality Review Board had issued the Procedure for Quality Review of Audit Services of Audit Firms (available at its website http://www.qrbca.in).Quality Review shall be directed towards inspection/evaluation of audit quality and adherence to various statutory and other regulatory requirements. It would involve inspection and assessment of the work of auditors while carrying out their audit function so that the Board is able to assess (a) the quality of audit and reporting by the auditors; and (b) the quality control framework adopted by the auditors/ audit firms in conducting audit.

4. Now, with a view to continue to carry out the work of review of quality of audit services of auditors/audit firms in India, the Quality Review Board has decided to issue a **revised** announcement seeking the services of members of the Institute to function as Technical Reviewers for the Board in terms of the aforesaid Procedure for Quality Review of Audit Services of Audit Firms issued by it. ***A suitable amount ranging upto ₹1 lakh or above, as may be fixed by the Quality Review Board depending upon the nature of work involved, may also be paid as honorarium. Those interested may kindly apply in the revised 'Application Form for Empanelment as a Technical Reviewer' (available at QRB website http://www.qrbca.in).***

5. The Quality Review Board views that this exercise would go a long way in promoting confidence of investors and other stakeholders in corporate reporting and governance which, in turn, would help in retaining and further enhancing the credibility of the profession in the society.

Sd/-
Secretary, Quality Review Board

Health Insurance Scheme

Health Insurance Scheme

For Members of ICAI

An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of ICAI has arranged the specialised Health Insurance Scheme for Members of ICAI. The Committee has signed afresh an MoU with New India Assurance Co. Ltd., Mumbai for the same on 12th March, 2013 The scheme has become effective from 12th March, 2013 for the Members of ICAI.

The highlights of the Health Insurance Scheme for Members of ICAI are as follows:

- 5% discount in Premium to be paid to the Insurance company, where the Member has not preferred any claim in the expiring policy in case of renewal of the policy.
- Sum Insured available in slabs of ₹5 lacs, 7 lacs and 10 lacs.
- Floater Sum Insured for the entire family of Self, Spouse and dependent children.
- No Health check-up. No entry age barrier.
- Dependant Parents covered under separate Floater Sum Insured, equivalent to the Sum Insured of the Member family.
- No Health check-up. No age limit.
- Premium discount in lieu of Cumulative Bonus.
- Hospital Cash Allowance @ 0.10% of Sum Insured, for a maximum of 10 days.
- Wide Coverage for Pre-existing diseases.
- Competitive Premium Rates

The member can carry over credit for previous continuous insurance. For a member with three years of continuous coverage with any other insurer, pre existing diseases are covered.

Pre existing disease coverage: under individual policies, pre existing disease is covered only after four years. Whereas, in CA super mediclaim, coverage for pre existing disease commences from first year, as per limits below:

First Year of Coverage	25% of the admissible claim amount, subject to a maximum of 25% of the sum insured
Second Year of Coverage	50% of the admissible claim amount, subject to a maximum of 50% of the sum insured
Third Year of Coverage	75% of the admissible claim amount, subject to a maximum of 75% of the sum insured
Fourth Year of Coverage	100% of the admissible claim amount, subject to a maximum of 100% of the sum insured

Members desirous to avail the benefits of the aforesaid scheme may please visit: http://icai.newindia.co.in & online solution for the same.

For grievance or any other queries please contact the New India Personnel Shri Satyanarayan Mohapatra, Sr. Divisional Manager at satyanarayan.mohapatra@newindia.co.in, Telephone: 022-24620311 or Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP, ICAI at ccbcaf.query@icai.org, Telephone: 0120-3045994.

CA. Naveen N.D. Gupta
Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI
E-Mail: chairman.ccbcaf@icai.org

Insurance Protection

An Insurance Protection for Members in practice & CA Firms of ICAI...
An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI...

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of ICAI has arranged insurance protection for members in practice/firms in the form of specially designed professional indemnity insurance at a reasonable premium i.e. 85% discount in market rate. The scheme has become effective from 12th March, 2013 for the Members in practice/ Firms of the ICAI.

Scope

The policy covers all sums which the insured professional becomes legally liable to pay as damages to third party in respect of any error and/or omission on his/her part committed whilst rendering professional service. Legal cost and expenses incurred in defense of the case, with the prior consent of the insurance company, are also payable, subject to the overall limit of indemnity selected.

Only civil liability claims are covered. Any liability arising out of any criminal act or act committed in violation of any law or ordinance is not covered.

Eligibility:

Chartered Accountants, individual/jointly or Proprietorship Concern or a Partnership Firm / Partnership

The applicants/firms should not have been subjected to disciplinary action by the Institute.

Premium Rates:

For Individual Members in Practice:

For SI of ₹10 lacs, the premium proposed is ₹1000/- (1:1), ₹803/- (1:2), ₹ 705/- (1:3) and ₹600/- (1:4).

Ratios indicate relationship between AOA and AOY

Additional: Per Capita for named professional employee - ₹100

Excess: 1/2% of Any One Year Limit subject to minimum ₹5,000/- and maximum of ₹ 1 Lac. (as per Market Agreement) For higher limits.

For Chartered Account Firm:

The premium of 0.10% shall be as per rates for Individual Chartered Accountants and shall be applied on the AOY limit chosen. All named professionals shall be charged ₹100/- extra over and above the basic premium.

For Example: If the CA firm chooses a Sum Insured of 2 Crore the Premium rate of 0.10% is to be applied on the AOY limit and each professional (including partners) have to be charged ₹100/- each. For example a CA firm with 20 professionals including 9 partners will pay ₹20, 000/- plus 20X ₹100 totalling to ₹22, 000/-. This would be on 1:1 ratio. If the ratio is 1:2, the Premium rate would be .08%, if the ratio is 1:3, the Premium rate would be .07% and if the ratio is 1:4, the ROL would be .06% on the indemnity limit chosen.

* Jurisdiction: India only

*Above Premium rates are subject to Service Tax @ 10.3%.

Members and CA firms desirous to avail the benefits of the aforesaid scheme may please visit http://icai.newindia.co.in & online solution for the same.

For grievance or any other queries please contact the New India Personnel Shri Satyanarayan Mohapatra, Sr. Divisional Manager at satyanarayan.mohapatra@newindia.co.in, Telephone: 022-24620311 or Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP, ICAI at ccbcaf.query@icai.org, Telephone: 0120-3045994.

CA. Naveen N.D. Gupta
Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI
E-Mail: chairman.ccbcaf@icai.org

Motor Insurance Scheme

Motor Insurance Scheme at discounted OD premium for Members of ICAI

An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of ICAI has arranged Motor Insurance Scheme at discounted OD premium for members of ICAI.

The salient feature of the aforesaid scheme as under:-

Members would get 55% discount on Own Damage Premium in respect of private four wheelers and two wheelers if Member approaches the office of Oriental Insurance Company directly.

Please approach to the office of the Oriental Insurance Company Limited with a self attested photo copy of the Membership Card for availing the aforesaid scheme. Please quote the special Client code: AI0000001313 for the aforesaid arrangement. For details about the motor insurance scheme offered by Oriental Insurance Company, kindly visit http://icai.org/post.html?post_id=9385

If any grievance arises while availing the aforesaid scheme, please mail your grievance to Shri P.S. Dishodiya at his e-mail id: dishodiyaps@orientalinsurance.co.in, Telephone: 011-43659834 or Shri V.P. Gupta at his e-mail id: vpgupta@orientalinsurance.co.in, Telephone: 011-43659832 with a copy marked to Dr. H.C. Dhingra, Chief Manager, Oriental Insurance Co. Ltd., New Delhi at drhcdhingra@orientalinsurance.co.in and Dr. Sambit Kumar Mishra, Secretary, CCBCAF&SMP, ICAI at ccbcaf.query@icai.org, Telephone:0120-3045994.

CA. Naveen N.D. Gupta
Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners
(CCBCAF & SMP), ICAI
E-Mail: chairman.ccbcaf@icai.org

Announcement: Accounting Standards for Local Bodies

The Committee on Accounting Standards for Local Bodies (CASLB), since its inception, has issued the following seven Accounting Standards for Local Bodies (ASLBs):

1. ASLB 1, *'Presentation of Financial Statements'*
2. ASLB 3, *'Borrowing Costs'*
3. ASLB 4, *'Revenue from Exchange Transactions'*
4. ASLB 5, *'Property, Plant & Equipment'*
5. ASLB 6, *'Events after the Reporting Date'*
6. ASLB 11, *'Construction Contracts'*
7. ASLB 12, *'Inventories'*

The Standards mentioned at sl. no. 2, 3, 4 and 5 above have been numbered based on the sequence of issuing the Standards as per the decision taken by the CASLB earlier.

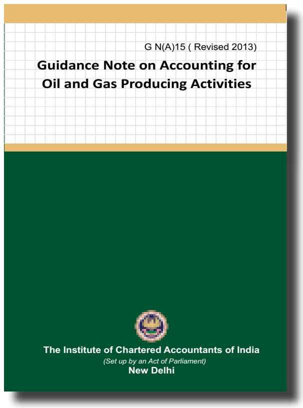
Subsequently, the Council of the ICAI has taken a decision that as the endeavour of the CASLB is to formulate the ASLBs on the basis of International Public Sector Accounting Standards (IPSASs) issued by the International Public Sector Accounting Standards Board (IPSASB) of IFAC. Therefore, in order to maintain consistency with the IPSASs, the number corresponding to that of IPSAS should be given to a relevant ASLB. Accordingly, the following ASLBs are renumbered as follows:

Old number	New Number
ASLB 3, 'Borrowing Costs'	ASLB 5
ASLB 4, 'Revenue from Exchange Transactions'	ASLB 9
ASLB 5, 'Property, Plant & Equipment'	ASLB 17
ASLB 6, 'Events after the Reporting Date'	ASLB 14

ASLB 1, ASLB 11 and ASLB 12 have already been numbered according to the new numbering policy adopted.

New Publications

Guidance Note on Accounting for Oil and Gas Producing Activities (Revised 2013)



Recently, *'Guidance Note on Accounting for Oil and Gas Producing Activities (Revised 2013)'* has been published. The revised Guidance Note is applicable in respect of accounting periods commencing on or after 1 April 2013. Accordingly, on the date of this Guidance Note coming into effect, the Guidance Note on Accounting for Oil and Gas Producing Activities, issued in 2003, stands withdrawn. The revision has been done with a view to incorporate the developments both national as well as international in recent times. The revised Guidance Note continues to deal with the accounting of upstream oil and gas operations viz., exploration, development and production and includes accounting for acquisition phase also.

Price:
₹ 50/-

Ordering Information:
The publication can be purchased directly from the Sales Counters at the ICAI's Regional Offices or at the Head Office. To order by post, requisition may be sent to the Postal Sales Department of the ICAI at postalsales@icai.org or postalsales@icai.in

Classifieds

4999 K S Aiyar & Co, wishes to recruit the following CAs for the Chennai Office:-Partners– Audit and Tax, Manager– Audit. Practicing professionals wishing to merge their practice are also welcome to write. Kindly send your profile in strict confidence addressed to the Senior Partner & CEO by email to KDhanraj@KSAiyar.com. Kindly confirm receipt by us. More about us is available at www.ksaiyar.com. Candidates/ firms must be able to demonstrate the highest standards of quality and ethics and have an entrepreneurial outlook.

5000 Bhubaneswar, Odisha based CA firm , wish to undertake professional work on sub-contract/ partnership/assignment/networking basis. Please contact CA. L. Gopal Shah 9437124361, email: ca.lgshah@gmail.com

5001 Ahmedabad based CA firm seeks merger offers from other CA firms in Mumbai. Email: ca.merger.abd@gmail.com

5002 Chandigarh based FCA (1978), with industry experience (over 8 years as CFO & a Board member), looking for assignments on partnership/sharing/sub-contract/retainer-ship/ employment basis. Contact 9781021730. Mail: gbs.cdg@gmail.com

5003 Opportunity for Chartered Accountants. FCA with more than 25 years experience in Bank Finance, ECBs, NBFCs, Private Equity available on pan-India basis. GTFINO@gmail.com

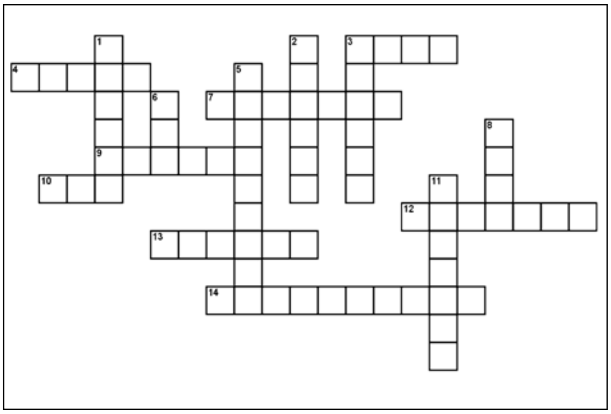
5004 District Araria (Bihar) based chartered accountant (1973) M. Com, L. L. B available for immediate audit assignment or partnership Contact Mob: 09304005342, T. K. Bardia & Co. chartered accountants, Bus Stand Road, District Araria (Bihar) 854311. E-mail: t.k.bardia@gmail.com

5005 CA 29 year experience in Accounts, Indirect tax, Cost Accounting and having commercial space in Pune, seeks proposal for professional work on assignment /sub contract /partnership/employment basis. Contact Email: dalshek123@yahoo.com

5006 Delhi Based CA Firm having experience seeks work on assignments/ sub Contract/ retainership basis anywhere in Delhi & NCR. Contact: 9015330302

5007 Delhi Based Chartered Accountant having 25 years of experience in industrial and institutional project reports & project financing, in audits and income tax, seeking work on partnership/ subcontract or assignmentbasis. Contact: prop6425@gmail.com.

CROSS WORD 082



ACROSS

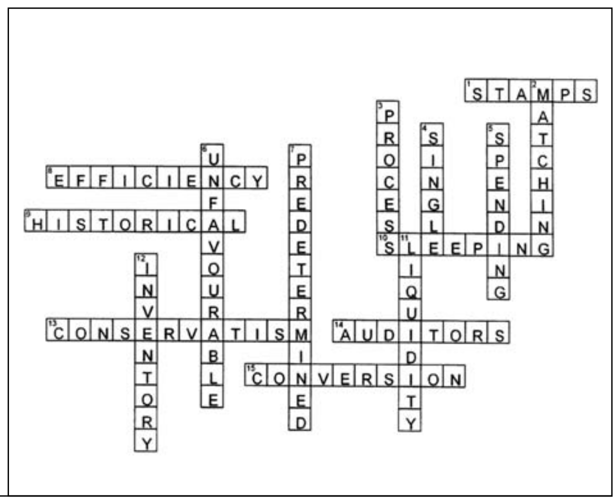
3. The Finance Bill, 2013 proposes to insert a condition that no deduction under Section 80- GGB and 80-GGC shall be allowed in respect of any sum contributed to any political party by way of___________.
4. TDS at rate of 1% on the value of transfer of immovable property where the consideration exceeds ₹_________ lakh.
7. Rate of abatement has been _____________in case of construction of a complex, building, civil structure or a part thereof for the specified classes.
9. Finance Bill, 2013 proposes to introduce a new sub-section (23ED) in Section 10 to __________income of the investor protection fund of depository
10. Central Processing cell of ______has been set up at Vaishali, Ghaziabad.
12. Rate of surcharge has been increased from 2% to 5% in the case of _____________companies.
13. Income of investor protection fund of depository to be ___________.
14. The Finance Bill, 2013 proposes to introduce a new Section 80 EE to provide deduction in respect of the interest payable on loan taken by an _________from a bank or a housing finance company for the purpose of acquisition of a residential house property.

DOWN

1. A service tax amnesty scheme namely _______________has been introduced in the Finance Bill, 2013.
2. As per the Finance Bill, 2013 there will be no STT payable on the delivery based purchases of units of an _________oriented Fund.
3. The tax _______ proposed as per Finance Bill, 2013 shall be equal to the tax payable or ₹2,000 whichever is less.
5. Jewellery allowed free of duty under the Baggage Rule 1988 by ______________passenger upto ₹ 50,000.
6. The deduction under Section 80 EE as proposed in the Finance Bill, 2013 is restricted to only ₹ _________ lakh and that too for one assessment year.
8. The Finance Minister has proposed to allow credit to an individual resident in India whose total income does not exceed ₹________ lakh.
11. Fifth large tax payer unit will be opened at ____________.

NOTE: Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.

SOLUTION CROSSWORD 081



Two friends, who haven't seen each other in several years, met on the street.

First Person: Who are you working for now?

Second Person: Same people, My Wife & 4 children.