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THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

jñāna yajña

the quest for excellence

ICAI International Conference
22-23 October, 2016
HICC Hyderabad

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The Chartered Accountant Journal

₹100

Chartered Accountants and Life-Long Learning

"The illiterate of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn, and re-learn," rightly said Alvin Toffler. Mahatma Gandhi, who had a special aptitude for learning new things and who even learnt the basics of accountancy while preparing for a legal case, had said: *Live as if you were to die tomorrow, learn as if you were to live forever*. These words of wisdom are worth taking note of in the Indian accountancy profession, which is constantly evolving and taking up ever newer roles of professional excellence amid ever rising expectations in the country's knowledge economy.

In the last more than 67 years since the inception of the Institute of Chartered Accountants of India (ICAI) on July 1, 1949, the Indian accountancy profession has undergone a paradigm shift, and the phenomenon continues to this day. The key to this ongoing transition is constant capacity building, life-long learning and being in tune with times. Today, the Chartered Accountants are regarded as an *'institution of public trust'* besides being *'conscience keepers of economy.'* It was in this backdrop that the visionary former President of India Dr. A.P.J. Abdul Kalam acknowledged them as *'Partners in National Development'*.

No doubt Indian accountancy profession has come a long way, but still there are miles to go. And this will be possible only through constant capacity building in both the core and the emerging new areas, and harnessing technology. In fact, the foremost challenges are to keep abreast of rapidly evolving technological tools as well as regulatory frameworks, which means going for comprehensive all-encompassing knowledge upgrade.

While emphasising on technology-driven capacity building, let's take stock and analyse how new technologies are being applied across the profession. The trend focuses on three areas of technology that have particular relevance. First, given that accountancy is grounded in financial data, improved capabilities in data, including big data and analytics, will have a significant impact. The importance of data also emphasises the need for good cyber security. Second, technologies such as cloud, mobile and social media deeply change the way that we can interact with clients and across businesses. Third, new financial technologies, including digital-currencies and distributed ledgers, will also have significant relevance to financial services and associated areas of accounting. On the basis of these technology trends, we see many examples of innovation across the profession globally. For example, Cloud accounting is now mainstream in many countries and enabling greater collaboration between the accountant and the client. In addition, Cyber Security has risen up in corporate agendas in the wake of large-scale data breaches, providing opportunities for new assurance and advisory services.

Today, the all-beneficial automation being offered by I-T also pose a threat to many tasks associated with accounting profession, which demands the professionals to redefine their core offerings. According to the book, *The Future of the Professions* authored by Richard and Daniel Susskind, the accountancy profession's future rests on inventing useful new tasks and applying knowledge of expertise on the task at hand and effectively playing decision making, planning and advisory roles, which are least susceptible to automation.

In recent Indian scenario, which calls for continuous capacity building, newer opportunities have emerged in the garb of challenges—particularly in the spheres of 'Ind AS converged with IFRS,' 'Companies Act 2013,' 'Goods and Services Tax,' 'Income Computation and Disclosure Standards,' 'CSR Reporting,' 'Big Data and Data Analytics,' 'XBRL,' 'Integrated Reporting,' 'e-Commerce,' 'm-commerce,' 'Environmental Accounting,' 'International Taxation,' 'Technology Consulting,' 'ERP Control Design and Implementation,' 'Forensic Accounting,' 'Fraud Detection,' 'Cloud Computing,' 'Information System Audit and e-governance,' etc.

However, by virtue of their tough training, Indian CAs can easily convert the challenges into opportunities, provided they dedicate themselves to continuous self education, skill upgrade and a life-long learning. The ICAI is very much alive to the need of capacity building of its members through its various committees. Special focus has been on women CAs, who comprise more than 23% of ICAI membership, and young members (of or below 40 years of age) who constitute 74% of the ICAI membership strength. According to ICAI data (as on 3rd October 2016), the average age of a total of 2,64,669 Indian CAs is 38.5 years. Further, the ICAI members are required to spend certain minimum number of hours in a year as part of learning initiatives.

Besides, a separate Committee for Capacity Building of Members in Practice is exclusively espousing the cause of comprehensive capacity building. Harnessing technology for professional excellence is a key area that is being given special attention. According to IFAC, the Artificial intelligence (AI)—the capacity of machines or software to create and exhibit intelligence— could become "an invaluable and enabling partner in shaping the future accountancy profession". Besides, ICAI is presently offering 16 Certificate Courses and four Post Qualification Courses for its members to build new skill sets.

To conclude, let's recall the saying: *"formal education will earn you a living, self-education will earn you a fortune."* One cannot disagree with Henry Ford when he says that *"anyone who stops learning is old, and anyone who keeps learning stays young."* So let's commit ourselves to lifelong learning. ■

Editorial Board ICAI – *Partner in Nation Building*

Simplicity is the ultimate sophistication. - Leonardo da Vinci

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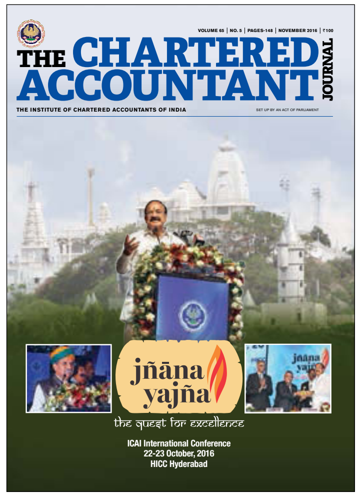

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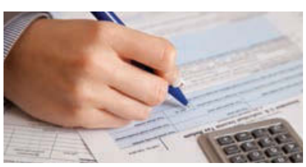

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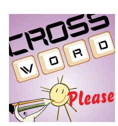

From the President

CA. M. Devaraja Reddy
President, ICAI

ICAI had been chosen as preferred institution to partner with the Government to create awareness about the Income Declaration Scheme 2016. ICAI and its members played a proactive role in making this Scheme a great success. A huge sum of ₹65,250 crore in black money has been disclosed through 64,275 declarations, as reported on 1st October 2016, marking it the biggest-ever disclosure of hidden wealth that will rake in ₹29,362 crore in taxes to the exchequer.

Dear professional colleagues,

Recently, Prime Minister Shri Narendra Modi said: *"For me, more than what the world thinks of the government, what the image of the country is, is important. Substance over symbolism. Empowerment over entitlement…."* Basically, either we give power and confidence and/or legal rights to people to enable, or we simply give authority, ownership, or, an honorary designation to them to enable. In the first case, i.e. empowerment, the process helps people in realising their worth and value, and they learn to respect the existence of everybody around them. In the latter, i.e. entitlement, people start believing that they are more important than others. The process motivates them to believe that people around them, especially those who disagree with them, are wrong. Therefore, all institutions and organisations across sectors must give priority to empowerment over entitlement.

Through schemes and programmes like *Beti Bachao Beti Padhao scheme* (to encourage the education of girl children by reversing India's declining child sex ratio), *Stand Up India* programme (to provide easy funding to dalits and female entrepreneurs), *Mudra Yojna* (low-interest loan scheme for small entrepreneurs), *Nai Manzil* (a skill development scheme for girls from minority communities), our Government has focused on empowering the socially and economically deprived sections of our society. While schemes like *Pradhan Mantri Suraksha Bima Yojana* (an accidental death and full/partial disability cover), *Pradhan Mantri Jeevan Jyoti Bima Yojana* (insurance scheme), and Atal Pension Yojana (flagship pension scheme) aim to provide social security to the masses, these schemes basically empower them to empower themselves. Basically, the Government has always followed its agenda of *empowerment over entitlement* while launching and starting its schemes and initiatives. It has strongly passed on a message to the masses that there are no freebies and that the people will have to take the ownership.

Can I sincerely request my professional fraternity too, to drop their expectations of entitlement while focusing more on empowering themselves? Let me quickly submit here that ICAI will leave no stone unturned in order to empower all members of its professional fraternity. It is indeed a noble thought and I would request all of you to give our PM's call for empowerment over entitlement a little thought. Let us bring this in our actions.

Now let me bring some of the key professional developments before you that have taken place over the last one month:

ICAI Thanks FM for Acknowledging Our Role in Huge Success of IDS, 2016

As you are aware, ICAI had been chosen as preferred institution to partner with the Government to create awareness about the Income Declaration Scheme 2016. ICAI and its members played a proactive role in making this Scheme a great success. A huge sum of ₹65,250 crore in black money has been disclosed through 64,275 declarations, as reported on 1st October 2016, marking it the biggest-ever disclosure of hidden wealth that will rake in ₹29,362 crore in taxes to the exchequer.

By teaming up with the Ministry of Finance, we left no stone unturned for the success of the programme. I am happy to inform, the Hon'ble Finance Minister Shri Arun Jaitley tweeted recently to acknowledge and appreciate the endeavours of ICAI and its members in making this scheme a great success: *"My gratitude to the ICAI for the role that the Institute and their Members played in the success of IDS 2016".* On behalf of the ICAI and its professional fraternity, I thank the Finance Minister for acknowledging our role and I assure him that we would stay committed to work with the Government as partner-in-nation-building. Meanwhile recently, our Hon'ble Prime Minister Shri Narendra Modi has also tweeted to compliment the Finance Minister and his Team for the "hard work" resulting in the successful outcome of IDS, 2016.

We Welcome Steps to Overhaul of Union Budget Process

As you will be aware, the Government has recently decided to carry out three kinds of changes in the Union Budget—to advance its presentation by 27 days, to do away with a separate railway budget and to dispense with the Plan and Non-Plan dichotomy in expenditure. We at the ICAI welcome these three changes, since these make great economic and practical sense. Advancing the presentation of Budget will allow the Parliament to vote on tax and spending proposals before the beginning of the new financial year on 1st April, which will do away with the need for a Vote on account and allow new direct tax measures to have a full year's play. On the other hand, the distinction of expenditure between Plan and Non-Plan had become dysfunctional and hindered holistic evaluation of the outcome achieved via two modes of spending. Expenditure will now be classified as revenue (current) or capital (with future income/expenditure implications). The ICAI is geared up for advancing the Budget presentation and is already on job to submit its *pre-budget memorandum* to the Government.

Union Ministers Hail the ICAI at Hyderabad International Conference

I am glad to inform you that our mega two-day International Conference—*Jñāna Yajña: The Quest for Excellence* was very successfully organised on 22nd-23rd October 2016 in Hyderabad. Hon'ble Union Urban Development Minister Shri M. Venkaiah Naidu inaugurated the conference while Hon'ble Union Mininter of State for Finance and Corporate Affairs Shri Arjun Meghwal attended the second day of the Conference and shared their words of wisdom with the participants. They both hailed the ICAI and Indian accountancy profession as a veritable partner in nation building and a facilitator of country's engine of growth. About 3,000 delegates, including many dignitaries from global accountancy profession attended this mega event. Chief Guest Shri Naidu specifically said that Chartered Accountants in India would have huge opportunities and challenges in the wake of Goods and Services Tax (GST) regime and they have a vital role to play in not only its seamless implementation but also in addressing issues such as curbing black money. "This is a huge opportunity and challenge for all of you to be partners in the progress of our nation," he said, and appreciated the theme of the conference *Jñāna Yajña: The Quest for Excellence* dubbing it as a key reason that attracted him to the conference. He said that Indian accountancy professionals, whose strength has gone from about 1,700 in 1949 to more than 2,60,000 now, are very ably serving the country. Various themes that were discussed at this platform were—governance and sustainability through accounting standards, new economic order, financial reforms and way forward, public-sector financial management, internal financial controls for enterprise governance, outcome-based developmental model, SMEs empowerment and development, and business analytics and strategy.

Coinciding with the International Conference, we also hosted the CAPA Board and other meetings in Hyderabad on 20th-21st October 2016. It provided us a unique opportunity to interact with global and local accounting fraternity at the same time.

From the President

IFRS Foundation Trustees Meeting

As part of ICAI's constant efforts to build rapport with global standard-setters and regulators, and enhance our role on global accountancy map, we recently organised the IFRS Foundation Trustees Meeting in New Delhi in collaboration with Trustees of IFRS Foundation. Discussions were held on technical activities, effect analysis, benchmarking, reporting protocol and education initiatives, etc. The meeting dwelt on IFRS Foundation's objective to promote the use of a single set of global standards across the world. The Trustees of the IFRS Foundation are responsible for the governance and oversight of the International Accounting Standards Board.

Helping Unleash a New Era of Accounting Reform in India

As you may be aware, in an accounting revolution, today more than 140 nations and reporting jurisdictions across the globe permit or require the use of International Financial Reporting Standards (IFRS). India too has joined this revolution with the adoption of Indian Accounting Standards (Ind AS) converged with IFRS, which promise immense benefits to the national economy as well as globalisation of Indian accounting profession. ICAI is playing a paramount role in unleashing this new era of accounting reforms in India as per the roadmap notified by the Ministry of Corporate Affairs, wherein the first phase requires companies with a net worth of INR 500 crore or more to mandatorily adopt Ind AS from or after 1st April, 2016. Accordingly, Indian companies in the first phase have to comply with Ind AS and most of them have already come out with their first quarterly financials based on Ind AS. Banks too are required to prepare their *half-yearly Performa Ind AS Financial Statements* as on 30th September 2016.

We at the ICAI are committed to a smooth implementation of Ind AS converged with IFRS and have taken a series of steps including training of our accounting professionals, creating awareness and providing guidance. To overcome the challenges and to have a better understanding on the way forward, we have already put in place an important mechanism – Ind AS Transition Facilitation Group (ITFG), to address complex interpretational issues relating to Ind AS and provide clarification to companies. The ITFG has issued 5 bulletins so far on a range of accounting and reporting issues under Ind AS which are available on our website. Besides, we have also launched a "Support-desk for Implementation of Ind AS" which can be accessed through ICAI website homepage. Further, Ind AS (IFRS) Implementation Committee of ICAI is continuously working to issue Educational Materials on Ind AS, which contains summary of the respective Ind AS and FAQs covering the issues, which are expected to be encountered frequently while implementing Ind AS. I call upon you to take benefit of our various related initiatives, boost your skill-sets and capabilities and make this ongoing mega accounting reform in India a big success.

We can Help Improve India's Ranking in Global Innovation Index

According to a recent IBM survey, creativity and innovation is the most sought-after trait in leaders today. Most people are born creative, and remain so, particularly as children. Give a child a paper and pencil and he/she will immediately get down to 'create'. But over time, as we grow, because of socialisation and our environment, a lot of us start to stifle the creative impulses. Most of us professionals are no exception to this phenomenon. As such, I would like to see my professional fraternity rediscover its creative confidence—the natural ability to come up with new ideas and courage to try them out. To do this, what we all need is to get past four fears that hold most of us back: *fear of messy unknowns, fear of being judged, fear of first step and fear of losing control.* Do try it out to make a difference to what we do as professionals and help raise India's ranking in Global Innovation Index, which has significantly improved in recent years. India, currently 66th in global Innovative index among 128 countries, is the top-ranked economy in Central and Southern Asia. It also ranks second on innovation quality among middle income economies. Industry view is that the commitment of India to innovation and improved innovation metrics is strong and growing. According to Hon'ble Commerce and Industry Minister Ms. Nirmala Sitharaman, the government will soon set up a team to look into India's positioning as an innovative country, and we look forward to engage with this team so far as accountancy profession is concerned.

ICAI's Registration as Insolvency Professional Agency

I wish to inform you that the Council of the ICAI recently considered the issue of Registration of ICAI as Insolvency Professional Agency (IPA) and allowing its members-in-practice to act as Insolvency Professionals as envisaged under the Insolvency and Bankruptcy Code, 2016, and decided to register itself as an Insolvency Professional Agency under the Insolvency and Bankruptcy Code, 2016 by forming a Section 8 company. It is decided that its IPA should be restricted only to Chartered Accountants. According to the Council, if a Chartered Accountant becomes a member of ICAI's IPA, he will not be allowed to become a member of other Insolvency Professional Agency on surrendering the membership of ICAI IPA. The Council also decided that a member holding COP (Certificate of Practice) after he registers himself as Insolvency Professional can continue to hold COP, while a member not holding COP can also practice as Insolvency Professional. According to the Council's decisions, Chartered Accountants are allowed to charge fees as a percentage of recovery/ assets. Necessary amendment in Regulation 191 and 192 will have to be carried out.

New Branches of EIRC, WIRC and NIRC Notified

One of our prime priorities has been to streamline, strengthen and expand the ICAI infrastructure and network in the larger interest of accountancy profession in India. Continuing with this drive, I am very pleased to inform that the Council at its recent meeting has decided to set up one Branch at EIRC, i.e., Brahmapur (initially called Ganjam Branch), two Branches at WIRC, i.e. Ratnagiri and Ichalkaranji, three Branches of NIRC, i.e. Kaithal, Kurushetra and Bhiwani, and the same have already been notified. Incidentally, with the notification of new Branches, EIRC now has 13 Branches, WIRC has 35 Branches, and NIRC has 23 Branches. Overall, the tally of total number of Branches of ICAI is 161.

New Age Capacity-Building Measures and Agenda of Empowering Stakeholders

ICAI has constantly endeavoured to empower its members through its valuable initiatives and measures. In today's world where time is money and real time updates are almost a requirement, electronic media has assumed significant importance as an approach to professional development and continuing education. Technology and communication is getting advanced day by day and ICAI does intend to walk hand-in-hand with our times.

As you may be aware, as part of our vision to provide value-added services, the ICAI has been providing online article placement facility towards their selection by CA Firms through its *Articles Placement Portal* on a pan-India basis, which facilitates CA firms in shortlisting of eligible students and calling them for interview at their offices on a date and time of their convenience, so as to hire them as article assistants. All eligible candidates (i.e. who have passed Group-I or both Groups of the Intermediate Course or have been admitted under the Direct Entry Scheme and who are willing to join articled training) may register themselves on the *Portal, i.e.* http://bosapp.icai.org. In a recent initiative for young members' empowerment, ICAI has launched an *e-Booklet* of useful information for our young members whether in practice or in service, which covers topics including professional opportunities, guidelines for practice in corporate, guidelines for networking of firms, advertisement guidelines, website guidelines and various other technical material. Young members may check the details in this regard at http://ymec.in/young-members-kit/. Then very recently, ICAI has developed a new CPE (Continuing Professional Education) Portal, i.e. www.cpeicai.org, to facilitate its members with more user-friendly and mobile-compatible functionalities with regard to continuing professional educational activities. Through this new *Portal*, our members can submit their requests online for unstructured learning activities, search events of CPE POUs quickly by Region, POU, city, subject and date, manage preferences with regard to POU, browse webcasts, background materials, etc., from anywhere, any time. The Portal incorporates a robust POUs Monitoring and Management System with a facility of sending alerts/notifications t hrough e-mail and SMS to the members regarding programmes and CPE credit based on their attendance. Moreover, CPE activities have now been linked with the ICAI Mobile App with an introduction of a *CPE Programs* tab.

I would therefore request all concerned members of our professional fraternity to please use the aforementioned ICAI websites and make their professional life more effective and successful by taking advantage of these contemporary initiatives. I am quite sure that all these useful developments will immensely benefit our members.

Let me take this opportunity to extend my heartiest wishes to everybody for Chhatha (also known as *Surya Shashthi* that falls on 6th November) and Guru Nanak Jayanti (also known as *Guru Nanak Gurpurab* and *Prakash Utsav*, which falls on 14th November). Let us celebrate the spirit of togetherness with love, peace and happiness.

Best wishes

M. Devaraja Reddy

CA. M. Devaraja Reddy
President, ICAI
Hyderabad, 25th October 2016

Nothing in life is to be feared. It is only to be understood. - Marie Curie

Photographs

Meeting with Finance and Corporate Affairs Minister of India

ICAI President CA. M Devaraja Reddy and his Central Council colleague CA. Prafulla Premsukh Chhajed in discussion with Union Finance and Corporate Affairs Minister Shri Arun Jaitley on the matters of professional interests (23rd September 2016)

Meeting with RBI Deputy Governor

ICAI Vice-President CA. Nilesh Shivji Vikamsey and his Central Council colleague CA. Prafulla Premsukh Chhajed present bouquet to the RBI Deputy Governor Shri N. S. Vishwanathan (7th October 2016)

ICAI International Conference 2016 in Hyderabad

ICAI President CA. M. Devaraja Reddy and Vice-President CA. Nilesh Shivji Vikamsey share the dais with Chief Guest Union Urban Development, Housing and Urban Poverty Alleviation and Information & Broadcasting Minister Shri M. Venkaiah Naidu, in presence of ICAI past Presidents CA. K. Raghu, CA. G. Ramaswamy, CA. Amarjit Chopra, CA. R. Balakrishnan and CA. Jaydeep Narendra Shah, ICAI Central Council members CA. K. Sripriya Kumar, CA. Dhiraj K. Khandelwal, CA. Nihar N. Jambusaria, CA. Sanjay K. Agarwal, CA. Tarun J. Ghia, CA. Vijay K. Jhalani, CA. Nandkishore C. Hegde, CA. Ranjeet K. Agarwal, CA. Prakash Sharma, CA. Vijay K. Gupta, CA. M. P. Vijay Kumar, CA. Dhinal A. Shah, CA. G. Sekar, CA. Shiwaji B. Zaware, CA. Sanjiv K. Chaudhary, CA. Prafulla P. Chhajed, CA. Kemisha Soni, CA. Sushil K. Goyal, CA. Manu Agrawal, CA. Mangesh P. Kinare and CA. Naveen N. D. Gupta, CAPA President Ms. Jackie Poirier and Deputy President (ICAI past President) CA. Manoj Fadnis, and ICAI Secretary Shri V. Sagar, among others (22nd October 2016)

Photographs

ICAI International Conference 2016 in Hyderabad

ICAI Central Council member CA. Sanjay Kumar Agarwal presents bouquet and welcomes Union Urban Development, Housing and Urban Poverty Alleviation and Information & Broadcasting Minister Shri M. Venkaiah Naidu, while ICAI President CA. M. Devaraja Reddy and Vice-President CA. Nilesh Shivji Vikamsey, CAPA Ms. Jackie Poirier, and ICAI Secretary Shri V. Sagar applaud the moments (22nd October 2016)

ICAI President CA. M. Devaraja Reddy and Vice-President CA. Nilesh Shivji Vikamsey and Central Council member CA. Rajesh Sharma present shawl and bouquet to welcome the Union Minister of State for Finance and Corporate Affairs Shri Arjun Ram Meghwal on second day of the Conference (23rd October 2016)

ICAI President CA. M. Devaraja Reddy presents memento to CBDT Chairperson Ms. Rani Singh Nair, in the presence of Central Council member CA. Dhinal Ashvinbhai Shah, among others, on the dais (23rd October 2016)

Photographs

ICAI Leadership with IFRS Foundation Delegation in New Delhi

ICAI President CA. M. Devaraja Reddy, CAPA Deputy President (and ICAI immediate past President) CA. Manoj Fadnis, ICAI Vice-President CA. Nilesh Shivji Vikamsey, Central Council members CA. Tarun Jamnadas Ghia, CA. Nihar Niranjan Jambusaria, CA. Mukesh Singh Kushwah and CA. Sanjay Kumar Agarwal, and ICAI Secretary Shri V. Sagar get together with IFRS Foundation Trustees Chairman Mr. Michel Prada and International Accounting Standards Board Chairman Mr. Hans Hoogervorst, among others (13th October 2016)

ICAI-IFRS Foundation Trustee Stakeholders Event in New Delhi

ICAI President CA. M. Devaraja Reddy, NACAS President (and ICAI past President) CA. Amarjit Chopra, ICAI Vice-President CA. Nilesh Shivji Vikamsey, Central Council members CA. Nihar Niranjan Jambusaria, CA. M. P. Vijay Kumar, CA. Shiwaji Bhikaji Zaware and CA. Tarun Jamnadas Ghia, get together with IFRS Foundation Trustees Chairman Mr. Michel Prada, among others (13th October 2016)

Meeting with Members of ICAI London Chapter

ICAI Vice-President CA. Nilesh Shivji Vikamsey and his Central Council colleague CA. Shiwaji Bhikaji Zaware visit the Chapter and get together with Chapter Chairman CA. Ajay Agarwal and other members on the occasion (26th-28th September 2016)

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New Udaan Bhawan CPE Study Circle Inaugurated in New Delhi

ICAI President CA. M. Devaraja Reddy and Vice-President CA. Nilesh Shivji Vikamsey along with GMR Infrastructure Ltd. Chief Compliance Officer Shri Adiseshavataram Cherukupalli, Delhi International Airport Ltd. CFO Mr. Radhakrishnababu and VP (Finance and Accounts) Mr. Hari Nagrani, among others on the occasion (4th October 2016)

National Women Conference in Mumbai

ICAI Vice-President CA. Nilesh Shivji Vikamsey and his Central Council colleagues CA. Kemisha Soni, CA. Jay Chhaira and CA. Prafulla Premsukh Chhajed attend the Conference on *Shakti-The Power of CA Women*, in presence of WIRC Chairperson CA. Shruti Shah, among other members of WIRC Managing Committee, on the occasion (15th October 2016)

Two-Day Mega Members Conference on GST at Vasai

ICAI Vice-President CA. Nilesh S. Vikamsey along with his Central Council colleague CA. Madhukar Narayan Hiregange and Branch Chairman CA. Vimal Agarwal pose with the member participants after lighting the lamp ceremony at the Conference (15th October 2016)

Not he who has much is rich, but he who gives much. - Erich Fromm

Accounting treatment of unutilised spare parts to be used on renovation and modernisation (R&M) of Power Plant

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') is a subsidiary company of another company (100% Government of Gujarat undertaking) having installed capacity of 5894 Mega Watt (MW). The company is having 2 units of 120 MW thermal power plants at Gandhinagar commissioned on 13-03-1977 for Unit-I and 10-04-1977 for Unit-II. [Both units have completed 38 years of life, which is normally 25 years (as per life prescribed by Central Electricity Regulatory Commission) and with R&M it will be 35 years of life]. As per the directives of Central Electricity Authority (CEA), the company has carried out renovation and modernisation (R&M) work during the financial year (F.Y.) 2007-08 to 2009-10. The company has given an Engineering, Procurement and Construction (EPC) contract to M/s XYZ to complete R & M work for the said units. As per this, M/s XYZ, an EPC contractor, has supplied materials and carried out some work in coal handling plant and ID fan etc. However, the company has a bitter experience of other power plants for not achieving the targeted efficiency. Therefore, the company has cancelled the order placed on M/s XYZ for R&M of 2 units of 120 MW each at Gandhinagar thermal power station (TPS). M/s XYZ has completed some work upto the date of cancellation of order. The company is seeking guidance for the above subject matter in context to the following information:
   (i) As per Accounting Standard (AS) 10, 'Accounting for Fixed Assets', fixed asset is an asset held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business.
   (ii) Stand-by equipment and servicing equipments are normally capitalised. If the machinery spares can be used only in connection with an item of fixed asset and their use is expected to be not frequent, it may be appropriate to allocate total cost on a systematic basis over a period not exceeding useful life of principal item.
   (iii) Improvement of assets: According to the querist, the R & M (improvement) subsequent expenditure related to very old fixed asset is to be capitalised because the expenditure that increases future benefit from the existing assets beyond its previously assessed standard of performance is included in the gross book value, i.e., an increase in the capital.
2. The querist has stated that during this period, the company has carried out following entries in the books of account:
   (i) Whatever work completed and shown in capital work in progress has been transferred to fixed assets of 'Plant & Machinery' during the F.Y. 2009-10 and F.Y. 2011-12.
      A) Purchase (Capital) A/c. Dr.
      To M/s XYZ (Party) A/c
      (Being entry passed for purchase of capital nature material from M/s XYZ to carry out R & M.)
      B) Capital work in progress A/c. Dr.
      To Purchase (Capital) A/c.
      (Being entry passed to transfer capital nature material and work to work in progress).
      C) Plant and Machinery A/c Dr.
      Capital Spares A/c. Dr
      To Capital work in progress A/c.
      (Being entry passed for transfer of work in progress to fixed assets and capital spares on work completion).

Gandhinagar Thermal Power Station Unit 1 & 2
Renovation and Modernisation (R&M)

Year	Addition in capital work in progress-WIP (₹ in lacs)	Transferred to fixed asset (₹ In lacs)	Statutory auditors' qualification	C&AG qualifications
2007-08	125.08	0		
2008-09	10176.86	0		
2009-10	8031.08	18333.01	NIL	NIL
2010-11	3321.18	0	NIL	NIL
2011-12	1161.52	4482.70	NIL	NIL
2012-13	0.00	0.00	NIL	NIL
2013-14	0.00	0.00	Yes	NIL
2014-15	0.00	0.00	Yes	NIL
Total	22815.71	22815.71		

The company depreciates plant and machinery as per Central Electricity Regulatory Commission (CERC) rate and capital spares on the basis of useful life of plant as per AS 10.

(ii) Unutilised material/spares of plant and machinery not installed are shown separately under the head of 'Capital Spares' and charged depreciation as per AS 10 i.e., depreciation to be charged during the useful life of plant and machinery.

(iii) The Gujarat Electricity Regulatory Commission (GERC) has approved the expenditure and allowed the addition of fixed assets and depreciation thereon as per CERC norms. The company, being a power generating company, is governed under the Electricity Act, 2003.

- The company has considered material purchased under above contract as capital nature spares with an intention to use in plants. So it was capitalised from the beginning.
- The statutory auditors have considered the fixed assets as per AS 10 for F.Y. 2010-11, 2011-12 and 2012-13 and given clear (unqualified) report to the company.
- The competent authority of GERC has considered the addition of fixed assets and capital spares and allowed depreciation, loan, return on equity etc. Further, the commission has approved tariff upto F.Y. 2015-16 only and hence, the company has re-assessed the life of plant. The company has charged the additional depreciation to achieve 90% depreciation up to life of plant, i.e., upto financial year 2015-16 as per CERC norms. And also for the capital spares, depreciation is charged to amortise capital spares 100% upto life of plant.
- During the F.Y. 2013-14 and 2014-15, the statutory auditors have taken a different view for CWIP and capitalisation done (F.Y. 2007-08 to F.Y. 2011-12) and qualified their report considering this as current assets and not of the nature of capital spares.
- Further, C&AG has carried out supplementary audit and given Nil audit comments. According to the querist, the qualification of statutory auditors has not been considered by C&AG Office because the nature is, as such, the capital nature and treatment is as per generally accepted accounting principles. As narrated above, the company's statutory auditors for the year 2011-12 and 2012-13 and internal auditors, Commission and C&AG have considered it as capital nature.

3. The querist has separately explained with regard to the nature of the spares that as these spares were purchased for renovation and modernisation, (for the plant whose life is over) its nature is capital. However, due to non-achieving the parameters by the original equipment manufacturers, the company has carried out bare minimum renovation and modernisation work for the purchase materials and balance material will be used in other similar unit of the company as and when required. Hence, it is inter-changeable with

similar capacity unit and can also be used with other similar plant and machinery of other units of the company.

B. Query

4. The company has treated these spares as capital nature and shown under the head 'fixed assets' due to above reasons and hence, the querist has sought the opinion of the Committee as to whether this accounting treatment is in conformity with Accounting Standards and GAAPs.

C. Points considered by the Committee

5. The Committee notes that the basic issue raised in the query relates to treatment of unutilised (not installed) spares and material (assumed to be of the nature of spares) of plant and machinery as capital spares. The Committee has, therefore, considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, depreciation on plant and machinery and capital spares, accounting treatment of expenditure on renovation and modernisation, accounting entries passed in respect of transfer of work completed and shown in capital work in progress to fixed assets of plant and machinery (as provided in paragraph 2 above), etc. At the outset, it is presumed that spares kept for future use are ready for their intended use. The opinion expressed hereinafter is from the perspective of accounting requirements contained in the Companies (Accounting Standards) Rules, 2006 and without considering the application of Accounting Standards amended by MCA vide Notification dated March 30, 2016, which should be applied for the accounting periods commencing on or after the date of such Notification. Further, the Committee wishes to point out that opinion expressed hereinafter is purely from accounting perspective and not from the perspective of determination of tariff as per CERC/GERC.
6. With regard to the issue raised, the Committee notes the requirements of Accounting Standard (AS) 2, 'Valuation of Inventories' and AS 10, as follows:

   AS 2

   "4. Inventories encompass goods purchased and held for resale, for example, merchandise purchased by a retailer and held for resale, computer software held for resale, or land and other property held for resale. Inventories also encompass finished goods produced, or work in progress being produced, by the enterprise and include materials, maintenance supplies, consumables and loose tools awaiting use in the production process. Inventories do not include machinery spares which can be used only in connection with an item of fixed asset and whose use is expected to be irregular; such machinery spares are accounted for in accordance with Accounting Standard (AS) 10, Accounting for Fixed Assets."

   AS 10

   "8.2 Stand-by equipment and servicing equipment are normally capitalised. Machinery spares are usually charged to the profit and loss statement as and when consumed. However, if such spares can be used only in connection with an item of fixed asset and their use is expected to be irregular, it may be appropriate to allocate the total cost on a systematic basis over a period not exceeding the useful life of the principal item."

   From the above, the Committee notes that the accounting treatment of machinery spares depends upon their nature, viz., whether these spares can be used only in connection with an item of fixed asset and their use is expected to be irregular. The Committee is of the view that machinery spares which are specific to a particular item of fixed asset, i.e., they can be used only in connection with a particular item of the fixed asset and their use is expected to be irregular can only be considered and capitalised as capital spares. In other words, machinery spares which are not specific to a particular item of fixed asset but can be used generally for various items of fixed assets should be treated as inventories for the purpose of AS 2. The Committee is further of the view that the capital spares as per AS 10 can be used only in relation to a specific item of fixed asset, and, accordingly, they are to be discarded in case that specific fixed asset is disposed of. In other words, such spares are integral parts of the fixed asset.
7. In the light of above discussion, the Committee notes from the Facts of the Case that the material/ spares in the extant case were purchased

originally for renovation and modernisation of a plant whose life is over. However, due to some reasons, those could not be used for that purpose and, therefore, the material/spares unutilised were kept to be used in other similar unit of the company as and when required. Further, the querist has also stated that these are inter-changeable with similar capacity unit of the company and can also be used with other similar plant and machinery of other units. From the above, the Committee is of the view that since these are inter-changeable with similar units and similar plant and machineries, these cannot be considered as specific to a particular item of fixed asset and, therefore, these cannot be treated as capital spares to be shown under 'fixed assets'. Accordingly, these spares should be treated as inventories.

D. Opinion

8. On the basis of the above, the Committee is of the view that for the reasons mentioned in paragraphs 6 and 7 above, the unutilised material/spares cannot be treated as capital spares and, therefore, the accounting treatment accorded by the company is not in conformity with Accounting Standards and GAAPs.

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 May 10-11, 2016. 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 four volumes. A CD of Compendium of Opinions containing thirty four volume 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.in.

Success is the sum of small efforts, repeated day-in and day-out. - Robert Collier

Circulars/Notifications

Given below are the important Circulars and Notifications issued by the CBDT, CBEC, FEMA, RBI 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.in**

DIRECT TAXES

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

I. NOTIFICATIONS

1. Backward districts of State of Andhra Pradesh notified for the purposes of Section 32(1)(iia) and 32AD - Notification No. 85/2016, dated 28-09-2016

Under section 32, depreciation on assets used for the purposes of business and profession is allowable as deduction while computing income under the head "Profits and gains of business or profession". Section 32(1)(iia) provides for additional depreciation @ 20% for new machinery or plant (other than ships and aircraft), acquired and installed after 31.03.2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation and distribution of power. In order to promote economic activities in the backward areas of the states of Andhra Pradesh, Telangana, West Bengal and Bihar, the Finance Act, 2015 inserted a *proviso* to Section 32(1)(iia) to provide an increased rate of additional depreciation @ 35% to an assessee who sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after 01.04.2015 in any backward area notified by the Central Government in this behalf, in such states, and acquires and installs any new machinery or plant (other than ships and aircraft) for the purposes of the said undertaking or enterprise during the period from 01.04.2015 to 31.3.2020 in the said backward area.

Further, section 32AD was inserted *vide* the Finance Act, 2015 to provide incentive in the form of an additional investment allowance @ 15% of the cost of the new asset acquired and installed by an assessee who sets up an undertaking or enterprise for manufacture or production of any article or thing, on or after 01.04.2015 in any backward area notified by the Central Government in this behalf, in such states, and acquires and installs any new asset for the purposes of the said undertaking or enterprise during the period from 1.4.2015 to 31.3.2020 in the said backward area.

Accordingly, *vide* this Notification, the Central Government has specified Anantapur, Chittoor, Cuddapah, Kurnool, Srikakulam, Vishakhapatnam, Vizianagaram as backward districts in the State of Andhra Pradesh for the purposes of Section 32(1)(iia) and Section 32AD.

2. Notification of revised Income Computation and Disclosure Standards applicable w.e.f. AY 2017-18- Notification No. 87/2016, dated 29-09-2016

Under section 145(1), income chargeable under the heads "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee. Section 145(2) empowers the Central Government to notify in the Official Gazette from time to time, income computation and disclosure standards to be followed by any class of assessees or in respect of any class of income. Accordingly, the Central Government has, in exercise of the powers conferred under section 145(2), earlier notified ten income computation and disclosure standards (ICDSs) to be followed by all assessees, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profit and gains of business or profession" or "Income from other sources" vide Notification No 32/2015, dated 31.03.2016 (this notification has now been rescinded *vide* Notification no 86/2016, dated 29.9.2016). Vide Notification No. 87/2016, dated 29.09.2016 the CBDT has, in effect, revised the earlier issued ICDSs. This notification shall apply to the assessment year 2017-18 and subsequent assessment years.

All the revised notified ICDSs are applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts. In the case of conflict between the provisions of the Income-tax Act, 1961 and the notified ICDSs, the provisions of the Act shall prevail to that extent.

3. Revision of Form No 3CD w.e.f. 01.04.2017 incorporating clause related to Income Computation and Disclosure Standards-Notification No. 88/2016, dated 29-09-2016

In exercise of the powers conferred by section 295 read with Section 44AB of the Income-tax Act, 1961, the CBDT has through, Income-tax (23rd Amendment) Rules, 2016 amended the Income-tax Rules, 1962 to substitute the existing clause 13(d) in Part B of the existing Form No 3CD (Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961) in Appendix II.

Amended clause 13(d) requires the tax auditor to report whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2) and if answer is in affirmative, clause 13(e) requires the details of adjustment to be tabulated ICDS wise showing clearly increase/decrease in profits as well as the net result of such adjustments. Further, clause 13(f) requires the reporting on disclosures as prescribed in the various ICDSs notified.

4. Insertion of new Rule 6A in the Income-tax Rules, 1962-Expenditure for obtaining right to use spectrum for telecommunication services-Notification No. 89/2016, dated 04-10-2016

Section 353ABA is inserted in the Income-tax Act, 1961 *vide* the Finance Act, 2016 to provide for tax treatment of spectrum fee. Section 35ABA provides that any capital expenditure incurred and actually paid by an assessee on the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee will be allowed as a deduction in equal instalments over the period for which the right to use spectrum remains in force. Clause (iii) of Explanation to Section 35ABA provides for the meaning of the term "payment has actually been made" as the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in such manner as may be prescribed. Accordingly, the CBDT through this Notification has inserted a new Rule 6A in the Income-tax Rules, 1962 *vide* the Income-tax (24th Amendment) Rules, 2016 and shall come into force on the date of publication in the Official Gazette. Rule 6A provides the meaning of the term 'payment has actually been made' as:

(a) where an assessee has opted and been allowed by the Department of Telecommunications, Government of India to make full upfront payment of spectrum fee, the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee;
(b) where an assessee has opted and been allowed by the Department of Telecommunications, Government of India to make deferred payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.

Further, in case of deferred payment referred to in (b) above, where there is failure by the assessee to comply with any of the conditions specified by the scheme of the Department of Telecommunications, Government of India and Department of Telecommunications terminates the allotment or assignment of spectrum, the Assessing Officer shall, in exercise of power vested in him under section 35ABA(3) shall re-compute the total income of the assessee for the previous year in which the deduction has been claimed and granted to him by deeming that,-

(i) the total amount of spectrum fee paid up to the date of termination is the amount of "payment actually been made";
(ii) the spectrum was in force up to the date of its termination for the purpose of computing "relevant previous year" .

5. Insertion of Rule 129 and Form No.68-Notification No 90/2016, dated 05-10-2016

Section 270AA (1) of the Income-tax Act, 1961 provides that an assessee may make an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, subject to fulfilment of certain conditions.

Further Section 270AA(2) provides that an application referred to in sub-section (1) shall be made within one month from the end of the month in which the order referred to in section 270AA(1)(a) has been received and shall be made in such form and verified in such manner as may be prescribed.

Accordingly, the CBDT has in exercise of the powers conferred by Section 295 read with section 270AA(2) of the Income-tax Act, 1961, through this Notification inserted a new Rule 129 in the Income-tax Rules, 1962 *vide* the Income-tax (25th Amendment) Rules, 2016 which shall come into force on 1.04.2017. The new Rule 129 prescribes that an application to the Assessing Officer to grant immunity from imposition of penalty under section 270A and from initiation of proceedings under section 276C or section 276CC shall be made in Form No. 68.

The complete text of the above Notifications can be downloaded from the link below: http://www.incometaxindia.gov.in/Pages/communications/notifications.aspx

II. CIRCULARS

1. Order under section 119 of the Income-tax Act, 1961 - Circular No. 34/2016, Dated 21-09-2016

Circular No. 17/2016 dated 20.05.2016 relating to the Income Declaration Scheme, 2016 (the Scheme) clarifies that a person shall be eligible to make declaration under the Scheme for assessment years other than the assessment year(s) for which a notice under section 142(1)/143(2)/148 of the Income-tax Act, 1961 (the Act) has been served on or before 31.05.2016.

In this context, concerns were raised that if declaration under the Scheme is made for years not under assessment on an identical issue which is pending assessment under section 143(3)/147 of the Act, then, whether such declaration shall tantamount to acceptance by the assessee of concealment of income on the said issue for the year under assessment. Doubts were also raised that declaration under the Scheme on an identical issue in other years may lead to levy of penalty and initiation of prosecution for the year in which assessment is pending.

In this regard, attention of all concerned is invited to the provisions of Section 273A of the Act which provides for power to reduce or waive penalty in certain cases. Attention is also invited to the provisions of Section 279(1A) of the Act which provides that a person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable under section 271(1)(iii) or 270A has been reduced or waived by an order under section 273A.

Legal Update

Section 273A *inter-alia* provides that the Principal Commissioner or Commissioner shall reduce or waive penalty in case the assessee has co-operated in any enquiry relating to the assessment of his income for the relevant assessment year and has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence to the assessment order passed under the Act in respect of the relevant assessment year. It is clarified that where a declaration is made under the Scheme for years not under assessment on an identical issue which is pending assessment under section 143(3)/147 of the Act and the person offers to pay the tax and interest, if any, on such issue for the year pending assessment under section 143(3)/147 of the Act, the person shall be treated as having "co-operated in any enquiry" within the meaning of section 273A of the Act. Therefore, the Principal Commissioners or Commissioners are advised to take a lenient view on receipt of a valid application under section 273A of the Act in respect of an issue for the said assessment year which is identical to the issue on which a valid declaration has been made under the Scheme for other assessment year(s) subject to payment of the entire amount payable under the Scheme.

2. Applicability of TDS provisions of section 194-I of the Income-tax Act, 1961 on lumpsum lease premium paid for acquisition of long term lease - Circular No.35/2016, Dated 13-10-2016

Section 194-I of the Income-tax Act, 1961 requires that tax be deducted at source at the prescribed rates from payment of any income by way of rent. For the purposes of this section, "rent" has been defined as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or machinery or plant or equipment or furniture or fittings.

The issue of whether or not TDS under section 194-I of the Act is applicable on 'lump sum lease premium' or 'one-time upfront lease charges" paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by CBDT in view of representations received in this regard.

The CBDT has taken note of the fact that in the case of The Indian Newspaper Society (ITA Nos. 918 & 920/2015), the Hon'ble Delhi High Court has ruled that lease premium paid by the assessee for acquiring a plot of land on an 80 years lease was in the nature of capital expense not falling within the ambit of Section 194-I of the Act. In this case, the court reasoned that since all the rights easements and appurtenances in respect of the said land were in effect transferred to the lessee for 80 years and since there was no provision in lease agreement for adjustment of premium amount paid against annual rent payable, the payment of lease premium was a capital expense not requiring deduction of tax at source under section 194-I of the Act.

Further, in the case *Foxconn India Developer Limited (Tax Case Appeal No. 801/2013)*, the Hon'ble Chennai High Court held that the one-time non-refundable upfront charges paid by the assessee for the acquisition of leasehold rights over an immovable property for 99 years could not be taken to constitute rental income in the hands of the lessor, obliging the lessee to deduct tax at source under section 194-I of the Act and that in such a situation the lease assumes the character of "deemed sale". The Hon'ble Chennai High Court has also in the cases of *Tril Infopark Limited (Tax Case Appeal No. 882/2015)* ruled that TDS was not deductible on payments of lump sum lease premium by the company for acquiring a long-term lease of 99 years.

In all the aforesaid cases, the Department has accepted the decisions of the High Courts and has not filed an SLP. Therefore, the issue of whether or not TDS under section 194-I of the Act is to be made on lump sum lease premium or one-time upfront lease charges paid for allotment of land or any other property on long-term lease basis is now settled in favour of the assessee.

In view of the above, it is clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I of the Act. Therefore, such payments are not liable for TDS under section 194-I of the Act.

The detailed circulars can be downloaded from the link below: http://www.incometaxindia.gov.in/Pages/communications/circulars.aspx

III. PRESS RELEASES/INSTRUCTIONS/OFFICE MEMORANDUM

1. Finance Minister conveys Government's Appreciation to tax payers for their contribution towards Nation building - Press Release, dated 19-09-2016

The Government acknowledges the contribution of individual tax payers in paying taxes within the prescribed time and prompt filing of Income Tax Returns. The Honourable Finance Minister, Shri

THE CHARTERED ACCOUNTANT JOURNAL AND ITS MANY DIGITAL VERSIONS

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

The journal of the Institute, *The Chartered Accountant*, started its journey with an eight-page Bulletin in January 1950 and this Bulletin transformed into a full-fledged journal in July 1952, which had a circulation of less than 5000 copies. The journal, which is being brought out monthly ever since July 1952 with a circulation of more than 274,000 copies today, is available in many facets of digital version also.

- An eJournal is hosted online on ICAI website www.icai.org as a transformed new hi-tech user-friendly *e-magazine in eMagazine platform V6* based on the latest HTML5 technology format with a range of convenience features wherein users can browse as if turning page after page like in hard copy.
- However, for the added and alternative convenience of readers, particularly for separate content-wise downloads, the journal continues to be hosted in the PDF format and also in Indexed mode. The archives of digital journal are available on ICAI website from July 2002 onwards.
- Further, this eJournal is now also available on mobile, compatible on iOS (IPad/IPhone etc.) and Android devices. It can be accessed at http://www.icai.org/ under 'e-journal' tab. The eJournal is also available on ICAI Mobile App.
- As an add-on service, the highlights of every issue of journal in capsule form and the President Message in the journal are mass-emailed to all the members.
- In an important initiative to provide a single point reference window to the readers of *The Chartered Accountant* journal and leverage the technology to serve them better, a DVD of past issues of the journal is also available for readers and other stakeholders. While a DVD of 10 years of the journal (July 2002-June 2012) in PDF format has been brought out for readers at a nominal cost, a more recent HTMLised DVD containing 63 years of *The Chartered Accountant* journal (July 1952 to June 2015) has also been released. In this HTML-version DVD in a searchable mode, readers can global search the contents through key words relating to accounting, auditing, taxation, etc., besides searching by month, year, volume, category (like Circulars & Notifications, ICAI News, Legal Decisions, etc.), author, etc.

Arun Jaitley on 19.9.16 handed over certificates of appreciation issued by CBDT honouring selected tax payers for such contribution. While it is widely acknowledged that the Nation meets its obligations towards spending in various social sector and welfare schemes and infrastructure development out of revenues mobilised through tax payments by millions of honest tax payers, this step marks the first effort by the Government to directly communicate to the tax payer its appreciation for that contribution.

CBDT will be sending out such certificates of appreciation to individual tax payers by e-mail in various categories on the basis of the level of taxes paid by them for the current Assessment Year 2016-17 where taxes have been paid in full and tax payers have no outstanding tax liabilities and where the return is e-filed within the prescribed due date. The tax payers may display these certificates in their homes/offices.

The categories for individual taxpayers and the number of certificates being issued in the first round are:

i. Platinum : Tax contributed ₹1 Crore and above
ii. Gold : Tax contributed ₹50Lakh to ₹1 Crore
iii. Silver : Tax contributed ₹10Lakh to ₹50 Lakh
iv. Bronze : Tax contributed ₹1Lakh to ₹10 Lakh

The CBDT urges taxpayers to e-file their returns in time and verify their return by submitting the Electronic Verification Code online or sending their ITR-V within 120 days so that they can also be acknowledged for their contribution.

The Department is committed to continuous improvement of taxpayer services and seeks the cooperation of all taxpayers in contributing their fair share of taxes voluntarily.

2. Number of Advance Pricing Agreements by CBDT crosses 100–Press Release, dated 23-09-2016

The CBDT entered into five (5) unilateral Advance Pricing Agreements (APAs) on 23rd September, 2016, with Indian taxpayers. One of these Agreements has a rollback provision in it. With these signings, the total number of APAs entered into by the CBDT has reached 103.

The APA Scheme was introduced in the Income-tax Act in 2012 and the Rollback provisions were introduced in 2014. The scheme endeavours to provide certainty to taxpayers in the domain of transfer pricing by specifying the methods of pricing and determining the arm's length price of international transactions in advance for a maximum period of five future years. Further, the taxpayer has the option to rollback the APA for four preceding years. Since its inception, the APA scheme has attracted tremendous interest among Multi National Enterprises (MNEs) and more than 700 applications (both unilateral and bilateral) have been filed in just four years.

The aforesaid 5 APAs signed pertain to diverse sectors, i.e., Information Technology, Sourcing services and Investment advisory services. The 103 APAs signed so far include 4 bilateral APAs and 99 unilateral APAs. A total of 39 APAs have already been concluded in six months of the current Financial Year. The year-wise details of APA signings are as follows:

Financial Year	**2013-14**	**2014-15**	**2015-16**	**2016-17 (up to 23.9.16)**	
Unilateral APAs	5	3	53	38	99
Bilateral APAs	0	1	2	1	4
Total	5	4	55	39	103

The CBDT expects more APAs to be concluded and signed in the near future. The progress of the APA Scheme strengthens the Government's commitment to foster a non-adversarial tax regime. The approach and functioning of the officers in the APA teams have been appreciated and acknowledged by the industry in India and abroad.

3. Instruction regarding sale of assets before 1.6.16–The Income Declaration Scheme, 2016 - Instruction No 9/2016, dated 27-09-2016

Instances were brought to the notice of the CBDT that some taxpayers were of the view that if a capital asset acquired out of undisclosed income is sold before 01.06.2016 and the sale proceeds so received are held in cash, then the amount of undisclosed income required to be declared under the Scheme shall be the amount of undisclosed income invested in acquisition of such capital asset as increased by the capital gain arising on sale of such asset determined in accordance with the provisions of the Income-tax Act, 1961 (i.e. sale consideration less indexed cost of acquisition).

In this context, it is clarified by the CBDT that the above method for arriving at the amount of undisclosed income for declaration under the Scheme is not in accordance with the provisions of the Scheme and clarificatory circulars issued by the Board from time-to-time.

The CBDT reiterated the provisions contained in section 183(2) of the Scheme that where the income chargeable to tax is represented in the form of investment in any asset, the fair market value of such asset as on 01.06.2016 shall be deemed to be the undisclosed income for the purposes of the Scheme. In this context, it may be noted that cash in hand is an asset for the purposes of the Scheme.

4. Clarification for declarants not having PAN under the Income Declaration Scheme, 2016–The Income Declaration Scheme, 2016-Instruction No 9/2016, dated 27-09-2016

The Income Declaration Scheme, 2016 (the Scheme) has come into effect from 1st June, 2016 and is open for declarations upto 30.09.2016. During the video conference held on 24.09.2016, concern was raised by field authorities that there can be few cases where the assessees may not have PAN but would like to file declaration under the Scheme towards the date of closure of the Scheme. In such cases, the assessee may not get PAN by the date of closure of the Scheme i.e. 30.09.2016

The issue is examined. It was decided that in such cases a declaration under the Scheme can be filed manually before the jurisdictional Pr.Commissioner/ Commissioner by quoting the date and acknowledgment number of PAN application form. The Pr.Commissioners/Commissioners are directed to accept such declarations.

However, the jurisdictional Pr.Commissioner/ Commissioner shall issue Form-2 only after the allotment of PAN to the declarant. The time limit provided for issuance of Form-2 under sub-rule (3) of Rule 4 of the Income Declaration Scheme Rules, 2016 in such cases shall apply from the date on which PAN has been allotted to the declarant. In case, PAN allotment could not be made due to non-compliance/non-furnishing of documents by the declarant, the declaration shall be treated as invalid.

5. Income Declaration Scheme 2016 unearths ₹65250 Crore of Hitherto Undeclared Income and Assets–Press Release, dated 01-10-2016

The Income Declaration Scheme, 2016 came into effect from 1st June, 2016. It provided an opportunity to persons who had not paid full taxes in the past to come forward and declare their domestic undisclosed income and assets. Declarations could be made online as well in printed copies of the prescribed form up to midnight on 30th September, 2016.

Legal Update

In order to facilitate the taxpayers and to spread awareness about the Scheme, the CBDT issued a number of FAQs to address various queries received. Major issues clarified included manner of declaration of fictitious liability, allowance of cost indexation and holding period benefit for registered immovable property, sanctity of valuation report etc. Difficulties with respect to payment of taxes in a short span were removed by permitting payment of tax in 3 instalments, the last being in September 2017. Absolute confidentiality of the declarations made was promised under the scheme to reassure the declarants.

An appeal was made by the Honourable Prime Minister of India to the general public to come clean on taxes due. The FM personally addressed stakeholders at many stations. More than 5500 public meetings in various cities were conducted by the department. Innovative publicity methods like Talkathons, Walkathons, Nukkad Nataks, were used to spread awareness about the Scheme. The Department's strategic use of taxpayer information and data mining techniques further spurred the declarations.

These steps resulted in a tremendous response from the general public, especially in the last two months. As a consequence, 64,275 declarations were filed upto the midnight of 30th September, 2016 with an aggregate of ₹65,250 crore worth of hitherto undeclared incomes in the form of cash and other assets being declared. With the final stock taking of declarations being filed in physical printed forms all over the country till late night on the last day, this number is likely to be further revised upwards.

This Scheme was the latest initiative of the Government of India towards tackling the menace of black money. The major steps taken by the Government against Black Money in the last 2-1/2 years include:

SIT: Many recommendations accepted such as mandatory quoting of PAN for cash transactions *etc.*

Legal Framework: Making tax crimes predicate offence under PMLA; Amendment of FEMA to provide for confiscation of domestic assets in place of foreign assets; Enactment of Black Money Law and Amendment to Benami Act.

International Treaties: Signing of FATCA with US; Amendment of Mauritius Treaty; Initiative for signing of Automatic Exchange of Information Treaty with all major countries including Switzerland, Initiatives under BEPS (Based Erosion and Profit Sharing) such as country by country reporting, PoEM (Place of Effective Management) *etc.*

Detection and administration of tax evasion cases: Assessment of ₹8,000 crore in HSBC cases as well as filing of 164 prosecution complaints in 175 HSBC cases; detection of ₹5,000 crore of undisclosed deposits in foreign accounts made out of ICIJ cases, 55 prosecution cases filed in those cases; Big investigation in Panama cases has led to 250 references being made to other countries asking for details about tax evaders, bank accounts *etc.* The quantum jump in the searches and survey has resulted in seizure of ₹1,986 crore as well as undisclosed income of ₹56,378 crore in the last two and half years. The upgradation of IT capabilities has led to non-intrusive methods of detection of tax evasion. ₹16,000 crore received as tax out of one such system of Non-filers of Monitoring System (NMS). 3,626 cases of prosecution and compounding in the last two and half years which is more than double as compared to previous two years.

The faith reposed by the Government in the CBDT and the Income tax Department strengthened the administration of the Scheme. This was a major step towards reigning in the parallel economy of the country and merging it with the mainstream. The CBDT endeavours to continuously use non-intrusive methods towards widening and deepening of the tax base.

6. CBDT committed to Strict Confidentiality under Income Declaration Scheme 2016-Press Release, dated 03-10-2016

While announcing the results of the Income Declaration Scheme 2016 on 1st October, 2016 at a press conference in Delhi, the Honourable Finance Minister Shri Arun Jaitley stressed that no break-up of these declarations on the basis of trades/cities/states shall be released in order to ensure absolute secrecy with respect to the identity of the declarants. CBDT clarifies that no official list of region wise declarations has been issued. The Income Tax Department is committed to maintaining strict confidentiality of declarations made under the Income Declaration Scheme 2016. CBDT requests the general public not to pay any heed to such fraudulent messages circulating on social media.

7. Valid mode of service in respect of electronically filed declarations under the Income Declaration scheme, 2016-Instruction No 11/2016, dated 13-10-2016

Representations have been received from field authorities to allow electronic mode of communication as a valid mode of service for issuance of Form-2 under the Income Declaration Scheme, 2016.

i. Keeping into consideration the confidential nature of the declarations made under the Scheme, the CBDT decided that electronic communication of Form-2 on the email address mentioned in Form-1 by *mutatis mutandis* application of Notification No.2 of 2016 dated 3-2-2016 issued by DGIT(Systems) shall be considered as a valid mode of service in respect of the electronically filed declarations under the Scheme.

ii. Representations were also received from field formation seeking clarification as to the eligibility of the assessee to file declaration under the Scheme where search and seizure operation has been conducted on or after 1-6-2016.

iii. In this context, reference is drawn to question No.6 of Circular No.17 dated 20-5-2016 read with question No.12 of Circular No.29 dated 18-8-2016 wherein it has been clarified that a person is not eligible to make a declaration under the Scheme if a search has been initiated and the time for issuance of notice under section 153A has not expired, even if such notice for the relevant assessment year has not been issued. It has also been clarified that in case of survey operation, the person is barred for making a declaration under the Scheme in respect of the previous year in which the survey was conducted.

iv. In view of the above the CBDT reiterated that in a case where a search and seizure operation has been conducted on or after 01.06.2016 but before making of declaration under the Scheme, the assessee shall not be entitled for filing a declaration under the Scheme in respect of the assessment years for which a notice under section 153A/153C of the Income-tax Act can be issued. The previous year in which search is conducted is already not eligible for declaration under the Scheme as declaration under the Scheme can be filed only upto A.Y. 2016-17.

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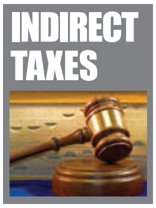


(Matter on Indirect Taxes has been contributed by the Indirect Taxes Committee of the ICAI)

SERVICE TAX

1. Exemption to taxable services provided by State Govt. etc. by way of granting long term lease of industrial plots to industrial units

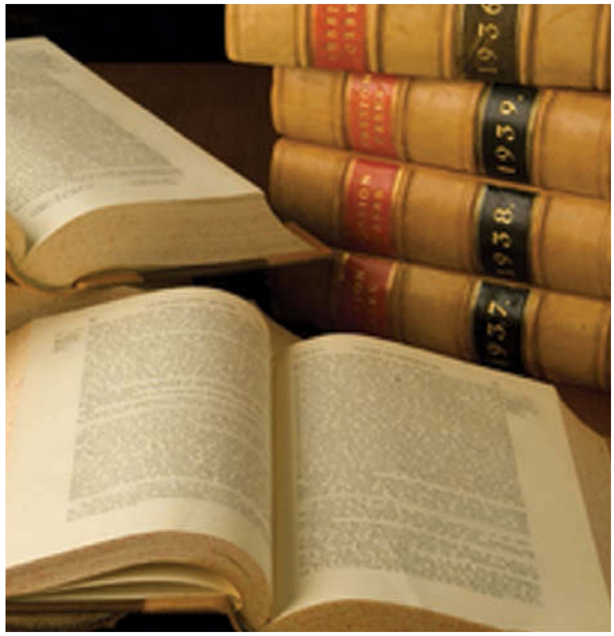
Central Government *vide Notification No. 41/2016-Service Tax, Dated: September 22, 2016* has extended exemption from service tax payable under section 66B of Finance Act 1994 to taxable services provided by State Government Industrial Development Corporations/Undertakings to industrial units by way of granting long term (30 years, or more) lease of industrial plots. However, this exemption is restricted to service tax payable on the one time upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for such lease.

[Notification No. 41/2016-Service Tax, Dated: September 22, 2016]

2. Form ST 3 amended to include One Person Company, KKC etc.

The Central Government *vide Notification No. 43/2016-Service Tax; Dated: September 28, 2016* has amended Service Tax Rules, 1994 in turn amending Form ST-3 (Service Tax Return u/s 70 of the Finance Act, 1994 & Rule 7 of Service Tax Rules, 1994) to give effect to the following changes:

- Insertion of word One Person Company with words Individual/Proprietary



- Insertion of word "Limited Liability Partnership", with the word "Partnership"
- Insertion of columns and entries relating to Krishi Kalyan Cess at relevant places.

[Notification No. 43/2016-Service Tax; Dated: September 28, 2016]

3. Revision of Monetary limits for issuing Service tax notice by officers

Central Government *vide Notification No. 44/2016-Service Tax, Dated: September 28, 2016* has amended the adjudication power of officers. The revised limits are as under:

S. No.	Rank of the Central Excise Officer	Amount of service tax of CENVAT credit specified in a notice issued under the Finance Act 1994. *w.e.f. 28th September 2016*	Amount of service tax of CENVAT credit specified in a notice issued under the Finance Act 1994. *Prior to 28th September 2016*
(1)	Superintendent	Not exceeding ₹10 lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation).	Not exceeding ₹1 lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation.)
(2)	Assistant Commissioner or Deputy Commissioner	Not exceeding ₹50 lakh (except cases where Superintendents are empowered to adjudicate).	Not exceeding ₹5 lakh (except cases where Superintendents are empowered to adjudicate.)
(3)	Joint Commissioner or Additional Commissioner	₹50 lakh and above but not exceeding ₹2 crore.	Above ₹5 lakh but not exceeding ₹50 lakhs (JC) &Above ₹20 lakh but not exceeding ₹50 lakh (AC)
(5)	Commissioner	Without limit."	Without limit."

[Notification No. 44/2016-Service Tax, Dated: September 28, 2016]

4. Guidelines for arrest in relation to offences punishable under the Finance Act, 1994 and Central Excise Act, 1944

Presently, the power of arrest in Service Tax is available only if a person collects any amount as service tax but fails to pay the amount so collected to the credit of the Central Government beyond the period of 6 months from the date on which such payment becomes due and the amount exceeds Rs. 2 crores.

In furtherance to above, Central Government vide Circular No. 201/11/2016-Service Tax, Dated: September 30, 2016 has provided following factors which must invariably be kept in mind before arresting a person:

1. Conditions precedent- Legal

- Collection of an amount exceeding ₹2 crore as service tax should be clear and self-evident from the invoices, bills, contracts, etc.
- The ST3 return filed by the assessee for the relevant period, showing the self-assessed value of taxable services and service tax paid should be available in file.
- Failure should be beyond the period of 6months from the date on which such payment becomes due.

2. Conditions precedent- Factual

- Is the alleged offender likely to hamper the course of further investigation by his unrestricted movement?
- Is the alleged offender likely to tamper with evidence or intimidate or influence witnesses?
- If the answer to both the questions is yes, then the decision to arrest can be made.
- If the alleged offender is assisting in the investigation and has deposited at least half of the evaded tax, then the need to arrest may not arise.

It is directed that henceforth arrest and prosecution of a person may be considered only in cases where evasion of Central Excise duty or misuse of CENVAT Credit is equal to or more than ₹2 crore as against earlier limit of ₹1 crore in order to maintain uniformity of practice in Central Excise and Service Tax.

It has further been reiterated that arrest and prosecution need not be resorted to in cases of technical nature i.e. where the additional demand of duty/tax is based totally on a difference of opinion regarding interpretation of law

[Circular No. 201/11/2016-Service Tax, Dated: September 30, 2016]

5. Exemption to Certain Services from levy of Service Tax

Central Government has exempted the following services from the levy of service tax:

S. No.	Services	Period of Exemption	Vide Notification
1.	Services provided by way of advancement of Yoga by entities registered under section 12AA of Income-tax Act, 1961 (Charitable or Religious Trusts and Institutions)	The period from 1st July 2012 to 20th October 2015	*Notification No. 42/2016-Service Tax, Dated: September 26, 2016*
2.	Transportation, by educational institutions to students, faculty and staff of such institutions	Period commencing on and from the 1st April, 2013 to 10th July, 2014.	*Notification No. 45/2016-ST dated September 30, 2016*

[Notification No. 42/2016-Service Tax, Dated: September 26, 2016 & Notification No. 45/2016-ST dated September 30, 2016]

CENTRAL EXCISE

6. Amendment in form A.R.E.-2 for claiming rebate on removal of goods for export

Central Government *vide Notification No. 44/2016-Central Excise (N.T.), Dated: September 16, 2016* has amended the conditions and procedure for rebate of duty on excisable goods used in manufacture/processing of export goods (*Notification No. 21/2004- CE (N.T.) dated September 6, 2004*) thereby amending Form A.R.E 2. From now on there can be made a combined application for removal of goods for export under claim for rebate of duty paid on excisable materials used in the manufacture and packing of such goods and removal of dutiable excisable goods for export under claim for rebate of finished stage Central Excise Duty or under bond without payment of finished stage Central Excise Duty leviable on export goods.

[Notification No. 44/2016-Central Excise (N.T.), Dated: September 16, 2016]

7. Supply of goods from EOUs without payment of Duty against Advance Licence

Presently exemption from excise duty on inputs is denied in cases where goods cleared into DTA are either non-excisable or in case of imports attract nil rate of Customs duty and additional Customs duty, when goods manufactured by EOU are supplied to Advance Licence/Authorisation holder in DTA.

Central Government *vide Circular No. 1046/34/2016-CX, Dated: September 16, 2016* has clarified that manufactured goods supplied by EOU to an Advance Licence/Authorisation Holder would be exempt from Excise Duty.

Now, clearance from EOU or DTA unit to Advance Licence/Authorisation holder has been allowed without payment of Central Excise duty, as both the cases are of "Import substitution." In case of supply of goods to Advance Licence/Authorisation holder, the export obligation is cast upon person holding Advance Licence/Authorisation and in case of default in export obligation recovery from the person holding Advance Licence/Authorisation is provided for in law.

[Circular No. 1046/34/2016-CX, Dated: September 16, 2016]

8. Rebate of duties paid on raw materials used in manufacture or processing of export goods and admissibility of duty drawback

Assessees have been facing difficulty in simultaneously availing drawback of Customs portion and rebate of duties of excise on raw material used in the manufacture or processing of goods exported.

In this regard, Central Government *vide Circular No. 1047/35/2016-CX, Dated: September 16, 2016* has provided the following:

i) Where in respect of exports, CENVAT credit is not availed on inputs but input stage rebate on excisable goods except diesel is availed under rule 18 of the Central Excise Rules, 2002, drawback of Customs portion, as per rates and caps specified in drawback schedule will be admissible;

ii) Where in respect of exports, CENVAT credit is not availed on inputs but the inputs except diesel, are procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, drawback of

Customs portion, as per rates and caps specified in the drawback schedule will be admissible;

iii) Where in respect of exports, input stage rebate on diesel under rule 18 of Central Excise Rules, 2002 is availed or diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, no drawback under the drawback schedule will be admissible.

   a) Divisional Assistant/Deputy Commissioner, Central Excise, while sanctioning the rebate claim should verify this aspect and in case of availment of any drawback, where input stage rebate on diesel under rule 18 of Central Excise Rules, 2002 is also availed will deny the claim of rebate involved on diesel out of the rebate claimed, for violation of the declaration (d) of the ARE 2.

   b) In cases where diesel is procured without payment of Central Excise duty under sub-rule (2) of rule 19 of Central Excise Rules, 2002, and the goods are exported under claim of drawback the Central Excise duty involved on diesel will be recovered for violation of the declaration (d) of the ARE 2, while examining the proof of export.

[Circular No. 1047/35/2016-CX, Dated: September 16, 2016]

9. No Photocopies of Railway Receipts required to be submitted with STTG Certificate for Claiming CENVAT Credit

Central Government *vide Notification No. 45/2016-CE (N.T.) dated 20.09.2016* has amended Rule 9 of CENVAT Credit Rules, 2004 and provided that the requirement of enclosing photocopies of the railway receipts (RRs) with the STTG certificate, as a document for availing CENVAT credit has been done away with. Only a Service Tax Certificate for Transportation of goods by rail issued by the Indian Railways would suffice for claiming the credit.

Further, Central Government *vide Circular No. 1048/36/2016-CX, Dated: September 20, 2016* has prescribed the detailed procedure for availing CENVAT credit of service tax paid on transportation of goods by rail.

[Notification No. 45/2016-CE (N.T.) dated 20.09.2016 & Circular No. 1048/36/2016-CX, Dated: September 20, 2016]

Legal Update

10. Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016-Security Bond Again Permitted

AS per Rule 4(5) of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable and Other Goods) Rules, 2016, (*Notification No. 20/2016-CENT, dated 01.03.2016*), the applicant manufacturer was required to execute a general bond with surety or security. The words "or security" were later removed *vide Notification No. 22/2016-CENT, dated 15.03.2016* and only surety was required to execute a general bond.

Now, Central Government *vide* Notification No. 46/2016-CE(NT) dated 26.09.2016 has again added the words "or security" getting the situation back to starting point i.e. the applicant manufacturer is required to execute a general bond with surety or security.

[Notification No. 46/2016-CE(NT) dated 26.09.2016]

11. Adjudication Powers vested to Audit Commissioners etc.

Central Government vide *Notification No. 47/2016-Central Excise (N.T.), Dated: September 28, 2016* has vested the specified Central Excise Audit Officers with powers of Central Excise Officers for the purpose of adjudication in addition to their existing powers for the purpose of Audit and issue of Show Cause Notices conferred *vide Notification No. 30/2014-CENT, dated 14.10.2014.*

[Notification No. 47/2016-Central Excise (N.T.), Dated: September 28, 2016]

12. Revised Monetary Limits for adjudication of Show Cause Notice in Central Excise and Service Tax

Central Government *vide Circular No. 1049/37/2016-CX, Dated: September 29, 2016* has supressed specified circulars (8 in total) and revised the existing monetary limits for adjudication so as to allow a greater flexibility in allocation of cases amongst adjudicating authorities.

Henceforth, powers of adjudication both in Central Excise and Service Tax will be exercised, based on the following monetary limits of the duty/ tax/credit involved in a case:

Sl. No.	Central Excise Officer	Monetary Limits of duty/ tax/ credit demand for Central Excise and Service Tax
1.	Superintendent	Not exceeding ₹10 lakh
2.	Deputy/ Assistant Commissioner	Above 10 lakh but not exceeding ₹50 lakh
3.	Additional/ Joint Commissioner	Above ₹50 lakhs but not exceeding ₹2 Crore
4.	Commissioner	Without limit i.e. cases exceeding ₹2 Crore

However, cases involving taxability, classification, valuation and extended period of limitation will be kept out of the purview of adjudication by Superintendents. Such cases, upto ₹10 lakh, will also be adjudicated by the Deputy Commissioner/ Assistant Commissioner in addition to the cases exceeding ₹10 lakh but not exceeding ₹50 lakh.

For special category cases following monetary limits have been prescribed:

a) Cases of refund (including rebate) will be adjudicated by the Deputy Commissioner/ Assistant Commissioner without any monetary limit.

b) Cases relating to appeals to the Appellate Tribunal regarding loss of goods,
  - where the loss occurs in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage, whether in a factory or in a warehouse or
  - credit of any duty allowed to be utilised towards payment of excise duty on final products under the provisions of this Act or the rules made thereunder and such order is passed by the Commissioner (Appeals) on or after the date appointed under section 109 of the Finance Act, 1998

Sl. No.	Central Excise Officer	Monetary Limits for Central Excise
1.	Additional/Joint Commissioner	Exceeding ₹50 lakh.
2.	Deputy/Assistant Commissioner	Above ₹10 lakh but not exceeding ₹50 lakh
3.	Superintendent	Not exceeding ₹10 lakh

c) In case different show cause notices have been issued on the same issue answerable to different adjudicating authorities, Show Cause Notices involving the same issue shall be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of duty.

d) Every adjudicating authority of Central Excise and Service Tax in the field will endeavour to adjudicate 100 cases in a year.

e) Further, in view of huge pendency of adjudication of Service Tax cases at the level of Commissioner, the Service Tax cases will be earmarked to Commissioners of Central Excise and Commissioners (Audit) of Central Excise also, depending upon the pendency level in the Zone.

f) In all cases where the personal hearing has been completed, orders will be passed by the adjudicating authority before which the hearing has been held. Such orders should normally be issued within a month of the date of completion of the personal hearing.

g) Cases which have been remanded back for de novo adjudication will be decided by an authority of the rank which passed the said remanded order.

The Chief Commissioners concerned are directed to ensure that once the Show Cause Notices pending for adjudication are re-distributed and re-assigned, the pending cases are to be disposed by March 31, 2017.

[Circular No. 1049/37/2016-CX, Dated: September 29, 2016]

CUSTOMS

13. Discontinuation of practice of making manual debits on physical copy of Advance Authorisations registered at EDI Customs port - CBEC Instruction

Presently for Advance Authorisations registered electronically at EDI Customs location i.e. where electronic ledger gets maintained, the physical authorisations are simultaneously issued and presented. These authorisations are endorsed by Customs with manual debits of usage and this practice is not uniformly followed at all EDI ports of registration. Such manual endorsements replicate work, cause delay, and at times also lead to errors, all of which impose transaction costs on trade.

In this regard, Central Government, as a measure of enhancing the ease of doing business for exporters, has provided that the practice of evidencing debits manually on physical copy of Advance Authorisation will now be discontinued with respect to future authorisations electronically registered at Customs EDI locations. Henceforth, the officer examining the imported goods and/or giving Out-of-Charge order will also re-check that the proper debit of the authorisation in the EDI system has been made.

Further, in case the Commissioner of Customs at port of EDI registration of advance authorisation decides to permit clearance manually at the time of an EDI breakdown it may take suitable safeguard and also ensure subsequent entry of debits on EDI for proper accounting.

[Instruction F.No.605/30/2015-DBK Dated: 28.09.2016]

14. Gold Included for Immediate Prosecution

Detailed guidelines for launching of prosecution in relation to offences punishable under Customs Act, 1962 have been provided *vide Circular No. 27/2015-Customs dated 23.10.2015*.

Central Government *vide Circular No. 46/2016-Customs, Dated: October 04, 2016* has amended the aforesaid circular to include Gold among items in relation to which prosecution may preferably be launched immediately after issuance of show cause notice.

[Circular No. 46/2016-Customs, Dated: October 04, 2016]

15. Foreign Post Offices Notified As Customs Stations

Central Government *vide Notification No. 125/2016-Customs (N.T), Dated: October 13, 2016* has notified the Sub-Foreign Post offices at Vijayawada, Leh and Hyderabad as Land Customs Stations for the clearance of all goods or any class of goods imported or exported by land.

[Notification No. 125/2016-Customs (N.T), Dated: October 13, 2016]

16. Rationalisation of procedures in handling exporters obligations under EPCG authorisations

At present, the correctness of the installation certificates issued by Chartered Engineers are to be verified on random basis in at least 5% cases through the Central Excise Division. The Central Government has decided that this verification be restricted to 5% cases.

In the *Circular No. 5/2010-Cus., dated 16-3-2010*, it was prescribed that first block EO (export obligation) should be verified in detail and if it has been found satisfactory then EODC issued at end of second block should be accepted without further verification.

Central Government has now provided that Customs authorities need not replicate the verification of export obligation of the first block that is being conducted by Regional Authorities and that the EODCs received under EPCG Scheme in terms of FTP/HBP 2004-09, 2009-14 and 2015-20 be normally accepted without further verification, except in 5% cases where they be verified in detail before acceptance.

Central Government has directed Commissioners to ensure transparent random selection criteria and selection for 5% check being made at least at Joint/ Additional Commissioner level and the relevant exporter being invariably informed, on the date of selection itself, via official email communication that its case is selected for detailed checks. Credibility and transparency may be brought into the Bond cancellation process which may be made speedier. The exporter should not be asked to routinely produce information that can be sourced from the Customs EDI system.

[Instruction F.No.605/71/2015-DBK, dated: 14.10.2016]

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

A. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2016

Notification No. FEMA.375/2016-RB dated September 09, 2016

The Reserve Bank of India hereby makes the following amendments in the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000 (Notification No. FEMA. 20/2000-RB dated 3rd May 2000) namely:-

Amendment to Schedule 1

In Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, (Notification No. FEMA 20/2000-RB dated 3rd May 2000), in Schedule 1, in Annex B, Paragraph F.8 shall be substituted by the following, namely:-

F.8	**Other Financial Services**		
	Financial Services activities regulated by financial sector regulators, viz., RBI, SEBI, IRDA, PFRDA, NHB or any other financial sector regulator as may be notified by the Government of India.	100%	Automatic
F.8.1	**Other Conditions**		
	i. Foreign investment in 'Other Financial Services' activities shall be subject to conditionalities, including minimum capitalisation norms, as specified by the concerned Regulator/Government Agency. ii. 'Other Financial Services' activities need to be regulated by one of the Financial Sector Regulators. In all such financial services activity which are not regulated by any Financial Sector Regulator or where only part of the financial services activity is regulated or where there is doubt regarding the regulatory oversight, foreign investment up to 100% will be allowed under Government approval route subject to conditions including minimum capitalisation requirement, as may be decided by the Government. iii. Any activity which is specifically regulated by an Act, the foreign investment limits will be restricted to those levels/limit that may be specified in that Act, if so mentioned. iv. Downstream investments by any of these entities engaged in "Other Financial Services" will be subject to the extant sectoral regulations and **provisions of Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000, as amended from time to time.”**		

B. Import Data Processing and Monitoring System (IDPMS)

A.P. (DIR Series) Circular No. 05 dated October 06, 2016

In order to enhance ease of doing business and facilitate efficient data processing for payment of import transactions and effective monitoring thereof, Import Data Processing and Monitoring System (IDPMS) has been developed in consultation with the Customs authorities and other stakeholders. The details of IDPMS were advised to the AD Category-I banks vide above mentioned *A.P. (DIR Series) Circular No.65 dated April 28, 2016* and banks were requested to be ready with the required IT changes in their system to generate/submit the data under IDPMS as per specified message format and technical specification.

Banks are advised that IDPMS will go live with effect from October 10, 2016 and are directed to use IDPMS for reporting and monitoring of the import transactions.

C. Investment by Foreign Portfolio Investors (FPIs) in Government Securities

A.P. (DIR Series) Circular No. 04 dated September 30, 2016

The limits for investment by foreign portfolio investors (FPI) in Government securities were last increased in terms of the Medium Term Framework (MTF) announced *vide A.P. (DIR Series) Circular No. 55 dated March 29, 2016.*

As announced in the MTF, the limits for investment by FPIs in Central Government Securities for the next half year are proposed to be increased in two tranches, each of ₹100 billion from October 3, 2016 and January 2, 2017 respectively.

As in the previous half-year, the limits for State Development Loans (SDLs) are proposed to be increased in two tranches, each of ₹35 billion, from October 3, 2016 and January 2, 2017 respectively.

The total increase in limits over the next two quarters would, accordingly, be as under:

INR Billion					
	Central Government Securities			State development Loans	Aggregate
	For All FPIs	Additional for Long Term FPIs	Total	For all FPIs (including long terms FPIs)	
Existing Limits	1440	560	2000	140	2140
Revised Limits with effect from October 3, 2016	1480	620	2100	175	2275
Revised Limits with effect from January 2, 2017	1520	680	2200	210	2410

As regards the transfer of unutilised portion of "Long Term FPI" category to "All FPIs" category, a separate communication will follow. All other existing conditions, including the security-wise limits, investment of coupons being permitted outside the limits and investments being restricted to securities with a minimum residual maturity of three years, will continue to apply.

(Matter on Corporate Laws has been contributed by CA. Rahul Joglekar)

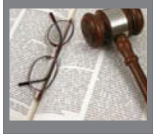
RBI (www.rbi.org.in)

RBI Circular no. FIDD.CO.Plan.CO.BC. No.17/04.09.001/2016-17 dated 6th October 2016- Priority Sector Lending-Revised Reporting System

RBI has notified the said circular dealing with reporting system for priority sector advances. Revised formats for quarterly and annual reporting by Banks have been prescribed. For complete text of the circular, please refer the link: https://rbi.org.in/Scripts/NotificationUser.aspx?Id=10634&Mode=0 ■

Legal Decisions[1]

DIRECT TAXES



Income Tax

LD/65/44

Jindal Steel and Power Ltd.

vs.

Pr. Commissioner of Income Tax

21st September, 2016

Section 220: When tax payable and when assessee deemed in default.

Order u/s 220(6) granting partial stay of demand to assessee company, modified by HC; AO is not entitled to adjust 'any refunds' arising to assessee against total demand, and adjustment can be only to the extent of the amount required for granting stay; Office Memorandum ('OM') dated February 29, 2016 issued by CBDT relied upon by HC.

The claim of deduction u/s 80IA was rejected by the Ld. A.O. during reassessment proceedings. The assessee sought stay of recovery of the total demand u/s 220(6) of ₹277 crore till the disposal of its appeal before CIT(A) subject to its paying a 15% of the total demand. The Prin. CIT granted the assessee with a stay subject to its depositing ₹41.64 crore which constituted 15% of total demand. Further, the assessee requested for adjusting a refund of ₹15.14 crore in respect of AY 2008-09 against this ₹41.64 crore, which request was accepted and so the assessee was accordingly directed to pay the balance amount of ₹26.18 crore in varying installments. The order of Prin. CIT permitted the AO to adjust any refund which may arise in favour of Assessee Company in any AY. As per the assessee's interpretation, this right to adjust the refund was limited to the amount of ₹41.64 crore directed to be deposited as a condition of stay. The authorities interpreted this order to authorise them to adjust any refund against the total tax demand of about ₹277 crore. The assessee therefore sought a clarification application of Prin. CIT's order. The Prin. CIT rejected this application seeking clarification, and relying upon the instructions dated February 02, 1993 issued by the CBDT, which stated that AO/Department may reserve the right to adjust the refund against demand.

Aggrieved, the assessee filed a writ petition before P&H HC. HC observed that instruction no. 1914 dated February 2, 1993 provided that in granting a stay, the Assessing Officer may impose such conditions as he may think fit and that he may reserve a right to adjust the refund arising, if any, against the demand. However, recent Office Memorandum dated February 29, 2016 issued by CBDT in partial modification of earlier Instruction No. 1914, entitles the Assessing Officer to reserve the right to adjust the refunds arising *"to the extent of the amount required for granting stay"*.

HC observed that the dispute was not regarding the grant of partial stay subject to paying 15% of outstanding demand, but was regarding the last sentence of order which entitled the AO *"to adjust any refund which may arise in favour of the assessee company in any assessment year"*.

HC observed that the Office Memorandum dated February 29, 2016 was issued as partial modification of the Instruction No 1914. HC held that *"Instruction No. 1914 dated 02.02.1993 as clarified by Instruction No.1914 dated 21.03.1996 must, therefore, be read together with the Office Memorandum dated 29.02.2016"*.

HC analysed the Office Memorandum dated February 29, 2016 issued by CBDT. HC held that the assessee's case would not fall under clause 4(B)(A) which gives the authority to administrative Pr CIT/CIT to decide quantum of demand to be paid for availing stay if the payment of more than 15% is warranted; and Clause 4(A) states that where the outstanding demand is disputed before the CIT(A), the AO 'shall' grant a stay of the demand on payment of 15% of the disputed demand unless the case falls in Clause 4(B).

HC observed that clause 4(E)(iii) which entitles AO to impose conditions as he thinks fit before granting stay, also entitles AO to reserve the right to adjust the refunds arising *"to the extent of amount required for stay.."* HC thus held that the right to adjust the refund is limited to the amount to be deposited by the assessee as a condition for the stay. HC thus held that the Prin. CIT's order entitling AO to adjust any refund against the entire tax demand would be contrary to the instructions of the CBDT contained in the Office Memorandum dated February 29, 2016.

[1] *Contributed by CA. Sahil Garud, Indirect Taxes Committee, CA. Mandar Telang and ICAI's Editorial Board Secretariat.*
Readers are invited to send their comments on the selection of cases and their utility at eboard@icai.in. For full judgement, write to eboard@icai.in

LD/65/45
Sunil Kumar Gupta
vs.
Asst. Commissioner of Income Tax
27th September, 2016

Section 23: Annual value how determined

Maintenance charges paid by sub-sub-licensee directly to the builder forms part of sub-licensee assessee's rent for the purpose of computing property's annual letting value u/s 23

The assessee is a sub-licensee of an apartment admeasuring 367 sq. feet in a commercial building. The assessee entered into a sub-sublicense agreement dated 03.05.2000 with one M/s RSM & Company. For AY 2002-03, the Revenue held that maintenance charges constitute rent u/s 23. As per the agreement, the sub-sub-licensee was supposed to pay to the assessee the maintenance charges.

The CIT (A) and ITAT ruled in favour of Revenue holding that maintenance charges payable by the sub-sub-licensee directly to the builder constituted rent. Aggrieved, the assessee filed an appeal before P&H HC.

HC stated that maintenance charges must form a part of the rent. As per Sections 22 and 23, the ambit of the term "rent" was wide enough to include *"any amount which is paid in consideration of the property being let"*. HC also noted that maintenance charges were payable by the sub-sub-licensee to the assessee based on the understanding between the parties and not pursuant to the agreement.

HC observed that if the maintenance charges are not included in the rent, it would enable an assessee to avoid paying tax on the true annual value of the property. Further, if maintenance-charges are not included as a part of rent, the assessee would be enabled to undervalue property's ALV for the purpose of Section 23 by the simple expedient of providing for the payment of the maintenance charges *etc.* and the rent separately.

Under Section 23(1) for the purpose of Section 22, the annual value of the property shall be deemed to be the sum for which the property might reasonably be expected to let from year to year. The amount of rent would also be dependent upon the common facilities of a building. The better the facilities, qualitatively and/or quantitatively, the higher the rent. It can hardly be suggested that the annual value of a property which provides several common amenities such as a swimming pool, gymnasium, security car, parking and elevators would be the same as the annual value of a property in the same area but without these facilities. The actual rent received would be much higher where the facilities are better. HC remarked that *"Where the agreement provides that the owner shall pay the amounts for the common facilities, maintenance charges, outgoings etc. it is obvious and reasonable to presume that the same is factored into the rent, fee or compensation payable by the lessee or the licensee."*

HC thus held that if the maintenance charges *etc.* are stipulated to be payable by the licensee or the lessor, it must form a part of the rent for the purpose of computing the annual value of the property.

HC thus dismissed the assessee's appeal.

LD/65/46

Jamnalal Sons Limited.

vs.

The Commissioner of Income Tax

27th September, 2016

Section 45: Capital gains

Capital contribution in the form of immovable properties, stocks and shares by assessee-company to a partnership-firm is not a taxable transfer u/s 45 for AY 1980- 81; Since computation mechanism was introduced w.e.f. AY 1988-89 (vide introduction of sub-section (3) to Section 45), capital gains earned by assessee cannot be determined in terms of Sec 48 in the relevant AY.

The assessee was a company involved in investment business. The assessee decided to commence a new business of trading in immovable properties, shares and securities, and therefore converted certain plots of land and shares held as investments into its stock-in-trade. Subsequently, the assessee entered into a new partnership firm [called as Bajaj Trading Company], with six other partners. The assessee contributed immovable property, shares and cash as part of its capital contribution. The AO held that transfer of immovable property and shares and securities into the firm resulted in long term capital gains of ₹1.19 crore.

The CIT (A) and ITAT ruled in favour of Revenue. The ITAT stated that the effect of all the transactions taken together was that the assessee was able to transfer its land to another entity i.e. partnership firm and received the market value of the same without having paid any tax. Aggrieved, assessee approached the Bombay HC.

HC placed reliance upon SC ruling in the case of *Sunil Siddharthbhai vs. CIT* and observed that this issue was not *res integra*. HC held that there arose a transfer of a capital asset when the applicant company introduced its immovable property, shares and securities as its contribution to the capital of the partnership firm.

HC observed that as per the then prevailing law, such a transfer of the capital asset by the applicant assessee by way of its capital contribution to the partnership firm did not give rise to receipt of any determinable consideration to the transferor as contemplated in Section 48 of the Act. HC observed that the SC in case of Sunil Siddharthbhai had relied on earlier ruling in the case of *CIT vs. B.C. Shrinivasa Shetty* to hold that where computation provision fails then the charging section cannot be invoked. SC had also held that the credit entry in the partners' capital account is merely a notional value and not a true value, making it intricate to deduce the share of partner at retirement/dissolution of the firm.

HC noted that sub-section (3) to Section 45 was introduced w.e.f. AY 1988-89 i.e. after the year under appeal. HC thus held that *"it cannot be said that any particular consideration is received by a partner on making contribution of a capital asset into a partnership firm. Consequently, the capital gains earned by the applicant assessee cannot be determined in terms of Section 48 of the Act."* HC noted that Section 45(3) was specifically introduced to overcome SC decision in Sunil Siddharthbhai. HC also rejected Revenue's plea that sub-section (3) of Section 45 was clarificatory and so retrospective.

HC also analysed the possibility of assessee selling the assets soon after transfer or the probability of firm having no substantial business which would require capital contribution of assessee, in order to evade tax. HC observed that the firm still existed as a fully functional firm and was duly assessed for tax, which fact defied the test of construction of firm to merely evade tax.

Referring to ruling in case of *Vodafone International vs. Union of India*, HC remarked that *"the investment made in it, cannot be a device when seen in the light of the subsequent conduct of the partnership firm of dealing in immovable properties, stocks and securities as its stock-in-trade for the subsequent years".*

HC thus held that transfer of capital asset by way of introduction as capital in new partnership firm did not result in capital gains and so and tax thereon. Thus, HC ruled in the assessee's favour.

LD/65/47

Shivinder Singh Brar, Karta HUF

vs.

Central Board of Direct taxes

28th September, 2016

Section 54F: Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house

CBDT order rejecting grant of time-limit extension for claiming 54F deduction, upheld; Assessee could have applied for relaxation for claiming the benefit u/s 54F only within the time prescribed under that section and that too, if before making such claim, the assessee had complied with the required conditions to claim such deduction

The Assessee is a *karta* of HUF which sold 4 canals of land for a consideration of ₹2.25 crore in AY 2012-13. The assessee deposited such amount under the capital gains tax scheme, 1988 by way of a fixed deposit in the State Bank of Patiala on 28.07.2012. Further, the assessee also owned 27 *kanals* 16 *marlas* on which a residential house was intended to be constructed, but the same could not be done due to interim orders granted by the HC and SC prohibiting any construction in that area in which these lands were situated. Consequently, the assessee was precluded from constructing the residential house, within the period of three years as per Section 54F.

The assessee therefore moved an application seeking condonation of delay and simultaneous grant of extension of time beyond the stipulated three years to raise the construction. CBDT rejected the assessee's application, concluding that it failed to demonstrate compliance with the conditions stipulated u/s 119(2)(c)(ii). Aggrieved, the assessee filed a writ petition before Punjab and Haryana HC.

Before the HC, the Revenue argued that powers of the CBDT u/s 119(2)(c)(ii) could be invoked only till the time that such deduction could be claimed u/s 54F [i.e. within 3 years from transfer of capital asset] and that the assessee could not seek extension of time to claim the deduction u/s 54F in perpetuity.

HC perused provisions of Section 54F and observed that if capital gains are not utilised, fully or partly for the purchase or construction of a residential house within 3 years from the date of transfer of the long term capital asset, then such unutilised amount ought to be charged u/s 45 as income of the previous year in which the period of three years from the date of transfer of the long term capital asset expires. Thus, the assessee could have availed benefit u/s 54F within three years of its sale i.e. up to 27/06/2014.

HC observed that Section 119(2)(c) would apply in cases where a genuine hardship was established by the assessee. HC noted that sub-clauses (i) and (ii) of Section 119(2)(c) are cumulative. HC further observed that the assessee had also failed to comply with requirements laid down thereunder.

HC stated that instant default in not constructing the house within a period of three years was not due to circumstances beyond the assessee's control. Section 54F requires the home to be constructed within a stipulated period. It does not require the home to be constructed on the assessee's other properties, even if he has any. As per HC, an assessee may be granted an extension for a reasonable period to construct his house on his property, but that cannot be for an indefinite period of time, and there could not be an inherent right to an extension of time in such circumstances.

As per Section 119(2)(c), CBDT has power to relax any requirement contained in any of the provisions of Chapter IV or Chapter VI-A to avoid genuine hardship where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder because of circumstances beyond the control of the assessee and where the assessee has complied with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed.

HC noted that the assessee did not comply with Secton 119(2)(c)(ii) and that the extension can be granted only if an assessee has complied with the requirements necessary to avail the benefit under Section 54-F before completion of assessment in relation to the previous year in which such deduction is claimed.

HC observed that the assessee had not fulfilled this condition even as on the date of petition before the HC. In this regard, the assessee submitted that it would be required to comply with the provisions u/s 54F only within the stipulated period commencing from the extended date granted under Section 119 (2) (c) (ii) of the Act. HC remarked that such a submission is based on the erroneous presumption that the words *"year in which such deduction is claimed"* means the year in which the assessee seeks and is granted extension. As per the HC, the words in fact mean the year in which the assessee is eligible to tax, which is AY 12-13 in this case. If such submission of the assessee is accepted, it would entitle an assessee to postpone the payment of capital gain tax indefinitely by making the application at any time and even repeatedly.

HC thus held that the assessee could have applied for relaxation for claiming the benefit u/s 54F only within the time prescribed under that section and that too, if before making such claim, the assessee had complied with the required conditions to claim such deduction. Thus, the HC opined that CBDT had rightly rejected the application of the assessee.

LD/65/48

Commissioner of Income Tax, Gandhinagar
vs.
Gujarat Industrial Investment Corporation
29th September, 2016

Receipts on account of interest on debentures, upfront fees and interest on deposits given to other corporations by assessee-company, not chargeable to tax under erstwhile Interest Tax Act, 1974;

Issues in the instant case were whether interest on debentures and upfront fees were taxable under the Interest Tax Act, whether interest liability was to be computed on net basis or gross interest basis under the same, and whether interest on monies lent to other corporations would attract the provisions of the said act.

Section 2(7) of the Interest Tax Act defines interest to mean interest on loans and advances made in India and also provides for certain inclusions and exclusions therefrom. HC as well as ITAT had held that investment in debenture could never be equated with the advancement of loans made in India. It was further held that even the legislature recognised the distinction between the loan and deposit and thereby excluded the interest earned by assessee on the deposits made with the Financial Institutions while computing the total chargeable income of the assessee.

Aggrieved, Revenue filed an appeal before SC.

SC observed that the definition of interest given u/s 2(7) of the Interest Tax Act, 1974 would have no application in the instant case.

SC therefore dismissed Revenue's appeal.

Transfer Pricing

LD/65/49
CIT- II, Pune
vs.
PTC Software (I) P. Ltd
26th September, 2016

Comparable following different financial period was to be excluded as per unambiguous mandate of Rule 10B(4). ITAT's exclusion of comparables selected by TPO was a purely factual determination and Revenue was unable to show that ITAT's findings of fact were perverse in any manner.

The assessee is a wholly owned subsidiary of an American Company M/s. Para Metric Technology Corporation USA (holding company). The assessee is engaged in providing Information Technology (IT) services and IT enabled Services to its holding company. The assessee had adopted Transaction Net Margin Method (TNMM) for determining the ALP of the IT segment services and determined its PLI at 14.02% and computed the average profit margin of comparables as 10.70%. In respect of its IT segment, the assessee determined its PLI at 14.23% while the arithmetic mean of the PLI of comparable cases was 10.51%.

During the transfer pricing proceedings, the TPO conducted a fresh search for comparables and proposed upward adjustment of ₹10.38 crore which was confirmed by the DRP. Aggrieved, the assessee preferred an appeal before ITAT.

ITAT ruled in favour of the assessee. Aggrieved, Revenue preferred further appeal on grounds of selection of comparable companies.

1. <u>FCS Software Ltd and Compucom Software Ltd.</u>
   TPO had in his Transfer Pricing Study applied the filter of 25% in respect of related party transaction (RPT) as against the 10% adopted by the respondent assessee in its transfer pricing study. HC observed that this was a purely factual determination and the RPTs have to be considered in the context of total transactions and not by a conversion formula as adopted by the AO. The determination of percentage of RPT as adopted by ITAT was similar to the method adopted by the TPO in the earlier years. Identical method as directed in the case of M/s FCS Software Ltd. was also done in case of M/s Compucom Ltd. by the Tribunal, and that the Revenue has made no grievance in case of the impugned order to the extent of M/s. Compucom Ltd.
   Accordingly, HC held that this question was factual and did not give rise to any substantial question of law.

2. <u>KALS Information Technology Ltd. and Helios Matheson Information Technology Ltd.</u>
   These companies were functionally uncomparable to the assessee's IT segment services, since they were engaged in the business of selling of software products whereas the assessee was rendering software services to its holding company. For preceding AY 2006-07, TPO had found that KALS Ltd. and Helios & Matheson Ltd. were functionally not comparable with the assessee. In the absence of any change in the nature of activities carried out by KALS Ltd. and Helios & Matheson Ltd. in the subject AY, ITAT excluded these companies.
   HC remarked that since the findings of the Tribunal being one of the facts which had not been shown to be perverse, the question as proposed does not give rise to any substantial question of law.

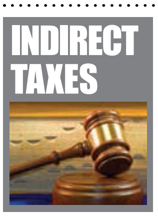
3. <u>Transwork Information Services Ltd.</u>
   The financial period of this comparable was from 1st July, 2006 to 30th June, 2007 whereas assessee's financial period was from 1st April, 2006 to 31st March, 2007. As per provisions of Rule 10B(4), the analysis for comparison shall be on the data relating to the financial year in which the international transaction has been entered into. ITAT therefore had excluded this comparable. HC held that the provisions of Section 10B(4) of the Rules are clear in as much as it obliges that the data to be used for comparability analysis should be of the same financial year in which the international transactions were entered into by the tested party. HC rejected Revenue's submission that mandate of Rule 10B of the Rules can be ignored as the difference is only of three months, stating that no such liberty is granted in terms of Rule 10B(4) of the Rules. HC thus dismissed this question.

4. <u>Vishal Information Technologies Pvt. Ltd [VITPL].</u>
   This company was functionally different as it was engaged in IT enabled services and

also in providing agency services by way of outsourcing services to third party vendors. ITAT had held that the functional profile of Vishal was different from that of the assessee, and also that Vishal had entered into RPT at 86% i.e. far in excess of 25% filter. Revenue argued before HC that VITPL was excluded on the basis of RPT filter without considering the fact that the notes to the account were incomplete. HC however observed such argument was not made before ITAT and also that Revenue had made no such submission with regard to percentage of RPT undergoing a change if the notes to accounts are considered in their entirety.
HC thus held that this question did not give rise to any substantial question of law.

5. Vishesh Infotechnics Ltd.
HC observed that ITAT order rendered a finding of fact that the services rendered by M/s. Vishesh Infotechnics were inherently different from the nature of services being rendered by the assessee. HC therefore held that this question did not give rise to any substantial question of law.

6. Galaxy Commercial Ltd.
This company was accepted as comparable on account of being functionally similar. Galaxy Commercial had earned income from transportation business, but it was merely 7% while the income earned from BPO operations was 87%. Since ITAT had ruled in favour of assessee on facts, HC held that this question did not give rise to any substantial question of law.
Accordingly, HC dismissed Revenue's appeal on grounds as dealt above.



Service tax

LD/65/50
Commissioner of Central Excise and Service Tax,
vs.
Jaikumar Fulchand Ajmera
09th March, 2016

Individual truck-owner transporting goods for public distribution are excluded from purview of tax u/s 65(105)(zzp) r/w Section 65(50b) of Finance Act, viz. "goods transport agency.

The assessee had been retained by District Supply Office ('DSO'), Osmanabad to move food grains and other goods in the operation of public distribution system ('PDS') and received a sum of ₹11.97 crore between January 2005-August 2009 on which tax of ₹34.82 lakh was confirmed as due as provider of 'goods transport agency' service.

The Commissioner (Appeals) held that individual truck owners were not providers of 'GTA service' and relying on ruling in *Commissioner of Central Excise & Customs, Guntur vs. Kanaka Durga Oil Products Pvt. Ltd.* [2009(15) STTR 399 (Tri- Bangalore)] set aside the demand. Aggrieved, the Revenue filed appeal before CESTAT. Revenue contended that said relied-upon decision was challenged before SC. It also contended that tax was leviable u/s 65(105)(zzp) of Finance Act for providing GTA service as defined in Section 65(50b) and that the recipient not being one of the entities listed in Rule 2(1)(d)(v) of Service Tax Rules, the service provider was liable to pay tax.

CESTAT perused the definition of GTA in Section 65(50b) and observed that the essential characteristic of service provider is the issuance of consignment note. Perusing the definition provided u/s 65(50b), CESTAT found that the essential characteristic of service provider is the issuance of consignment note. CESTAT remarked that *"Revenue had resorted to a circular logic by claiming that Rule 4B of Service Tax Rules requires GTA to issue consignment note. This according to us, is a specious line of reasoning as the provider of GTA being determined by issuance of consignment note under the statute, it is not within the ambit of subordinate legislation to create a class of taxable persons by imposing condition that would, perforce, bring such persons within the tax net. The intent and purpose of Rule 4B had been misinterpreted by the Reviewing Authority".*

CESTAT further held that decision in *Kanaka Durga Oil Products Ltd.* still prevailed, which excluded individual truck owner from the purview of tax in Section 65(105)(zzp).

CESTAT stated that goods transported by District Supply Officer (DSO) were for public service which involved a distribution chain. The distributors were mere designated outlets for PDS and till the transfer of title of goods to the intended beneficiaries of the system the goods were in possession of the DSO. Consequently, during the transportation stage, assessee does not acquire any lien on the goods which is implicit in the issue of consignment note. CESTAT therefore held that, by no stretch of imagination could the document issued by DSO conveying the goods transported be construed as consignment note to render assessee to be a GTA.

Accordingly, CESTAT rejected Revenue appeal for lack of merits.

LD/65/51
Union of India and Ors, vs. Mega Cabs P. Ltd.
26th September, 2016

Revenue's SLP is admitted by SC. Operation of Delhi HC judgment in case of Mega Cabs Pvt. Ltd. that struck down Rule 5A(2) of Service Tax Rules (as amended by December 2014 Notification) to the extent it empowered Service Tax Dept. officers, audit party deputed by Commissioner or CAG to seek production of Cost Audit / Income Tax Audit Reports on demand, is stayed;

In the case of the assessee, the Delhi HC had held that Rule 5A(2) exceeds the scope of the provisions under the Finance Act. This is the result whether Rule 5A(2) is tested *vis-a-vis* Section 72A of the Finance Act which pertains to special audit or Section 72 which pertains to assessment or Section 73 which pertains to adjudication or even Section 82 which relates to searches. HC had further held *"… under the garb of the rule making power, the Central Government cannot arrogate to itself powers which were not contemplated to be given it by the Parliament when it enacted the FA. This is an instance of the Executive using the rule making power to give itself powers which are far in excess of what was delegated to it by the Parliament"*. HC had further held that verification of the records can take place by the officers of the Department provided such officers are authorised to undertake an assessment of a return or of adjudication for the purposes of Section 73 of the Finance Act and it is not any and every officer of the Department who could be entrusted with the power to demand production of records of an Assessee.

HC had quashed CBEC Circular No. 995/2/2015-CX prescribing detailed norms to be followed by Audit Commissioners, stating that the Circular did not have any statutory backing under Finance Act and cannot be relied to legally justify audit undertaken by Service Tax Department Officers. HC had further noted that Circular or Manual could not travel beyond scope of the statute itself and struck down Circular No. 181/7/2014-ST which stated that legal backing for Service Tax Department Officers to conduct audit was available in terms of Section 92(4)(k).

Thus, HC had declared that Rule 5A(2) as amended in terms of Notification No. 23/2014-Service Tax dated 5th December 2014 of the Central Government, to the extent that it authorised the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand was *ultra vires* the FA and, therefore, struck it down to that extent.

Now, the SC has admitted Revenue SLP and stayed the operation of above Delhi HC judgment which struck down Rule 5A(2) of Service Tax Rules (as amended by Dec. 2014 notification) to the extent it empowered Service Tax Department officers, audit party deputed by Commissioner or CAG to seek production of cost audit/income tax audit reports on demand.

Note: The summary of Delhi HC ruling was reported at LD/65/12 in the August edition of the ICAI Journal.

LD/65/52
Concept Hydro Pneumatic (P.) Ltd. vs. Commissioner of Central Excise, Bangalore Commissionerate (Karnataka HC)
24th August, 2016

Delay in filing an appeal as a result of financial difficulty to make mandatory pre-deposit is condonable as it shows that assessee was prevented by sufficient reasons in not preferring the appeal.

Tribunal dismissed the appeal as time barred by not condoning the delay. Before the High Court, the appellant contended that, on account of financial constraints, it could not make payment of 10% of pre-deposit in time, which is pre-requisite for filing an appeal, and therefore, there had been a delay of 117 days in preferring the appeal. On merits, appellant contended that, it had an arguable case. The department resisted the aspects of condonation of delay on the ground when there was delay or-lapse on the part of the appellant in not putting the case before the Board of Directors and even after the knowledge, the appeal was not filed.

The Hon'ble Karnataka High Court held that ground of financial inability to pay mandatory pre-deposit, which is a pre-requisite for filing an appeal, can be considered as one of the valid grounds for accepting the contention that the appellant was prevented by sufficient reasons in not preferring the appeal. It further held that, in a given case, Court may decline to exercise discretion for condoning the delay, if, during the period of delay, the rights of the parties are substantially altered and/or irreversible situation is created, but no such circumstances exists in the present case. Having said so, the Court considered the aspect that declining the exercise of discretion for condonation of delay may result into grave injustice to the appellant and appellant would be deprived of the case to be considered on merits, more particularly, when no prejudice is going to be caused to the respondent-Department, since on the demand, the interest if ultimately is maintained, it is to follow. Under these circumstances, the High Court allowed the Appeal and directed restoration of appeal before the Tribunal on payment of nominal cost of ₹ 10,000.

....

LD/65/53
Pr. Commissioner of Service Tax, Delhi
vs.
T. T. Ltd.
(Delhi HC)
30th August, 2016

For the purpose of export incentives, when new services are added to parent notification by subsequent notifications issued on different dates, refund/exemption in respect of such new services has prospective effect i.e. only from date of subsequent notification.

Adjudicating authority has the primary jurisdiction to examine eligibility of refund claim even when the matter is remanded to him only for verification of refund claim vis-à-vis documents.

The *Notification No. 40/2007-ST*, dealing with refund to exporters in respect of certain input services, was issued on 17.09.2007 and it listed down 4 services. It was superseded by *Notification No. 41/2007-ST dated 06.10.2007* leading to inclusion of 12 services in base notification. Subsequently new services were further added to this list *vide Notification No. 3/2008 dated 19.02.2008, Notification No. 17/2008-ST dated 01.04.2008* and *Notification No. 33/2008-ST dated 07.12.2008*. Respondent, an exporter of manufactured cotton yarn, sought refund in terms of Notification No. 41/2007-ST as amended by later notifications issued in 2008. At the first instance, adjudicating authority rejected refund claim. On appeal, the First Appellate Authority remitted the matter to adjudicating authority, who then granted part refund. When respondent again preferred an appeal, the Commissioner in his order-in-Appeal dated 02.09.2011 held that substantial exports by respondent were eligible for service tax refund. However, the matter was remitted to adjudicating authority with specific direction to examine the relevant documents and co-relate them to check as to whether the assessee could claim the amount.

The Adjudicating authority in his order-in-original dated 06.11.2012 held that substantial portion of refund claim pertained to services which were not part of '2007 notifications' but that of '2008 notifications' and hence, respondent was not entitled to claim refund. Aggrieved by the order of adjudicating authority, respondent preferred appeal before the Tribunal. The Hon'ble Tribunal set aside the order of adjudicating authority by holding that adjudicating authority could not adjudicate upon the refund claim afresh and further, directed him to sanction the refund claim by verifying documents in terms of order of the commissioner dated 02.09.2011. The Hon'ble Tribunal also examined the correctness of reasons given by the Adjudicating authority on merits and held that, even otherwise since the base notification i.e. 41/2007 was amended and various services in respect of which refund was claimed by the assessee were in fact included, there was nothing expressly stated to prohibit their application for the periods in question.

Department challenged correctness of the Tribunal's order before the Hon'ble High Court. Before the Court respondent, the assessee contended that in the absence of any express stipulation in 2008 notifications stating that inclusion of new services should have prospective application covering future exports only, such amendment would take effect from date of base notification, and that inclusion of particular service in exemption notification is relevant and not the date of its inclusion. Respondent also urged that in rejecting the refund claim on new ground, adjudicating authority exceeded the scope of the remand given by order of Commissioner dated 02.09.2011 and thereby violated the law and hence, pleaded for sustaining order of the Tribunal.

The Hon'ble High Court held that the amendment in '2007 notification' i.e. base notification by subsequent '2008 notification' was expressly prospective as the wordings of '2008 notifications' clearly stated that they would come into force on the dates of their publication in the official gazette. The Hon'ble HC further held that a notification can be said to be clarificatory when base/original notification enunciates something leading to requirement of clarification. The Hon'ble HC distinguished the decision in cases of *WNS Global Services (P.) Ltd. vs. CCE [2008] 13 STT 37 (Mum.-CESTAT) and Commissioner of Central Excise vs. Sesa Goa Ltd. 2015 (321) ELT A66 (SC)*, which were relied upon by the respondent, by observing that facts of the present case are entirely different. It observed that the base notification included within its purview only certain specified services and not all and that inclusion of other services by way of three separate notifications on which were effective from different dates gives clear indication that subsequent notifications are not merely clarificatory, but seeks to expand the scope of base notification and thereby cannot be said to be effective from date of original notification.

As regards respondent's contention of adjudicating authority going beyond scope of remand, the Hon'ble HC noted that the fact that commissioner remitted the matter to adjudicating authority twice for verification shows that the scope of remand was widened, that since the exemption and refund applications are to be construed strictly and narrowly as affirmed by the Hon'ble Apex court in case of *CCE vs. Hari Chand Shri Gopal 2010* (260) ELT 3 (SC), in present case the adjudicating authority cannot be said to lack primary jurisdiction merely because of a circumscribed demand. Accordingly the matter was decided in favour of revenue by setting aside the Tribunal's order.

LD/65/54

M/s Marudhan Motors

vs.

Commissioner of Central Excise and Service Tax, Jaipur

29th July 2016

Prior to 01.04.2011, 'exempt service' as defined in Rule 2(e) of CCR, 2004 did not include 'trading activities' and therefore rule 6(3) of CCR, 2004 has no application in respect of credit of common input services used for providing taxable services as well as trading activities.

Appellant, apart from providing taxable services namely authorised service station, business auxiliary service and tour operator services, was also undertaking trading activities during the period 2005-2006 to 2009-2010. When appellant took cenvat credit of common input services used for providing both taxable services and trading activities, department disallowed such cenvat credit under Rule 14 of CCR, 2004, on the ground that trading activity would constitute 'exempted service' in terms of Rule 2(e) of CCR, 2004 and as such, in terms of Rule 6(3)(A) of CCR, 2004, appellant is required to maintain separate accounts or pay the amount towards provision of service of undertaking trading activity.

The Hon'ble Tribunal noted that Rule 2(e) of CCR, 2004 defines the term 'exempted service' to mean taxable services which are exempted from whole of service tax leviable thereon, and include services on which no service tax is leviable under Section 66 of the Finance Act, 1994. By an amendment to said definition of 'exempted service' *vide* Notification No. 3/2011-CE (N.T.) dated 01.03.2011, an explanation was added to the said rule, clarifying that exempted service includes trading. The Hon'ble Tribunal held that perusal of both i.e. amended and unamended provisions of exempted service reveal that activity of trading was not included within the ambit of definition prior to 01.04.2011, and since the amended definition of exempted service would not apply in present case, Rule 6(3) of CCR, 2004 should not have any application for taking cenvat credit of common input services used for providing taxable services and trading activity. Accordingly, order denying credit of common inputs was set aside.

LD/65/55

Federation of Hotels and Restaurants Association of India

vs.

Union of India

12th August 2016

High Court upholds the constitutional validity of Section 65 (105)(zzzzv) read with Section 66E (i), Section 65 (22) of the Finance Act 1994 as well as Rule 2C of the Service Tax (Determination of Value) Rules, 2006, but strikes down Section 65 (105) (zzzzw) of the Finance Act 1994 pertaining to levy of service tax on the provision of short-term accommodation and the corresponding instructions/circulars seeking to operationalise the levy as unconstitutional and invalid

In this Writ Petition, the petitioners challenged three things namely (i) the constitutional validity of Section 65 (105) (zzzzv) of the Finance Act 1994 (FA) whereby the provision to any person by a restaurant, by having the facility of air-conditioning in any part of its establishment serving food or beverage, including alcoholic beverages or both, in its premises has been made amenable to service tax. (ii) the constitutional validity of Section 65 (105) (zzzzw) of the FA whereby the provision by a hotel, inn, guest house, club or camp-site by whatever name called to any provision, accommodation for a continuous period of less than three months has been made amenable to service tax.(iii) constitutional validity of Section 66E(i) of the Finance Act 1994(from 01.07.2012) to the extent it seeks to constitute a service portion in an activity of supply of food or other articles as 'declared service' and consequently validity of Rule 2C of the Service Tax (Determination of Value) Rules, 2006.

The High Court first noted the legislative history of 46th Constitutional Amendment and observed that, Parliament inserted Article 366 (29 A) (f) by the 46th Amendment to the Constitution to overcome the decisions in *State of Himachal Pradesh vs. Associated Hotels of India* 2002-TIOL-65-SC-CT-CB and *Northern India Caterers (India) Ltd. vs. Lt. Governor* (1978) 4 SCC 36 & (1980) 2 SCC 16 and various other decisions. It further noted that, in para 13 of the Statement of Reasons for the 46th Amendment to the Constitution, it was observed that the *"proposed amendments would help in the augmentation of the State revenues to a considerable extent."* The High Court therefore expressed a view that, the focus of the said amendment was on ensuring that State sales tax was leviable on the portion of supply of food and drinks even where it was as a part of a composite catering contract. The focus at that stage was not on capturing any portion of that composite contract for the purpose of levy of service tax. This was 1982 and service tax was not thought of till a decade later. Therefore, the High Court expressed a view that, it is difficult to imagine that Parliament had in 1982 at the time of the 46th Amendment consciously decided that no portion of the composite contract of a catering contract would be amenable to levy of Union Service Tax.

While deciding the constitutional validity of "restaurant service" u/s 65(105)(zzzzv), the High court felt that, to examine the challenge, it is essential, to determine whether the composite catering contract is capable of being segregated into the portion pertaining to supply of goods and the portion pertaining to the service provided. After examining provision contained in Art.366(29A)(f) the Court held that, the subject matter of "transfer, delivery or supply" are the 'goods', which in this case would be food or any other article fit for consumption whether or not intoxicated. The key expression is not just 'supply' but 'supply of goods'. Explaining the "dominant intention test" emphasised in BSNL's case (2006) 3 SCC 1 and subsequently considered in L&T's case (2014) 1 SCC 708, the High Court expressed a view that, even if some part of the composite transaction involves the rendering of service, there should be no difficulty in recognising the power of the Union to bring to tax that portion. It also noted that, Section 66F(i) defines declared service to be only a 'service portion' in composite activity. As regards the decision of the Hon'ble Supreme Court in the case of *K. Damodarasamy Naidu vs. State of Tamil Nadu (2000) 1 SCC 521*, the Court held that, the said decision did not engage with the question whether the service element involved in the supply of food and drink would be amenable to service tax. The only question was whether the entire transaction was exigible to sales tax even where the supply of food and drink was in the course of providing a service and that question that was answered in the affirmative. Therefore the said decision is not an authority for proposition that in a catering contract, which is admittedly a composite contract, the service portion thereof cannot be made exigible to service tax levied by a Union legislation. The High Court, on the other hand relied upon decision in the case of *Tamil Nadu Kalyana Mandapam Association vs. Union of India AIR 2004 SC 3757*, to hold that, there is possibility of splitting up of the composite transaction into the provision of service element and the supply of food. Challenged to constitutional validity of Section 65(105)(zzzzv) was thus not accepted by the Court.

The Court further held that, as regards Section 66F(i), the legislative carving out of the service portion of the composite contract of supply of food and drinks has sound constitutional basis, and consequently the constitutional validity of Section 66F(i) was upheld.

As regards Rule 2C, the court held that, the said rule only enables the assessing authority to put a definite value to the service portion of the composite contract of supply of goods and services in an air-conditioned restaurant. Hence, the said ready reckoner formula is useful where an assessee does not maintain accounts in a manner that will enable the assessing authority to clearly discern the value of the service portion of the composite contract. However, when during the course of assessment proceedings an assessee is able to demonstrate, on the basis of the accounts and records maintained by it for that purpose, that the value of the service component is different from that obtained by applying Rule 2C the assessing authority would be obliged to consider such submission and give a decision thereon. The Court accordingly upheld the constitutional validity of Rule 2C.

While deciding the constitutional validity of "short term accommodation service" contained in Section 65(105)(zzzzw) the Court noted that, main contention of the Petitioners is that levy of tax on luxuries as contemplated under Article 246 read with Entry 62 of List II (State List) of the Constitution entirely covers the field and therefore, Parliament lacks the legislative competence to levy such service tax. The Hon'ble Court referred to the provisions of Delhi Tax Luxuries Act, 1996 and held that, the very same taxable event of providing service by way of accommodation in a hotel *etc.* is the subject matter of both levies viz., luxury tax under the Delhi Tax Luxuries Act and service tax under the Finance Act. The High Court relied upon the decision in the case of *International Tourist Corporation vs. State of Haryana*, in which it was held that, before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislative must be clearly established. The Court held that, the Delhi Tax Luxuries Act, 1996 which provides for levy of luxury tax on provision of the service of accommodation in a hotel *etc.* is traceable to Entry 62 of List II and the State is therefore competent to levy and collect luxury tax on such taxable event. The High court also noted decision in the case of *Godfrey Phillips India Ltd. vs. State of U.P., (2005) 2 SCC 515*. The High Court further observed that, levy also fails due to lack of machinery provision for levy and collection of tax on accommodation holding that there is no corresponding provision for determining the value of the service in the case of Section 65 (105) (zzzzw) of the Finance Act. The High Court accordingly, struck down Section 65 (105) (zzzzw) of the Finance Act 1994 pertaining to levy of service tax on the provision of short-term accommodation and the corresponding instructions/circulars seeking to operationalise the levy as unconstitutional and invalid

Excise

LD/65/56

Commissioner of Central Excise

vs.

Castings (India) Inc.

22nd August, 2016

Section 2(f): Definition of 'manufacture'.

De-coiling, straightening and cutting of TMT coils into TMT bars/rods does not amount to manufacture u/s 2(f) of Central Excise Act; Value addition in end product is also irrelevant since the same is due to various factors such as labour, customer satisfaction and demand in market, and so is conclusive factor for 'manufacture'. Mere applicability of different tariff rates does not mean that two products are essentially different.

The assessee, Castings India Ltd. [CIL] is a conversion/external processing agent of Tata Steel Limited [TSL] and performs the activities of processing TMT coils into TMT bars/rods after de-coiling, straightening and cutting into sizes for TSL, for a processing charge. Revenue issued Show Cause Notices (SCN) to assessees demanding payment of differential duty on account of substantial value addition to TMT bars considering the process undertaken by the assessee amounted to manufacture. The notice alleged that converting TMT coils into TMT bars results into an altogether different item falling within Sub-Heading 7213.90 of Central Excise Tariff Act, 1985 (CETA) and that TMT bars and TMT rods had been cleared from the factory of assessee without payment of central excise duty. Thus the Revenue alleged contravention of the provision of Section 4 and 6 of the Central Excise Act, 1944 and violation of Rules 4,6,8,9,10,11 and 12 of the Central Excise Rules, 2002 and since there was evasion of central excise duty for the different periods, the aforesaid show-cause notices were issued and they were held liable for payment of excise duty as well as the interest and penalty etc.

CESTAT allowed assessees' appeals aggrieved by which the Revenue approached the HC.

HC perused the definition of 'manufacture' u/s 2(f) of the Excise Act 1944 and observed that if no different and distinct article emerges having a distinct name, character and use, after the process applied upon the original product, there is no manufacturing at all. Commercially new and distinct articles ought to emerge out of the process applied.

HC observed that the test to ascertain whether a process amounts to manufacturing or not is to check whether change brought by the process causes the commodity to reach a point where commercially it can no longer be regarded as the original commodity, but, instead is recognised as a new and distinct article and that mere cutting or slitting of steel sheets does not amount to manufacture because the identity of the product remains unchanged as the steel folded in coil remains steel even after cutting and merely because of change in tariff item, the resultant product cannot be different and distinct commodity.

HC observed that there would be no manufacturing even though the process involves unwinding, cutting/slitting and packing, if the characteristics of the raw material and final product remain the same.

With respect to the process employed by the assessee of decoiling, straightening and cutting of TMT coils into TMT bars and rods, HC noted that for cutting TMT coils into bars and rods, de-coiling and straightening are must and therefore, the major question was whether cutting of TMT coil would result in manufacturing or not. HC observed that in various decisions, it has been held that cutting *per se* does not amount to manufacturing. Reliance was placed upon SC ruling in *Aman Marble Industries Pvt. Ltd. vs. Collector of Central Excise, Jaipur* [2003 (157) ELT 393 (SC)], wherein it was held that cutting and polishing stones into slabs did not result in any manufacture of new commodity and that the end product remains the same. Thus, HC observed that original identity of TMT coils also remains as it is even after being converted into TMT bars and rods.

HC rejected Revenue contention that there is value addition in the end product after the said conversion of TMT coils into bars and rods and hence, the same would be manufacture. HC observed that the value addition is on account of the labour put in the said process and not because of any change in the characteristic of the resulting commodity. HC placed reliance upon SC decision in *Satnam Overseas Ltd. vs. Commissioner of Central Excise* [2015 (318) ELT 538 (SC)], wherein it was observed that mere addition in value and ultimately even the market price after original product has undergone certain process would not bring it within 'manufacture' definition unless original identity also undergoes transformation and becomes distinctive and new product. HC also rejected Revenue's contention that since TMT coils and TMT bars/rods fall under different entries as per Schedule to Excise Act, the said process amounts to manufacture.

HC stated that merely because there is change in the tariff item for the end product, it does not become excisable as the product must be 'manufactured' and become marketable. HC relied on ruling in case of *Prabhat Sound Studios vs. Additional Collector of Central Excise* [1996 (88) ELT 635 (SC)] wherein it was held that although after recording the sound of magnetic cassettes, *etc*, the end product may be covered by another tariff entry, but, the process of recording of sound of such tapes does not amount to manufacturing and observed that only because raw material and final product fall under different headings, does not mean that it automatically amounts to manufacturing.

HC observed that the Revenue in the present case, had failed in discharging the burden of proving that the process employed by assessee amounted to manufacturing.

Accordingly, HC ruled in favour of assessees and dismissed Revenue appeals.

LD/65/57

M/s SRF limited

vs.

Commissioner of Central Excise, Chennai

30th August, 2016

Section 35G makes it clear that an appeal to High Court shall lie, provided it not being an order relating to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purpose of assessment; Madras HC refuses to entertain assessee's appeal.

Assessee is engaged in the manufacture of Nylon Filament Yarn, falling under Chapter 54 of the Central Excise Tariff Act, 1985. During the relevant period, the assessee, claimed exemption, under Central Excise Notification No.08/1996 dated 23/07/1996. The notification allowed exemption to Nylon Filament Yarn of 210 denier with ±4% variance. The test reports indicated that denier range of the yarn was above the permissible limit, under Notification No.08/96. Notice was issued by the Revenue demanding differential duty. The said duty was confirmed by Original Authority and Adjudicating Authority. Further the appeal filed by the assessee was rejected by the CESTAT. Being aggrieved the assessee has filed an appeal before the HC.

Revenue challenged the maintainability of petition before the HC in view of Section 35G of Central Excise Act 1944. Therefore, the issue before Madras HC was whether the appeal filed by the assessee under Section 35G of the Central Excise Act 1944 (Act) is maintainable when the same relates to the rate of duty of excise, as raised in the substantial question of law by the assessee. Revenue contended that mere perusal of the substantial questions of law would clearly show that the assessee has raised questions of law pertaining to the claim of exemption, under the Exemption Notification.

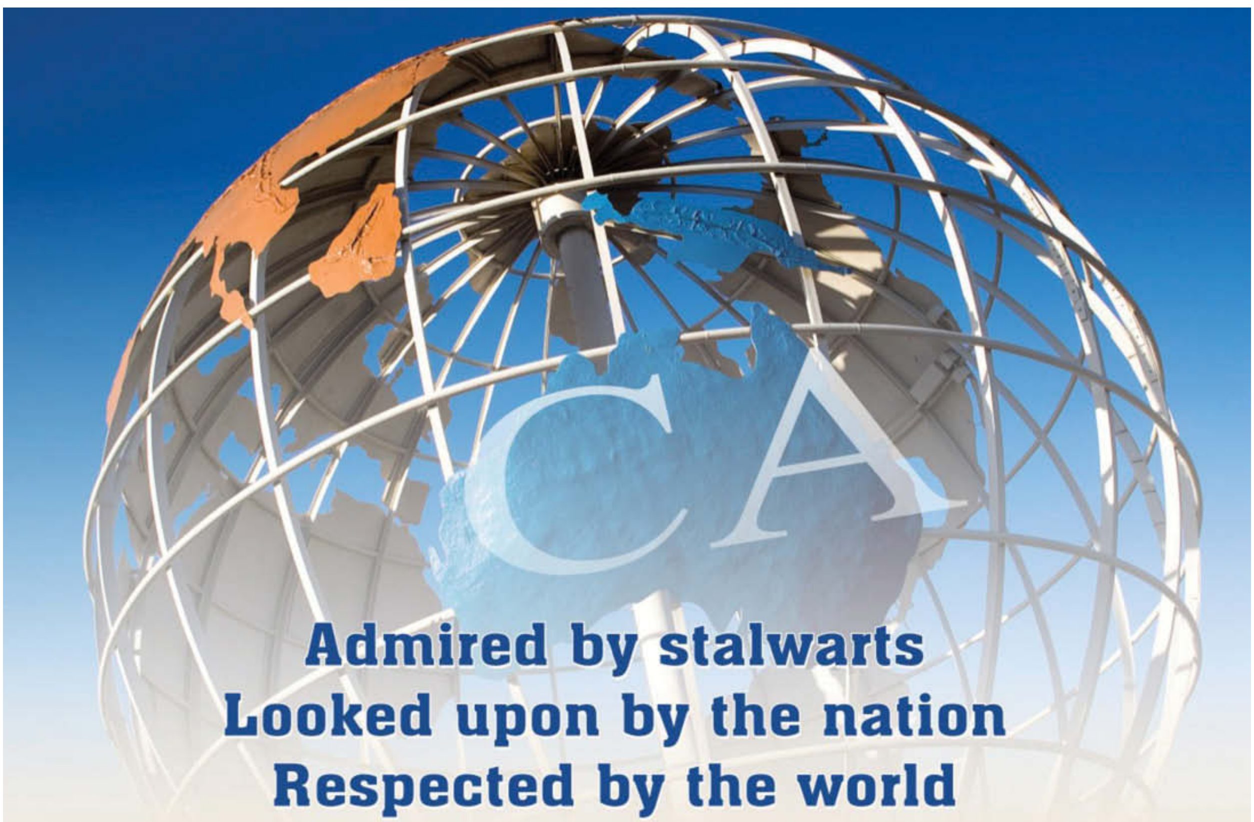
The Assessee contended that the test reports of the samples taken for one particular batch, cannot be applied for the yarn of the next batch, as the process parameters may vary for each batch. The Assessee also contended that the Revenue rejected the benefit of export, on the ground that the assessee was not able to prove that the twine exported is made out of the quantity of yarn produced during the relevant period. The Assessee further argued that rejection of the appellant's plea by the CESTAT, without considering the FIFO method was incorrect, as per the principles laid down, by the Hon'ble Supreme Court, in the case of *TELCO vs. Municipal Commissioner, [(1993) Suppl. (1) SCC 361].*

Revenue submitted that the test reports cannot be questioned since tests were repeated at the request of the assessee by getting the same tested at CRCL, New Delhi and similarly, at the request of the assessee samples were again tested at the National Test House, with regard to its tenacity and denier. Further, admittedly, the assessee had not intimated any process change to the department, whereby such reduction of denierage was recorded; especially when it is the case of the assessee that denierage is based on various factors, including the inputs used by them.

HC perused Section 35G and stated that as per the said section an appeal to HC shall lie, provided it not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for the purpose of assessment. In the instant case, the issue was related to the claim for exemption under the exemption notification, and whether it was applicable to the assessee or not. HC noted that the conditions in the exemption notification for the tolerance limit of nylon yarn were not fulfilled by the assessee. Therefore, any dispute relating to rate of duty could not be decided under Section 35G of the Act.

The Assessee had also submitted that appeal was pending for a period of 10 years, and therefore the same need not be dismissed now, for want of jurisdiction. HC stated that if the Court proceeds with the merits of the case, having no jurisdiction to entertain an appeal, then the judgment passed by the Court, would amount to nullity.

HC thus held that the substantial questions of law raised by the assessee relate to the rate of duty and hence stated that the appeal was not maintainable under Section 35G of the Act. ■



Don't wait. The time will never be just right. - Napoleon Hill

Accountants Crucial to Political Establishment in Policy Making

While the accountancy profession regularly calls upon governments around the world to adopt accrual accounting and stronger public financial management, we must remember that accountants are on the same page as politicians in terms of having a vision for affordable public services that support economic growth and tackle poverty. In every country and corner of the world, today's and future generations deserve effective education, public health programs, and living conditions that require the effective prioritisation and management of resources. Read on…

I strongly believe that the accountancy profession across the public and not-for-profit sectors is at the heart of making lives better. And the rewards of feeling you have made a difference vastly outweigh the extra complexities of delivering political mandates that must be assessed for social impact as much as fiscal rate of return.

The Chartered Institute of Public Finance and Accountancy (CIPFA)'s *Financial Management Model* has for many years set out a maturity model where we first ensure strong stewardship and good governance, secondly improve performance, and thirdly develop enhanced cross-cutting and soft skills that underpin transformation. We are all on this journey, and with governments generally representing 25%-75% of GDP, the stakes are high.

Rob Whiteman

(The author is Chief Executive, Chartered Institute of Public Finance and Accountancy. Comments can be sent at eboard@icai.in.)

As demonstrated by CIPFA's *Whole Systems Approach* many—including financial managers, auditors, regulators, standard setters, and decision makers—have a vital role to play, and no single player on its own can ensure strong public financial management. We have to build systems with the right roles and competencies.

Public expectations, of course, about the quality of public services are growing, and long lasting improvements are often being sought in accountability and transparency of the spending of public funds. Because of the scale, size, and complexity of the public sector, it can be hard for politicians to know where to begin, even though we often look to them to initiate reform.

Although the sovereign debt crisis and its aftermath provided a wake-up call, financial reform still isn't seen as a priority by some governments, where reporting is patchy and can lead to a lack of public trust and confidence from citizens and the business sector. At its worst, where systemic fraud and corruption goes unchecked, governments have difficulty attracting inward investment from the capital markets and donors.

But while the accountancy profession has a pivotal role to play in promoting and delivering strong public financial management in the public interest, we must get better at explaining how this benefits society. If we simply make it sound like a better process it will not win hearts and minds. Nor will we succeed if we simply lecture politicians or suggest that all the answers can be imported from elsewhere. We must respect local differences as well as build strong local institutions and solutions.

But while the accountancy profession has a pivotal role to play in promoting and delivering strong public financial management in the public interest, we must get better at explaining how this benefits society. If we simply make it sound like a better process it will not win hearts and minds. Nor will we succeed if we simply lecture politicians or suggest that all the answers can be imported from elsewhere. We must respect local differences as well as build strong local institutions and solutions.

Most of all, the profession can at times slip into the mistake of assuming that public services and governments are second best to the corporate sector and simply need to adopt its approaches. Elected politicians can easily interpret this as self-serving and it's not the right formula to gain influence.

What most sets political hearts fluttering is not better process but effective policy making. Policy decisions supported by robust financial information and analysis are more likely to succeed. The "golden thread" that links policy with resource deployment and public service outcomes is the most effective means to bring politicians on board because it is meeting their needs for the short, medium, and long-term.

The *Whole Systems Approach* also sets out that the financial literacy of parliamentarians is vital to facilitate the effective scrutiny of financial

A positive outcome of the Panama Papers scandal is that the accountancy profession is seen as stepping forward with constructive solutions. Politicians need our advice to curb offshore tax avoidance schemes and profit shifting tactics that, if left unchecked, will cause increasing public outrage as well as undermine public finance resilience.

Accountants in public service are never just there to make the numbers fit the policy aspiration. Speaking truth to power and never being afraid to do the right thing is as vital a part of our training scheme as it has always been. But, we need new skills too—not least data analytics, cyber, and value for money.

statements and programs. Legislatures often need to do more—for example, introduce development for new members to ensure oversight and challenge. If decisions become harder to agree on and are challenged and changed along the way by insights from citizens and politicians (both ministerial and scrutiny roles), then usually it means better decisions are made.

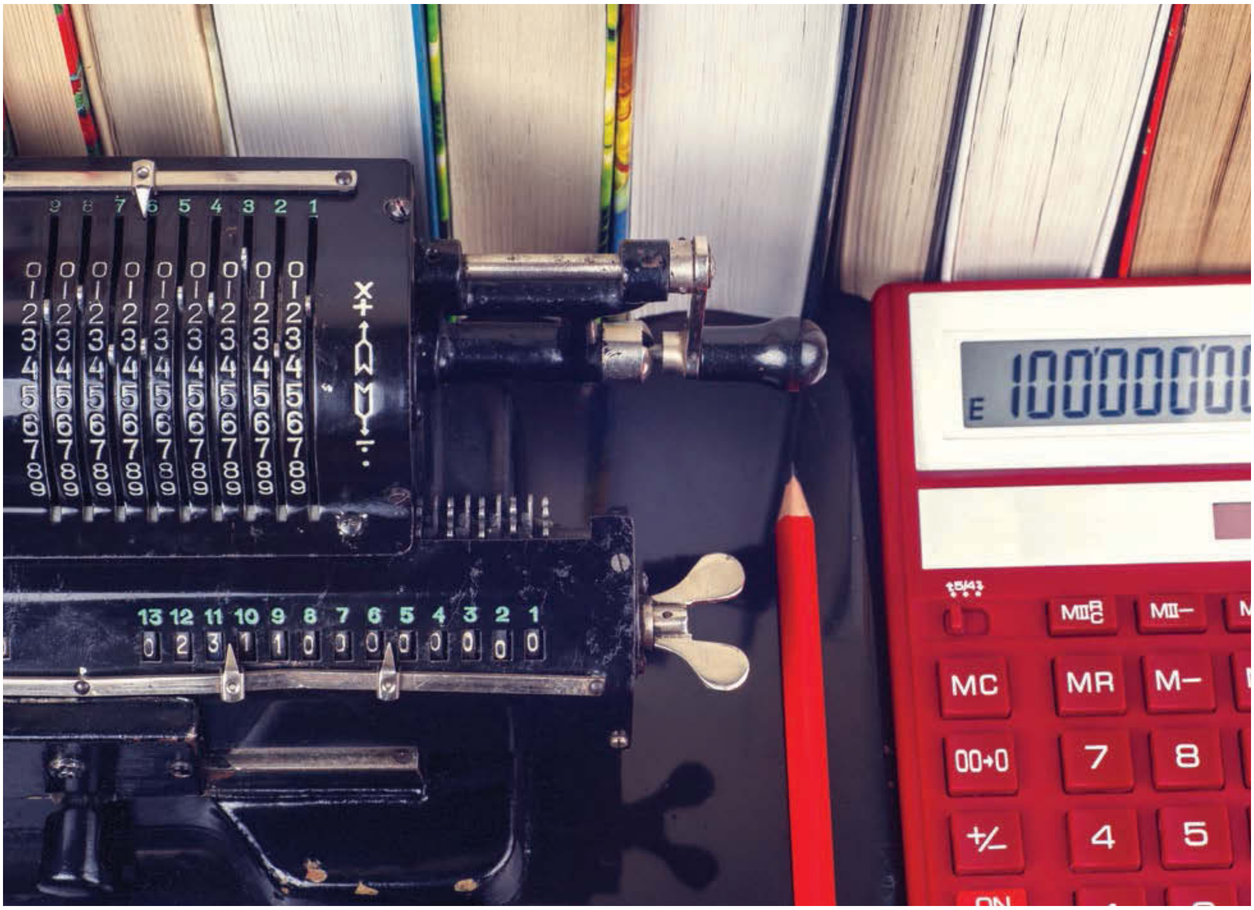
Finally, good public finances rely on effective tax systems. Competent tax authorities rely on a range of taxes to avoid the risks of over-reliance on any one source of revenue. Resilience is an important facet of an effective Whole Systems Approach. A positive outcome of the Panama Papers scandal is that the accountancy profession is seen as stepping forward with constructive solutions. Politicians need our advice to curb offshore tax avoidance schemes and profit shifting tactics that, if left unchecked, will cause increasing public outrage as well as undermine public finance resilience.

As a trainee, in what feels a lifetime ago, it was made clear to me that accountants in public service are never just there to make the numbers fit the policy aspiration. Speaking truth to power and never being afraid to do the right thing is as vital a part of our training scheme as it has always been. But, we need new skills too—not least data analytics, cyber, and value for money. A collaborative process, where we share skills and approaches, is the best way forward.

(Source: IFAC Global Knowledge Gateway).

What seems to us as bitter trials are often blessings in disguise. - Oscar Wilde

Where Machines Could Replace Accounting Professionals — and Where They Can't (Yet)



The automation it heralds seems to pose an existential threat to many tasks associated with our profession, a threat that likely will demand the profession to redefine its core offerings. Richard and Daniel Susskind, father and son academics, have researched the impact of technology on the professions. Their work is summarised in their book, The Future of the Professions. The genesis of their message for the profession, captured in this article, is that various tasks associated with the profession stand to be automated and that the profession's future rests on inventing useful new tasks. Applying knowledge of expertise on the task at hand and decision making are least susceptible to automation. Read on to know more…

Paul Thompson

(The author is Director, Global Accountancy Profession Support at International Federation of Accountants (IFAC). Comments can be sent at eboard@icai.in.)

Considerable column inches of late in the business media—notably, *"The March of the Machines"* in The Economist and *"The Future of Work: Three Ways To Prepare For The Impact Of Intelligent Technologies In Your Workplace"* in Forbes— have been devoted to the implications of advances in technology on the workplace and the professions. Advances

Automation presents both threats and opportunities. But harvesting the opportunities will demand significantly redefining our role, moving from compliance services and tasks based on data collection and processing to knowledge work based on data analysis and advising on the data's implications and recommended actions.

in technology and their impact on work are nothing new. Arguably they've been with us since the beginning of time. The invention of double entry bookkeeping was, in its day, an advance in technology, and look how that came to have a lasting and profound impact on modern business. In our lifetimes, we have seen the calculator, spreadsheets, personal computer, and the Internet—the real game changer.

Before the Internet, globalisation was largely confined to the cross-border exchange of tangible goods. But the Internet has extended this exchange to intangible services, enabling instantaneous cross-border dissemination of knowledge-based services including accounting and consulting work. The current wave of globalisation is—according to Stephen Roach, a senior fellow at Yale University's Jackson Institute of Global Affairs— characterised by the unprecedented speed of technology absorption and disruption. The Internet has also served as the foundation for the most recent wave of technology, that which is blurring the real world with the technological world. This is dubbed as the fourth Industrial Revolution—think Pokémon Go. One of the more pressing questions this revolution raises is—how will the way we work change?

The automation it heralds seems to pose an existential threat to many tasks associated with our profession, a threat that likely will demand the profession to redefine its core offerings. We at IFAC recently reported on insights from Richard and Daniel Susskind, father and son academics who have researched the impact of technology on the professions. Their work is summarised in their book, *The Future of the Professions*. The genesis of their message for the profession, captured in this article, is that various tasks associated with the profession stand to be automated and that the profession's future rests on inventing useful new tasks.

McKinsey's Report

A recent interim report by McKinsey—summed up in the article, "Where Machines Could Replace Humans and Where They Can't (Yet)," offers further evidence and analysis into how automation stands to affect work, including that of accountants, and how we might respond. In sum, automation presents both threats and opportunities. But harvesting the opportunities will demand significantly redefining our role, moving from compliance services and tasks based on data collection and processing to knowledge work based on data analysis and advising on the data's implications and recommended actions. As Susskind said, the challenge for the profession, all professions, is to reinvent their core tasks and offerings. IFAC and its members have the responsibility of leading this change.

Let's take a closer look at the interim report and the supporting data for each sector including that of professional services. The report is based on a detailed analysis of 2,000-plus work activities for more than 800 occupations. McKinsey quantified both the amount of time spent on these activities across the US economy and the technical feasibility of automating each of them. The report shows that current technologies could automate 45 percent of the activities people are paid to perform and that about 60 percent of all occupations could see 30 percent or more of their constituent activities automated.

Technical Feasibility of Automation

In discussing automation, McKinsey refers to the potential that a given activity could be automated by adopting currently demonstrated technologies that is, whether or not the automation of that activity is technically feasible.

Each whole occupation is made up of multiple types of activities, each with varying degrees of technical feasibility. McKinsey identifies seven top-level groupings of activities—*managing others, applying expertise, stakeholder interactions, unpredictable physical work, data collection, processing data, and predictable physical work.* Occupations in the professional sector, which include accountancy, involve activities such as applying expertise to decision making, collecting or processing data, and interacting with clients. Since all of these constituent activities have a different automation potential, McKinsey arrives at an overall estimate for the sector by examining the time workers spend on each of them during the workweek.

McKinsey concludes that *managing others and applying expertise (to decision making, planning, and creative tasks)* are the least susceptible to automation; *stakeholder interactions and unpredictable physical work* are less susceptible; and *data collection, processing data, and predictable physical work* are highly susceptible. Based on data on time spent in US occupations, those working in the professional sector spend most of their time on *applying expertise, stakeholder interactions, data collection, and processing data.* This represents mixed news for our profession: the former are less susceptible, while the latter are highly susceptible. This suggests that large chunks of time spent by professional accountants on data

***Applying expertise (to decision making, planning, and creative tasks)* are the least susceptible to automation; *stakeholder interactions* and *unpredictable physical work* are less susceptible; and *data collection, processing data, and predictable physical work* are highly susceptible.**

collection and processing risk being automated. But that's not the end of the story.

Accountancy Sector's Susceptibility to Automation based on 5 Factors Determining Automation

While technical feasibility is a necessary precondition for automation, it is by no means a complete predictor that an activity will be automated. Whether or not automation will in fact become a reality is determined by five factors. Below we've assessed the risk of automation for the accountancy profession's core activities in the context of the five factors identified by McKinsey.

1. **Technical feasibility**—As noted above, some activities performed by accountants are less susceptible, while others are highly susceptible, to automation. We look forward with bated breath to see what the final McKinsey report has to say on this.
2. **Cost of developing and deploying the hardware and software for automation**—it would seem the costs, such as that of data analytics and cloud computing, have fallen sharply in the past few years. This low to modest cost points to increased risk of automation.
3. **Cost of labour and related supply-and-demand dynamics**—many jurisdictions are reporting a talent war with qualified staff in short supply. This seems to have triggered significant increases in the salaries of professional accountants. This high cost of labour and shortage of talent points to increased risk of automation.
4. **Benefits beyond labour substitution**—it's easy to see that automation might lead to higher levels of output, better quality, and fewer errors especially in data collection and processing. In the case of audit, one can see how technology enables the testing, quickly and accurately, of entire data populations rather than just samples. These substantial benefits of automation contribute towards a high chance of automation.
5. **Regulatory and social-acceptance issues**—it seems likely that employers or clients will be accepting a robot or machine replacing some of the functions of an accountant, but perhaps less accepting where the situation demands the exercise of professional judgment or skepticism,

such as an ethical dilemma. Regulators might also prefer to see human intervention than reliance on a machine. The net impact of these issues might be neutral as far as their impact on whether automation is likely.

Implications for the Profession

The upshot of this analysis is that it seems that not only does a large proportion of the core work of a typical accountant have the potential for automation but that other factors may work to realise this potential. If that's the case, then it's vital that the profession accelerates its move into tasks and activities less susceptible to automation. The top candidate is advisory—to clients or for employers. This has to do with *managing others, applying expertise and stakeholder interactions* that are much less susceptible to automation than *data collection* and *processing*. The crucial ingredients to advisory, that for now at least seem impervious to automation, are that of establishing trust and providing personalised expertise.

Many accountancy practices have already made a big push into this service area. As the *International Accounting Bulletin's World Survey* revealed many larger accountancy firms now draw the lion's share of their revenue from this type of work. According to IFAC's Global SMP Survey, this trend away from audit in favour of advisory, including that around cyber security and data analytics that did not exist a decade ago, is gathering pace amongst medium-sized international accountancy networks and small- and medium-sized practices (SMPs). IFAC has challenged SMPs to carefully consider diversification. Diversification, and the resulting recruitment of non-accountants, means accounting firms are less *firms of* professional accountants and more *firms* led by professional accountants. A recent IFAC Knowledge Gateway article sets out some guidance on how SMPs can go about diversifying. Similarly IFAC's thought leadership on the role of professional accountants in business has stressed the need for them to be the strategic navigator for their employers.

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Technology is a crucial tool in making the transition. Olivia Kirtley, IFAC President recently discussed how technology can be a strategic opportunity to strengthen the accountancy profession. In a similar vein ICAEW's CEO concludes that "the future of the profession is an exciting one, but only if we embrace new technologies and focus on the value that we can offer to businesses and our clients as a result."

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Finally, we might need to take a leaf out of the book of the profession that, according to McKinsey, looks least likely to be automated—teaching. The more professional accountants assume the role of educator or coach of their clients and employers, on things like the relevance and import of quality financial management and other information, then they will find their role, for the foreseeable future at least, more resistant to automation.

Please Share Your Thoughts

We at the IFAC are keen to hear from you as to whether you agree with the above assessment and what actions the global accountancy profession, professional accountancy organisations, and professional accountants need to take to ensure we don't find a robot sitting at our desk one Monday morning.

(Source: IFAC Global Knowledge Gateway). ■

If people did not do silly things, nothing intelligent would ever get done. - Ludwig Wittgenstein

Empowerment of SMPs: Indian Perspective

A critically important part of accounting profession, the Small- and medium-sized practices (SMPs) comprise the majority of professional accountants working in practice almost globally, and India is no exception. The SMPs typically serve small- and medium-sized entities (SMEs), which are commonly referred to as engines of growth and innovation because according to Edinburgh Group research estimates more than 95% of enterprises across the world are SMEs contributing significantly to countries' gross domestic product (GDP). The SMPs are often the preferred source of advice for SMEs, including audit and assurance and expert business advisory services. As such, capacity building of the SMPs is one of the key priority areas of Institute of Chartered Accountants of India (ICAI), which has been constantly taking a number of initiatives to raise the profile and build the capacity of SMPs, particularly through its Committee for Capacity Building of Members in Practice, exclusively dedicated to this cause. This article provides an overview of such initiatives besides giving insight into latest ICAI membership statistics. Read on...

In India SMPs are more in number in comparison to big CA Firms. They have their multi- location presence and are widely preferred by the local clients. SMEs are mostly dependent on them. Although having comparatively limited resources, they are able to provide high quality professional services to their clients.

Statistics of ICAI members & Firms

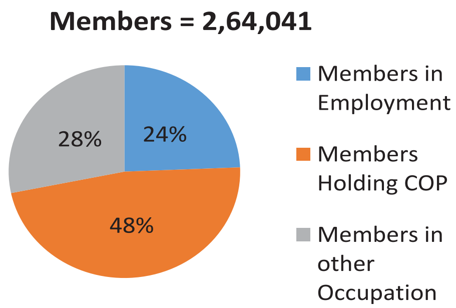
ICAI currently has approximately 2.6 lakh members. Out of them 48% members are holding Certificate of Practice and deemed to be engaged in any form of practice. Around 24% members are engaged in other occupation. A similar portion of members, 28%, is serving industry and service sector. As such, practitioners form the major chunk of membership of ICAI. Further around 75% of members among them are practicing under SMP category. Amazingly 63% members are running their sole proprietary firms and 8% members are carrying out their sole practice. It constitutes to 71% SMPs.

(Contributed by Committee for Capacity Building of Members in Practice. Comments can be sent to ccbcaf@icai.in.)

Similarly a large number CA Firms i.e. 10308 are having only two partners out total 64990 CA Firms. Only 1,230 CA Firms are having 5 partners. About 22.37% of them have 2 to 3 partners. Firms having partners between 4 and 10 are hardly 7.43% and about 0.42% firms are having partners more than 10. Large firms constitute a very minimal percentage of the total firms registered with ICAI. However, Indian SMPs are leading in terms of number & strength in SAFA countries. The following data pertains to all regional offices of ICAI in its totality.

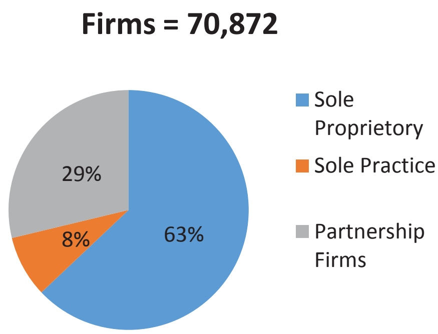
ICAI Members Status
(September-2016)

Total Active Members	**2,64,041**
Members in employment	64,324
Total Members holding COP	1,25,166
Members in other Occupation	74,551



CA Firms status

TOTAL FIRMS:	**70,872**
Sole Proprietary	44,606
Sole Practice registered in Individual name	5,882
Partnership Firm	20,384

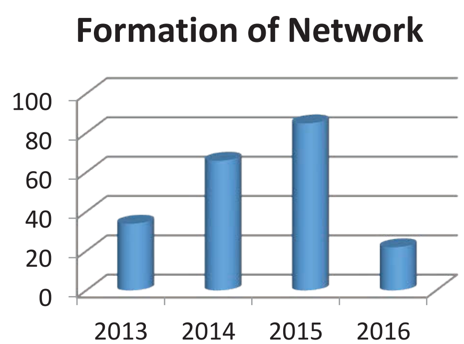


Status of Small & Medium Firms

Firms with 2 Partners	10,308
Firms with 3 Partners	4,795
Firms with 4 Partners	1,965
Firms with 5 Partners	1,230

Formation of Networking

Year	No. of Firms under Networking
2013	34
2014	66
2015	85
2016	22 (up to June 2016)



Different types of corporate CA Firms (ICAI Region wise -September 2016)

Firm Type	NRO	CRO	WRO	SRO	ERO	Total
Merger	1,025	1,323	803	180	347	3,678
Networking	20	8	31	32	12	103
Networking Abroad	5	8	1	17	28	59
MCS	52	18	18	15	4	107
LLP	42	10	162	48	21	283

It is a fact that most of the SMPs are working in the small towns and mofussil areas. They are largely sole proprietary firms. Partnership firms having around 2-5 partners are in the metro cities or state capitals. Big firms having more than 5 operate in Delhi, Mumbai, Kolkata, Chennai, Hyderabad, and Pune, *etc.*

Similarly, merger of CA firms has happened with the firms based at big towns and it is the most preferred form for creating professional strength. LLP firms are being incorporated mostly in Delhi. Mumbai, Kolkata and Chennai. MCS is corporate form of practice and it is need-based or on requirement of consultancy services by the clients. Less popular is domestic and international Networking, reason being that members are not fully aware of its benefits. Further, Network is not a firm; it is an arrangement only for pulling out resources.

The ICAI has been constantly concentrating on development of SMPs at small cities and towns.

ICAI's Support to SMPs

One of the major focus areas of the ICAI has been promotion of SMPs through Capacity Building Measures aiming to upgrade & strengthen small and medium practitioners. For the purpose, ICAI has created a dedicated platform namely- the Committee for Capacity Building of Members in Practice (CCBMP). Through the CCBMP, ICAI regularly conducts professional development programmes for SMPs knowledge upgrade. It also encourages SMPs to join hands and come forward for networking with professional colleagues to multiply their presence.

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Capacity Building

Committee for Capacity Building of Members in Practice

The Committee for Capacity Building of Members in Practice is a non-standing Committee of the Institute and bears the objective to rejuvenate practice portfolio of members and CA firms by strengthening their professional knowledge and competence through Networking and Merger among CA firms as well as assisting in setting up of LLP as well as corporate form of Practice (MCS). The Committee also provides platform for knowledge sharing and updating through release of technical publications on various issues and topics of professional interest.

To support the Members in Practice, the Committee has arranged various Audit and Accounting software, Antivirus Protection software, Medical and Health Insurance, Professional Indemnity Insurance and Loan Schemes at very competitive cost for the members and students of ICAI. To keep the member abreast in their professional field, Committee regularly organises seminars, conferences, interactive sessions, workshops throughout the Country.

The Committee works in close coordination with the SMP Committee of SAFA & IFAC. The Committee also contributes in formulation of SMP Agenda of IFAC.

Measures of Capacity Building for SMPs

As a measure of Capacity building of firms, ICAI through Committee for Capacity building of Members in Practice, promotes the following;

- ➢ Merger amongst CA firms
- ➢ Networking amongst CA firms
- ➢ Provision of Management Consultancy Services Company
- ➢ Creation of Limited Liability Partnership Firms

The details of these capacity building measures are as below:

(1) Merger & De-merger of CA Firms: Merger and De-merger have become universal practices for securing survival, growth, expansion and globalisation of enterprise and achieving multitude of objectives. Merger of CA Firms may take place in order to have an orderly and sustainable growth. To effectuate merger, a merger agreement in the prescribed format in Form – E needs to be filed with the Institute within 30 days from the date of the agreement. The Merger agreement itself shall contain the terms and conditions for de-merger. Merger amongst CA Firms may take place through executing merger agreement in the prescribed documents. In merger, one of the firms out of merged CA Firms continues with its own identity bearing existing name and registration number of the firm. In merger, establishment date of oldest firm of merging entity is taken into the ICAI records to maintain seniority of the firm. Change in name of continuing firm, if desiring so, may take place. Re-constitution of merger is permitted under CA Regulation 190. Other merging firms cease to be in Practice from the date of its merger and required not to carry Practice in previous firm name. De-merger is permissible by filing Form–E before completion of 5 years with the consent of 75% or more of the continuing partners of the erstwhile firm. Through de-merger, any entity may become separate and active by having its previous name, firm registration number and date of establishment as it is. For all purposes, existing CA Firm after merger is subject to various provisions of the Chartered Accountants Act, 1949 and the CA Regulation 190 of Chartered Accountants Regulations, 1988 as well as guidelines framed by the Council thereunder.

(2) Networking of CA Firms: Network is a mutual entity created to facilitate its constituting firms/members for functional convenience and multi-location presence. Since Network is an arrangement to pull out resources for common interest, a Network itself cannot carry out any professional practice. Network shall consist of Sole-Practitioner, Proprietor and Partnership firm. Joining of only one network is permitted. Forming of Network requires Firm name approval and subsequent registration with ICAI under CA Regulations, 1988. A Network firm will bear suffix as " & Affiliates." Registration of Network with ICAI is mandatory. Networking with entities outside India requires filing of Form–D for listing of such networks within 30 days from the date of entering into the Network arrangement. Indian Firms may have Network with common Multi-National Accounting Firms and they shall be considered a part of Network. Change in the constitution of registered Network on account of any entry or exit from the Network requires to be intimated to the Institute by filing prescribed Form-C within a period of thirty days from the date of change in the constitution. Network requires to comply with all ethical requirements prescribed for a CA Firm. The Network may advertise to the extent permitted by the Guidelines under Code of Ethics and may use the name of the Network on their professional stationary.

(3) **Management Consultancy Services Company, MCS (Practice in Corporate Form):** Management Consultancy Services Company can be formed by member(s) with/without holding Certificate of Practice (COP) subject to the guidelines of the Institute. A MCS Company needs to be registered with ICAI and concerned ROC of Minister of Corporate Affairs of the Indian Govt. CA Members may be Promoter, Director or partner with or without own relatives as shareholders and there will be no restriction on quantum of equity holding by CA Member in MCS Company. A Member having full time COP may become Managing Director, Whole-time Director, and Manager and retain his full time COP can continue attest function and entitled to train articled assistants pursuing CA Course. MCS Company shall extend only management, consultancy and allied services but cannot perform statutory functions. All provisions of the Company Act, 1956 and other concerned Laws will be applicable to MCS Company. Forming of MCS Company requires name approval and subsequent registration with ICAI under CA Regulations, 1988. The name of Management Consultancy Company may indicate the area of 'Management Consultancy & Other Services' permitted by the Council from time to time. Name Approval for MCS Company requires filing of Form–G and Registration by filing of prescribed Form–H. A MCS Company may have suffix as" Private Limited/Limited." A MCS Company will be operating subject to compliance of guidelines and code of ethics of the Institute.

(4) **Limited Liability Partnership (LLP):** ICAI permits corporate form of practice in the form of LLP under provisions of the Limited Liability Partnership (LLP) Act, 2008 of India and guidelines on LLP framed by ICAI. For all purposes a CA LLP Firm is equivalent to CA Firm under CA Regulation 190. A CA Firm can be created as LLP as new entity or through conversion of existing CA Firm into LLP. The proposed name of LLP may include the word 'Chartered Accountant' or 'Chartered Accountants' Registration with ICAI is noted on filing of requisite papers i.e. 'No Objection Certificate' of ICAI, Form-18 & Approval letter, Incorporation Certificate from ROC, Copy of Form-2 and Form- 17 of ROC as applicable. In case of conversion, a CA LLP firms stands with its seniority. The List of CA LLP Firms of ICAI includes name of CA LLP Firm also. A unique registration number in *seriatim* is allotted to each LLP.

(5) **Multidisciplinary Partnership (MDP):** ICAI also provides for creation of Multidisciplinary Partnership in which a Member in Practice can have partnership with following other professionals;

- Company Secretary
- Cost Accountant
- Advocate
- Engineer
- Architect
- Actuary

However, creation of MDP is still not in operation as the concerned professional bodies are yet to confirm their permission for creation of Multidisciplinary Partnership.

Initiatives of ICAI to support SMPs in India

(I) **Financing for SMPs:**

Specialised loan scheme for Members of ICAI & Educational Loan Scheme for students of ICAI: ICAI has arranged financial support in the form of professional loan and financial assistance through Bharatiya Mahila Bank Ltd., New Delhi for the members of ICAI and Educational Loan for the students pursuing CA course of ICAI. The Lady Members may avail 1% discount in the aforesaid scheme from the prevailing rate of interest.

Specialised loan scheme 'Corp CA' Scheme: ICAI has also arranged financial help through Corporation Bank specifically for the purpose of setting up of offices and buying furniture/fixture/office equipment-computers and other accessories and part of the working capital.

(II) Technical Support to SMP Practitioners: ICAI has been extending technical support to SMPs by arranging professional knowledge tools and system software at discounted price for plasticising members of ICAI;

- **IT Auditor software at special price:** IT Auditor software is an Income Tax compliance with e-filing of Tax Audit Report at special price for practicing members & CA Firms.
- **Cloud based Service Tax, TDS & PDF Signer software at special price:** Cloud based Service Tax, TDS & PDF Signer software is online TDS and Service TAX software along with PDF signer to digitally sign the documents.
- **Indian Financial Reporting Manager (IFRM) at Special Price:** ICAI has arranged the IFRM, the web based research & solutions kit of India Financial Reporting Manager.
- **ICAI–Tax Suite: A Tax Compliance software:** Tax Compliance software namely 'ICAI-Tax Suite' combines facility for Income Tax, TDS, Audit Reports, Project Report/ CMA, Form Manager, AIR (Annual Information Return), Service Tax and Document Management for the Practitioners & CA Firms, and very helpful for the practitioners.
- **XBRL software:** The software on XBRL named as ICAI-XBRL software to provide the CA Firms for MCA mandate XBRL Filing. The XBRL software is a solution for converting financial information of a Company in XBRL format as per MCA mandate.

(III) Litigation related software for SMPs:

- **CTR Library for Direct Taxes at Special price:** ICAI has arranged Single DVD of CTR Library of Tax Cases- comprehensive coverage on Direct Taxes to the members of ICAI to enable the members to keep pace with the latest developments in Direct Tax Cases.

(IV) Office Management for SMPs:

- **Arrangement of the 'Quick Heal Total Security for PC at special price for the Members & Students of ICAI:** ICAI has tied up with Quick Heal technologies Pvt. Ltd. Pune for providing Quick heal Antivirus software, access to Quick Heal Total Security system. It helps the members to organise the system network without loss of data.

(V) Social Security for SMPs

- **Office Protection Shield Insurance:** ICAI has arranged Office Protection Shield Insurance for members of ICAI. The scheme has been liked more by SMPs of mofussil area.
- **Health Insurance Scheme for Members of ICAI:** ICAI has taken a major initiative for arranging in the form of specially designed Health Insurance Scheme through New India Assurance Co. Ltd., Mumbai with the special features. For CAs there is no health check-up, no age limit & entry barrier but there is premium discount in *lieu* of Cumulative Bonus, 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; wide Coverage for pre-existing diseases *etc.* for members & students of ICAI.
- **Professional Indemnity Insurance for Members/CA Firms of ICAI:** 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 especially for CA members.
- **Motor Insurance at Special premium for members of ICAI:** Motor Insurance scheme is made available for vehicles of members on discounted rate with further 65% discount on Own Damage premium irrespective of the previous claims in respect of private four wheelers and two wheelers. This facility has been widely liked by all CAs.

(VI) Knowledge Sharing for SMPs

- **ICAI Connect–A self-service portal for members of ICAI:** The CCBMP has launched the ICAI Connect, a self-service

The CCBMP has launched the e-Samadhan portal for resolving the professional queries of the members of ICAI. The empanelled professionals will answer the queries raised by the members in various areas of the profession. Members need to log in to SSP and click on 'e-samadhan' to register their query.

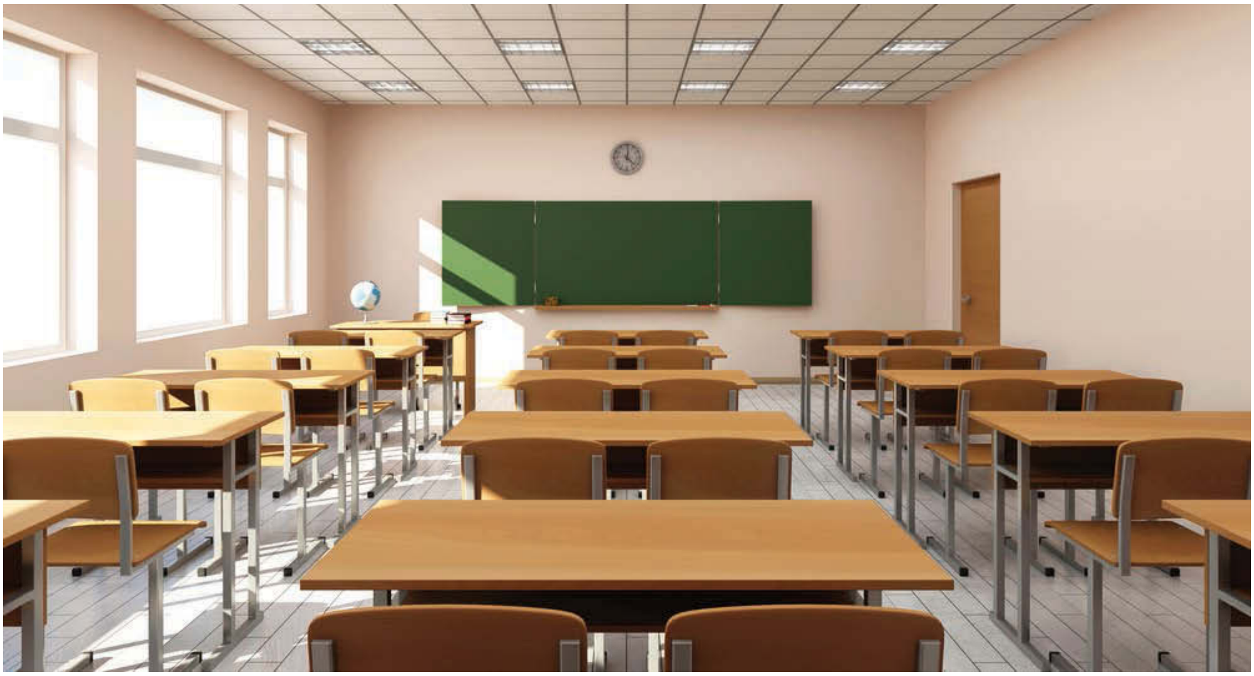
portal for the members of ICAI. The features of the aforesaid single window self-service portal includes viewing personal profile and firms constitution, announcements of ICAI, details of payments of fees and regulatory charges to ICAI, My Articles details, tracking regulatory forms and application status, e-Services, My Firms, My Software(s), Letters & Certificates, CPE Hours credited, Guidelines of Networking, Merger & Demerger *etc.*

- **e-Samadhan portal for resolving the professional queries raised by members of ICAI:** The CCBMP has launched the e-Samadhan portal for resolving the professional queries of the members of ICAI. The empanelled professionals will answer the queries raised by the members in various areas of the profession. Members need to log in to SSP and click on 'e-samadhan' to register their query.
- **Committee's exclusive website www.icai.org.in**
  The CCBMP has developed a Website www.icai.org.in, where the Firms and Practitioners may create their own portals as per the norms laid down by the Council of the Institute of Chartered Accountants of India. The website provides a platform for the CA Firms to upload their firms' details and gives them an opportunity to reach out to the members and CA firms practicing worldwide.
  The website also acts as a forum for consolidation of the members and CA Firms by providing for consolidation measures like Networking, Merger and Corporate Form of Practice. The members may visit portals of other members and firms and like-minded persons may join hands to grow big to compete in the international front.
- **A portal for Senior Members of ICAI www.seniormembers.icai.org:** The Committee has developed a website namely seniormembers.icai.org. The website provides a platform for senior members of ICAI for getting flexi working hours assignment as well as fulltime assignment after their retirement. At the same time it also helps industry to tap experienced talent pool which might not be accessible otherwise in normal course.
- **Brochure on Revised Minimum Recommended Scale of the fees:** The Committee has prepared a Brochure on Revised Minimum Recommended Scale of the fees for the Professional Assignments done by the Chartered Accountants for Class 'A' & Class 'B' cities. The aforesaid Brochure will be circulated to the CA Firms in India for their reference.
- **The Certificate Course on Wealth Management and Financial Planning (WMFP):** The Committee has launched the Certificate Course on Wealth Management and Financial Planning enabling members for new career opportunities. The objective of this Course is to equip the members with the principles of Management of Wealth as well as devising effective Investment Strategy and the practical procedural aspects and to build the competency level to position them as financial consultants and advisor.

Accountancy profession is fast moving occupation. It has gone beyond its traditional function of accounting, auditing and taxation. CAs are now more in business consultancy. From being generalists, CAs are now specialising in Service Tax, International Taxation, Transfer Pricing, Information Systems Audit, Fraud detection (insolvency, bankruptcy), Risk Management, ERP, US GAAP, IFRS, WTO representations, property-related matters, investment banking, transaction advisory services. These are additional avenues which members of SMPs segment may capture successfully. To come up to high level of professional competency, SMPs need to be developed for these services. ICAI is serious about it and has taken a series of steps to raise, lead and establish small and medium practitioners. ■

Leadership has a harder job to do than to choose sides. It must bring sides together. - Jesse Jackson

ICAI Certificate, Post Qualification Courses: Taking Capacities of Indian CAs to Next Level



A recent study has found that in the wake of growing business complexities, knowledge requirements, regulatory and legal changes and client expectations, specialists will be preferred over generalists in future. The Indian Chartered Accountants are no exception to this fact. Quality is the core of our profession while 'specialisation' acts at the facilitator of greater quality. In these times of transition, there is a greater need for constant pursuit to quality and perfection. Keeping this in mind, ICAI has come up with a number of certificate courses as well as post qualification courses in order to aid the members to develop specialisation and build domain expertise in various emerging areas of the profession. The certificate courses and post qualification courses are structured in such a manner which augments the skill set of the chartered accountants in that particular area and enables them to perform their professional duties with increased efficiency. The idea is to provide customised solutions and contemporary professional knowledge to our fraternity to enhance their competence. Here is a brief overview of some such courses being offered by various committees of the Institute:-

CERTIFICATE COURSES

Certificate Course on Wealth Management and Financial Planning

The ICAI Committee for Capacity Building of Members in Practice has launched the Certificate Course on Wealth Management and Financial Planning, enabling members to prepare for new career opportunities. The objective of this Course is to equip the members with the principles of Management of Wealth as well as devising effective Investment Strategy and the practical procedural aspects and to build the competency level to position them as financial consultants and advisor.

(Contributed and Compiled by Editorial Board secretariat with inputs from various committees of the ICAI.)

The Certificate Course on Master in Business Finance

The ICAI Committee on Management Accounting runs the Certificate Course on Master in Business Finance since 2009 to impart the nitty-gritty of finance to the members of the Institute. A very comprehensive and wide course curriculum has been formulated which focuses on all contemporary and advanced facets of finance such as fund raising, equity and fixed income research, financial planning, risk management, Indian Depository Receipt (IDRs), derivatives, corporate valuation, mergers & acquisitions, working capital management, forex, import/export financing, treasury, banking and investments and RBI guidelines *etc*. The course provides an in-depth and comprehensive knowledge of theoretical as well as practical aspects of Business Finance to the participants. There is a requirement for the participants to prepare case studies based on real life situations. This will to a great extent sharpen the writing skills of the participants. The Interactive classroom sessions are led by Industry experts, leaders in Private Equity, Fund raising, Banking, Mutual Funds, Forex Management, Merchant Banking, Investment Banking, Derivatives, *etc*. The Group discussions as a part of course curriculum also provide a good opportunity for the participants to share their rich knowledge and experiences with each other. The course thus intends to enable the participants to be the best in finance arena. The Course is designed to amplify the business finance skills of Chartered Accountants and enabling them to become business leaders. The Course also provides various professional opportunities in the areas of Investment Banking, Corporate Advisory, Private Equity, Venture Capital, valuations, Banking, Risk Management etc. The details of the course are available on the following link i.e. http://www.icai.org/post.html?post_id=4092.

Certificate Course on Cooperatives

This Certificate Course conducted by ICAI Committee for Co-operatives and NPO Sectors makes the members competent in the field of Cooperatives. The Course aims at providing:

a. About Cooperative Societies
b. Laws Applicable to Cooperative Societies
c. Formation of Cooperative Societies
d. Management, Accounting and Audit aspects of Cooperative Societies
e. Taxation aspects of Cooperative Societies
f. Accounting, Audit and Legal issues in Urban Cooperative Societies.

Certificate Course on Not for Profit Organisations

This Certificate Course conducted by ICAI Committee for Co-operatives and NPO Sectors makes the members competent in the field of NPO. The Course aims at providing latest knowledge update about:

a. Non-Profit organisations
b. NPO-World scenario
c. Laws Applicable to NPOs
d. Authorities regulating NPOs & Formation of NPOs
e. Role of NPO with regard to Corporate Social Responsibility obligation of companies under Companies Act, 2013
f. Internal control, Risk Management & Accounting aspects of NPOs
g. Audit of NPOs
h. Taxation aspects of NPOs.

These two Courses are conducted at various locations in the country. The courses are open for the members of The Institute of Chartered Accountants of India as well as for the students who have cleared CA final examination. Duration of both the Courses is same: 6 days (Generally on Saturday and Sunday)

Certificate Course on Service tax

This certificate course is conducted by Indirect Taxes Committee of ICAI. The basic objective of the course is to provide specialised and updated knowledge in the area of Service Tax in a systematic manner and enhance analytical and problem solving skills for decision making. The course aptly covers concepts of service tax law like need & pervasiveness of service tax, meaning & definition of service, concepts of negative list, mega exemption notification, reverse charge, abatement provisions, place of provision of service rules, point of taxation rules, valuation rules, statutory provisions with service tax rules, CENVAT credit rules, GST, concepts of relevant allied laws like excise, customs *etc*. with regard to service tax, case laws, drafting correspondences, practical illustrations, mock tribunals and much more.

Certificate Course on Service Tax is of 10 days (weekend classes on Saturdays & Sundays) classroom session wherein expert faculties in the field of indirect taxes to provide the members an in-depth technical as well as practical knowledge. The Committee also provides the participants with a background material which thoroughly covers all the relevant topics. Fees for the course is ₹18,000/12,000 (Metro/Non-metro cities) and 30 structured CPE hours are awarded to members attending the said course.

With the advent of GST, the Committee will soon launch Certificate Course on GST after enactment of CGST, IGST and SGST Law, for providing depth knowledge on GST to the members. For further details visit www.idtc.icai.org.

Certificate Course on Concurrent Audit of Banks

The Internal Audit Standards Board has introduced Certificate Course on Concurrent Audit of Banks. The concurrent audit system of banks has become very crucial and important for banks. The main objective of the system is to ensure compliance with the audit systems in banks as per the guidelines of the Reserve Bank of India and importantly, to ensure timely detection of lapses/irregularities. In view of the core competence of the chartered accountants in the area of finance and accounting, risk management, understanding of the internal functioning and controls of banks, *etc.*, the banking sector has been relying extensively on them to comply with these requirements of the regulator.

Objective of the Course:

The purpose is to provide an opportunity to the members to understand the intricacies of concurrent audit of banks which would thereby help them:

a. to supplement the efforts of the bank in carrying out internal check of the transactions and other verifications and compliance with the procedures laid down;
b. to improve the effectiveness of concurrent audit system in banks;
c. to improve quality and coverage of concurrent audit reports.

Course Fees (w.e.f July 1, 2016):

For Members of ICAI (other than Young Members)		For Young Members* of ICAI	
Metro Cities	₹15,000	Metro Cities	₹12,000
Non-Metro Cities	₹12,500	Non-Metro Cities	₹10,000

**Chartered Accountant up to the age of 30 years on 1st January of every calendar year will be considered as Young Member i.e. Members born on or after 1.1.1986 will be considered as young member for calendar year 2016.*

For further details refer link: http://www.icai.org/post.html?post_id=8236.

Certificate Course on Valuation

This course is run by Corporate Laws & Corporate Governance Committee since 2008. The Committee has so far conducted 65 batches of the Certificate Course on Valuation. Till date, 3,250 members have been registered for the Course. The details about the course are provided below:

Objective of the Course

Knowledge dissemination, expertise in the field of Valuation, integration of key approaches and methods from each area and applying those to real case studies.

Programme Structure/Topics covered

a. Valuation Overview, Basic Techniques, Impairment and Fair Value Concept, Valuation under Companies Act 2013.
b. DCF Model, Forecasting, Cost of Capital, Discounts, Premiums, DCF as a model for Valuation of Shares.
c. Examples of Specific Industry in case of Valuation, Multiple methods of Valuation, Options, Basics of Options, ESOP only significant portion.
d. Merger and Acquisitions, Valuation for tax Purposes, Closely held Companies, Stressed Assets for Asset Restructuring Companies and Banks, Valuation of Complex Securities.
e. General Considerations in Valuation with Case Study and Valuation of Intellectual property and Human resources with case study, Brands and Copyrights, regression Analysis.

f. Valuation-Effective use of excel spread sheets, Drafting Valuation Report, Valuation as a profession, Competence, quality and ethics.
g. Practical case studies, Questions and Answers session

Scheme of the course
a. The minimum size of the batch is ideally 40 members.
b. The fees for the course is ₹25,000 for Delhi/ NCR, Mumbai, Chennai and Kolkata and 20,000 for other cities, which can be paid online also.
c. The reference books (two) are supplied by the Committee
d. There are seven (7) sessions in total.
e. The classes are normally held on Saturdays and Sundays.
f. The timings of the sessions are between 10 am to 5 pm.
g. The CPE credit for the entire course is 50 hours which are credited at the end of the course
h. After completion of the course, every participant/group (as the case may be) is required to submit a project report on any topic related to Valuation, within one month of completion of the Course.
i. There is an examination consisting of two parts-(1) written examination consisting of MCQ's (60 marks) and subjective type (40 marks). The minimum pass requirement in the written examination is 60 marks.
j. Project report also carries 100 marks and minimum pass requirement is 60 marks.
k. Participants are allowed to appear for the written examination only if project report is submitted by them before the date of examination. Examination date will be decided/announced by the Committee and hosted on the ICAI Website.
l. The fees for the first appearance of the examination is Nil. However, for the subsequent appearance the fee charged is ₹1,000/-.
m. All classes are video graphed and participant will be given the VCD after the classes are over.
n. The faculty fixation is the exclusive right of the Committee and having a minimum experience of 15 years in the field of valuation.
o. Every successful participant is given a Certificate. However, it is to be noted that the Certificate does not entail the participant to use any word, nomenclature after his/her name.

p. This is only a Certificate course and does not entail any guarantee or placement of empanelment or whatsoever.
q. The sessions are interactive and case study based.
r. Technical sessions broadly cover all aspects relating to business valuation.
s. Participants may be requested to first enrol at valuation@icai.in and payment can be made at the spot as well. The payment to be in favour of The Secretary, ICAI, payable at par all over India.
t. Attendance is compulsory for all the classes.

Examination for the Course
a. Examination is conducted twice a year after completion of the classes.
b. Written examination is of 3 hours of 100 marks.
c. MCQ- 60 MARKS.
d. Practical/Theory questions-40 MARKS.
e. Project report of 100 marks–to be submitted by the participants after the classes. Topics covered for project report are Private Company, Unlisted Company, Infrastructure, telecommunication, ESOP, Power, construction, Intangibles, Brand or any other topic as per the choice of the participants.

Reference books
a. Book titled 'Damodaran on Valuation' by Damodaran and titled 'Valuation for Mergers, Buyouts and Restructuring' by Arzac.
b. Other Indian & International Books made available through ICAI Library.

Certificate Course on Forex and Treasury Management

The ICAI Committee on Financial Markets and Investors' Protection is successfully conducting batches of Certificate course on Forex and Treasury Management from the year 2009. Committee has successfully conducted 38 batches of the course till date.

With the latest developments that are taking place in the Capital, Money, and Foreign Exchange Markets affecting volatility in exchange rates and accentuating liquidity constraints, corporates and banks have started paying closer attention to the treasury and forex management function.

This course covers practical concepts and analyses the international finance environment within which banks, other intermediaries and companies operate and how it affects their operations in treasury.

Certificate Course on Derivatives

The Committee on Financial Markets and Investors' Protection is successfully conducting batches of Certificate course on Derivatives from the year 2009. Committee has conducted 3 batches of this course till date.

This course covers financial derivatives such as forward contracts, futures contracts, options, swaps and other recently created derivatives. It follows pragmatic approach and discusses both the derivative markets and the derivative products and their use. At present, the course is Residential in nature and is conducted at Centre of Excellence, Hyderabad.

For detailed info about above courses, visit:
FXTM: http://www.icai.org/post.html?post_id=3552&c_id=266
Derivatives: http://www.icai.org/post.html?post_id=3553&c_id=266

Certificate Course on IFRS

An extensive Certificate course on IFRS is being organised by the Ind AS (IFRS) Implementation Committee for educating members about IFRS-converged Indian Accounting Standards (Ind AS). The Course aims at providing:

a. Introduction of the concepts of IFRS
b. Dissemination of knowledge on IFRS;
c. Comparison of IFRS with Indian Accounting Standards;
d. Issues in relation to IFRS;
e. Conversion of Financial Statements prepared on the basis of Indian GAAP to IFRS based financial statements.

Apart from the comprehensive theoretical aspects, this course sharpens the expertise and excellence of the members of the ICAI through multiple case studies across the industry and service sector. A certificate is awarded to the participants after attending and satisfactorily completing the course and passing the examination. The duration of the course is 12 days of classroom teaching and classes are held at weekends.

So far, around 7,000 members have been successfully trained in the Certificate Course on IFRS across various locations throughout the country and abroad.

Since IFRS/Ind AS is a reality these days, there is a high repute of this course as there are a lot of opportunities for accounting professionals in field of Ind AS/IFRS. The companies are looking for professionals having expertise in these new standards who can enable them in implementing these Standards by providing consultancy and advisory service. Not only the preparers of the financial statements but auditors and other experts are required to abreast themselves with Ind AS. It also opens up training avenues for the members as they can get actively involved in providing training to the concerned stakeholders through various courses, seminars, programmes.

It is worth mentioning that these opportunities are not limited to India only, because these are globally recognised Accounting Standards. With the knowledge of IFRS, Indian chartered accountants will be able to provide their services in different parts of the world. Indian chartered accountants having knowledge of Ind AS/IFRS will get global recognition.

Certificate Course on Anti Money laundering Laws (Anti-Money Laundering Specialist)

This course is conducted by Committee on Economic, Commercial Laws & WTO. The Money laundering has become a world-wide menace. It is a threat to the good functioning of a financial system; however, it can also be the Achilles heel of criminal and anti–national activities. Keeping in view the efforts and initiatives of the Government to curb the generation of the black money in various sectors and to closely work with the Government as a partner in the nation building and help the

Government to achieve its objectives in Prevention of Money Laundering, it was felt that the Chartered Accountants with their expertise in financial matters and exposure to business/commerce have a special role to play in the war against money laundering. As such, this Certificate Course was launched in 2015 with the objective to equip the members in this field.

The objective of the Course is to develop a base of expertise amongst the members in the field of Money Laundering and to provide members with the insight into various phenomena that determine and influence the money transactions that would enable them to find new opportunities for professional growth and development. The Course is of 40 Hours of duration and is divided into comprehensive 5 Modules. An evaluation test would also be conducted at the end of the Course for making the members eligible to complete the Course and award of the completion Certificate. At present, the Committee has conducted 2 batches of the Course at New Delhi and Mumbai.

Certificate Course on ADR (Arbitration, Mediation & Conciliation)

Arbitration is a quasi-judicial process for resolving commercial disputes without the intervention of the court. World over, arbitration has emerged as a preferred mode of dispute resolution in domestic as well as International trade. Arbitration process is expeditious and cost effective as compared litigation in the courts of law. Appreciating the larger role of members in Alternative Dispute Redressal Mechanism as well as the significance of dispute settlement in the development process, the ICAI Committee on Economic, Commercial Laws & WTO launched the Training Programme on Arbitration for the members in the year 2005. Later on, this Course was renamed and re-launched as Certificate Course on Arbitration in the Year 2008. With the merging global scenario and trade complexities, it was decided to revise and update the course which has now been renamed as Certificate Course on ADR (Arbitration, Mediation & Conciliation). The objective of the Course is to familiarise the members with the relevant laws which impact the arbitration process and the practical procedural aspects and to build the competency level of the members of the ICAI to position them as multidisciplinary consultants in the global service market.

The revised Course is divided into comprehensive 7 Modules covering the wide area of domestic

and international Arbitration, Mediation and Conciliation. The Certificate is to be awarded to the participants who qualify the evaluation test held on the last day of the Course and their names are also empanelled at the ICAI Panel of Arbitrators maintained by the ICAI. This Panel has also been promoted amongst various user bodies like High Courts, Co-operative Societies, Chambers of Commerce, Stock Exchanges *etc.*, for utilising the services of the members empanelled at the Panel.

POST QUALIFICATION COURSES

Corporate Management course

The Committee on Management Accounting of ICAI is entrusted with the task of organising Corporate Management Course. This Course is open only to the members of the Institute. This course is intended to enable the participants to give a visible evidence of specialisation in Corporate Management. The objective of this course is to provide the candidates an insight into certain concepts of behavioural-sciences, nuances of the corporate planning process, techniques of management control and management audit.

The Scheme of the course is as under:

Part I - Examination in four papers relevant to the course divided into two groups.

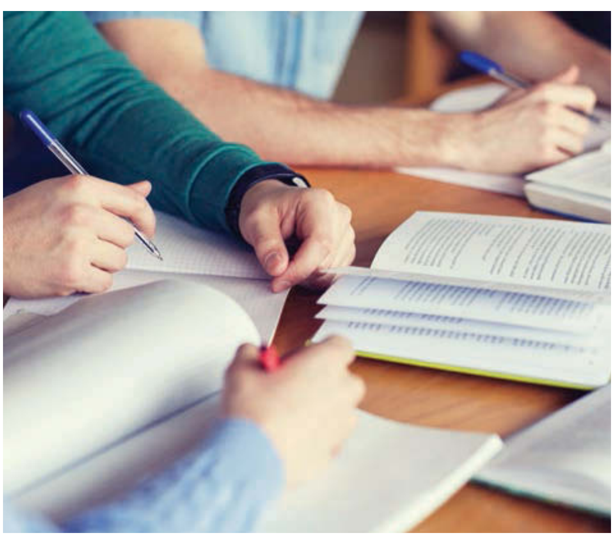
Interested candidates are required to apply to examination division by submitting an examination form directly either for a particular group or both groups simultaneously.

Part II - Practical Training of two years and submission of a dissertation on a selected subject.

A member eligible for the course can undertake both parts simultaneously or any part of the course at a time. Only application form is required to be submitted. A member can register himself for Part II (Practical Training). It is on-the-job training for two years which can be undergone with commercial or industrial organisations both within and outside India having a paid-up capital of not less than ₹25 lakh or a turnover of ₹5 crore. It may also be undergone in any government organisation, department of industrial undertaking, with or without the requirement of paid-up capital/ turnover, as mentioned above, depending upon the type of the undertaking as well as involvement of the candidate in any research project conducted by the ICAI or by other Institutions as may be approved by the Committee from time to time. The details of the course are available on the following link i.e. http://www.icai.org/new_post.html?post_id=1873&c_id=98.

Management Accountancy Course

The Committee on Management Accounting of ICAI is entrusted with the task of organising Management Accountancy Course. This Course is open only to the members of the Institute. Apart from the basic task of recording and analysing monetary transactions, the accountant today has to use his specialised skills and training to assist management in planning, controlling and decision making. The main objective of organising this course is to equip the candidates with technical and analytical skills in management of funds and managerial decision-making with special emphasis on the practical aspects. This course is intended to enable the participants to give a visible evidence of specialisation in Management Accountancy arena.



The Scheme of the above mentioned course is as under:

Part I - Examination in four papers relevant to the course divided into two groups.

Interested candidates are required to apply to examination division by submitting an examination form directly either for a particular group or both groups simultaneously.

Part II - Practical Training of two years and submission of a dissertation on a selected subject.

A member eligible for the course can undertake both parts simultaneously or any part of the course at a time. Only application form is required to be submitted. A member can register himself for Part II (Practical Training). It is on-the-job training for two years which can be undergone with commercial or industrial organisations both within and outside India having a paid-up capital of not less than ₹25 lakh or a turnover of ₹5 crore. It may also be undergone in any government organisation, department of industrial undertaking, with or without the requirement of paid-up capital/turnover, as mentioned above, depending upon the type of the undertaking as well as involvement of the candidate in any research project conducted by the ICAI or by other Institutions as may be approved by the Committee from time to time. The details of the course are available on the following link i.e. http://www.icai.org/new_post.html?post_id=1873&c_id=98.

Diploma in International Taxation

Broad objectives of this course conducted by Committee on International Taxation are:

a. To gain working knowledge of the provisions of International taxation laws.
b. To acquire an analytical approach to apply the working knowledge to specific problem areas in a variety of practical situations.

Vision behind this initiative

Keeping oneself updated with the current and potential compliance and tax issues continue to be a major focus area of every business decision maker. Tax laws have a bearing in every business decision, whether it is relating to transactions with related or non-related parties; in the domestic or global markets or structuring of business or entering into new business areas. Sweeping changes are being made in the tax laws all across the globe. Organisations that are a part of a multinational group have to evaluate the implications of the probable anticipated changes. They will also need to keep an eye on the tax administrative and legislative developments in India and also in other jurisdictions where they operate. Undoubtedly, this will widen the scope of practice for our chartered accountants in the area of international taxation.

The Diploma in International Taxation has been designed to provide necessary exposure and practical approach to our members in this area. This field has been offering a lot of professional opportunities for our members, which needs to be tapped. At present, the members practicing in this area are not in proportion to the opportunities available. Thus, ICAI took this initiative to encourage its members, particularly, the young members to take up international taxation as an area of practice. This course, if completed, would provide an aspiring practitioner the desired confidence to practice in this complex and upcoming field.

Post Qualification Course on Information System Audit

This course is run by ICAI Committee on Information Technology. Technology plays a major role in facilitating all functions of business in this era, not just in transaction capturing and processing but even in lesser known areas like Corporate Governance and Risk Management. There is no doubt that Chartered Accountants with ISA qualification will play a major role in Information Systems Audit (ISA) in the coming years. The technology revolution in the 21st century, particularly last 10 years, is a re-enactment of the Industrial Revolution that happened 150 years ago-with lessons that are valid even today. The Industrial Revolution was propelled by innovations but now the rules are being rewritten, powered by silicon chips and Internet bandwidth. With changing paradigms, knowledge and experience in technology are not merely desirable, but basic requirements for growth and even survival in the evolving global village.

With the new challenges threatening the traditional domain, the council of the Institute-by commissioning Post Qualification Course on

Information Systems Audit-is not just coping with the demands of IT dynamics. It also seeks to leverage technology to enhance the professional skills of its members. This course prepares members to offer value added services of Information Systems Audit, which are in increasing demand. The ISA Course provides basic understanding of how information technology is used/deployed. It facilitates understanding of how an IS Auditor is expected to analyse, review, Evaluate and to provide recommendations on identified control weaknesses in different areas of technology deployment. However, this course is not oriented towards teaching the fundamentals of technology. The course is conducted through a good blend of e-learning (online and facilitated), class room training, hands-on training with practical case studies and project work.

Objectives: The ISA combines technology, information assurance and information management expertise that enable an ISA to become trusted Information Technology advisor. The ISA with the unique blend of knowledge would serve as the "bridge" between business and technology leveraging the CA's strategic and general business skills. ISA Certification provides CAs with better understanding of technology deployment in enterprises and enables them to provide IT enabled services covering both assurance and consulting. The objective of the ISA course is *"To provide relevant knowledge, skills and practical guidance for planning and executing various types of assurance or consulting assignments in the areas of Governance, Risk management, Security, Controls and Compliance in the domain* *of Information Systems and in an Information Technology environment by using relevant standards, frameworks, guidelines and best practices."*

The ISA exam is designed to assess and certify Chartered Accountants for conducting Information Systems Audit. After successfully completing the course, the ISA candidates are expected to have required knowledge and skills to perform various assurance and consulting assignments in the domain of Information Systems, Information Technology and related areas. In addition, this will enhance their skills to be more effective in auditing in a computerised environment covering traditional areas of financial/compliance audits.

Course Scheme

a. Course Registration: Members of the ICAI interested in taking the ISA Course have to apply for registration to the ISA Course by filling the online form available at http://cit.icai.org along with the course fee of ₹20,000/-
b. ISA Professional Training (PT): Complete 80 hours of ISA PT classes generally scheduled for five weekends (Saturday and Sunday) covering 10 days training. Minimum attendance required to successfully complete ISA PT is 90% (9 Days out of 10).
c. ISA Eligibility Test (ISA ET): Candidates who successfully complete their ISA Professional Training can appear for ISA Eligibility Test with a qualifying requirement of 60%.
d. ISA Assessment Test (AT): After qualifying ISA ET, one has to appear for ISA AT. Currently it is organised on a half-yearly basis in the month of June & December with a qualifying requirement of 75% scaled marks.
e. Course Duration: It takes about six months to complete the course.

Professional Opportunities

The following are the opportunities where a system audit professional could target:

a. System Development Audit
   It is a process of setting and developing the application, the computer system, built on the basis on business requirement. As an IS Auditor, the following could be reviewed:
   i. System planning & Feasibility audit
   ii. Development & Design audit
   iii. System acceptance audit
   iv. System maintenance audit
b. Hardware & Software & Application Audit
c. Security Audit
   i. Network data security audit
   ii. Network access control audit
d. System Management Audit
e. Internal Controls Audit
f. DRP & BCP Audit

Post Qualification Course in International Trade Laws and World Trade Organisation

This course is run by Committee on Economic, Commercial Laws & WTO. It aims to establish and assure the expertise and authority of the ICAI in all matters of conceptualisation, formulation, negotiation, implementation and redressal concerning laws of Trade including Trade in Goods and Services in particular and the implementation of international trade regimes including the WTO regime in general. This Post Qualification Course was launched in the year 2003 with the main objective to equip the members with technical competence to understand and respond effectively to the complex milieu of trade laws that operate under the aegis of the World Trade Organisation. Later, keeping in view of the dynamic shifts in the economies and the pattern of negotiations due to globalisation, dynamics of the global market scenario, latest developments, expectations of the members, professional opportunities *etc.*, the course was revised and updated. The objective of revised Course is to provide the candidates with a thorough knowledge of the Domestic Trade Laws/Anti-dumping/Anti-subsidy/Competition Laws/TRIPS and TRIMS/GATT Agreements and to equip members with the specialised skills necessary for developing a dedicated practice in the area of services related to International Trade Laws and WTO.

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Capacity Building

The Course includes:-

Part I - Theoretical knowledge with examination

Part II-Intensive Training and submission of dissertation

A member eligible for the course has to complete Part I first before registering for Part II of the Course.

A certificate in the approved form shall be granted to those who qualify in the Course and they shall be entitled to use the letters "DITL (ICAI)" after their names.

Diploma in Insurance and Risk Management Course

This course is conducted by Committee on Banking, Insurance & Pension. Insurance worldwide, is one of the most potent financial sectors generating billions of dollars as revenues annually. With the rapid development of technology, changing consumer behaviour and increasing private participation & foreign equity, insurance companies have shifted their focus to providing greater value to the customer with a wide range of products. The good news about the insurance sector is that, with globalisation and deregulation worldwide, insurance can reach more people. Besides, with increasing competition, it offers more innovative products and services to individuals as well as the industry. However, the business is more complex than ever. Insurance professionals require an unusually high level of competence, specialised knowledge of insurance, expertise in finance and accounts so as to manage complexity at several levels such as strategy, advisory services, marketing, loss assessment, third party administration, operations & finances audit, investment management, compliance with IRDAI *etc*. Needless to say, there is a dearth of professionals who can play this role. The Diploma in Insurance and Risk Management (DIRM) was launched by the Instituted in 2003 with an objective to equip members of the Institute with the specialised knowledge to become insurance and Risk Management professionals and enable them to leverage opportunities in the rapidly evolving insurance sector. The DIRM course is tailor-made for CAs who wish to emerge as preferred professionals in the insurance sector. The contemporary curriculum and comprehensive course material sets the learning standards in Insurance and Risk Management and provide inputs required to comprehend the nitty-gritties of the industry.

NEW COURSES ABOUT TO BE LAUNCHED

Certificate Course on Financial Markets and Securities Laws

In the current scenario of information explosion, global linkages, quick responses and fast redundancies of data, products, businesses and services, it has become imperative for members to keep abreast of the challenges in the market place. The objective of this Course to be soon launched by Committee on Financial Markets and Investors' Protection is two-fold - on one hand, it undertakes to help those members who are willing to make career as intermediaries in the financial markets and on the other, to increase the efficiency of the participants associated with the financial market and to enable them to keep pace with the changing environment.

Certificate Course on Fundamental & Technical Analysis of Stocks Including Equity Research

This course to be launched by Committee on Financial Markets and Investors' Protection is meant for the young brigade of upcoming analysts in the industry of share market, stock market and includes technical and basic fundamental analysis. Fundamental analysis is a stock valuation methodology that uses financial and economic analysis to envisage the movement of stock prices. Technical analysis is all about studying stock price graphs and a few momentum oscillators derived thereof.

For detailed info about above courses, visit: http://www.icaiknowledgegateway.org/index.php?option=com_k2&view=itemlist&task=category&id=183:certificate-courses&Itemid=43

For further details about all the above mentioned courses, please visit ICAI website www.icai.org.

Happiness is not something ready-made. It comes from your own actions. - Dalai Lama

Adoption of Ind AS 17 Lease Standard and Its Implementation Challenges

Ministry of Corporate Affairs (MCA) notified the roadmap for implementation of converged IFRS (i.e. Ind AS) effective from 1st April, 2015. Implementation of the converged IFRS standards will be challenging for many entities and they might need to change the way they looked at the transactions under the Indian GAAP. Implementation of the converged IFRS standards would require numerous organisational and business changes and involvement from various departments and process owners of the entity. One such standard which the entity would need to look into detail is Ind AS 17-Leases. Read on to know more....

CA. Rohit Aggarwal

(The author is a member of the Institute who may be contacted at rohit_agrawal_777@yahoo.co.in.)

The Ind AS 17 Standard applies to agreements that transfer the right to use assets even though substantial services by the lessor may be called for in connection with the operation or maintenance of such assets. The Standard does not apply to agreements that are contracts for services that do not transfer the right to use assets from one contracting party to the other.

Assessment of lease standard typically requires the Companies to assess the substance of the transaction rather than the legal form of the arrangement. If a series of transactions involves the legal form of a lease and the economic effect can only be understood with reference to the series as a whole, then the series needs to be accounted for as a single transaction.

Risks and Rewards incidental to ownership

The classification of leases is based on the extent to which risks and rewards incidental to ownership of a leased asset lie with the lessor or the lessee. Risks include the possibilities of losses from idle capacity or technological obsolescence and of variations in return because of changing economic conditions. Rewards may be represented by the expectation of profitable operation over the asset's economic life and of gain from appreciation in value or realisation of a residual value.

Para 10 of Ind AS 17 states "Examples of situations that *individually or in combination* would normally lead to a lease being classified as finance lease are":

(a) the lease transfers ownership of the asset to the lessee by the end of the lease term;

(b) the lessee has the option to purchase the asset at a price that is expected to be sufficiently lower than the fair value at the date the option becomes exercisable for it to be reasonably certain, at the inception of the lease, that the option will be exercised;

(c) the lease term is for the major part of the economic life of the asset even if title is not transferred;

(d) at the inception of the lease, the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset; and

(e) the leased assets are of such a specialised nature that only the lessee can use them without major modifications.

Analysis- It may be noted that Para 8 of earlier AS 19 states "Examples of situations which would normally lead to a lease being classified as finance lease". The word "individually or in combination" is a differentiating factor under Ind AS 17 and AS 19. Under Ind AS 17, the term individually or in combination is used, which means that even if one condition is satisfied the lease would be classified as a finance lease. However, examples and indicators mentioned above are not always conclusive. It may be noted that if it is clear from other features that the lease does not transfer substantially all risks and rewards incidental to ownership, the lease can still be classified as an operating lease.

Discount rate for determination of Minimum Lease Payments

In the books of Lessee's- The discount rate to be used in calculating the present value of the minimum lease payments is the interest rate implicit in the lease, if this is practicable to determine; if not, the lessee's incremental borrowing rate shall be used.

In the books of Lessor's– The present value of the minimum lease payments accruing to the lessor is computed at a market rate of interest.

Leases for Land and Buildings

Ind AS 17 specifically speaks about transactions when the lease includes both land and building. An entity needs to assess the classification of each element as a finance or operating lease separately. In determining whether the land element is an operating or a finance lease, an important consideration is that *land normally has an indefinite economic life.* Whenever necessary in order to classify and account for a lease of land and buildings, the minimum lease payments (including any lump sum upfront payments) are allocated between the land and the buildings' elements in proportion to the relative fair values of the leasehold interests in the land element and buildings' element of the lease at the inception of the lease. If the lease payments cannot be allocated reliably between these two elements, the entire lease is classified as a finance lease, unless it is clear that both elements are operating leases, in which case the entire lease is classified as an operating lease.

Appendix C to Ind AS 17: Determining whether an Arrangement contains a Lease

Background

An entity may enter into an arrangement, comprising a transaction or a series of related transactions,

If the lease payments cannot be allocated reliably between these two elements, the entire lease is classified as a finance lease, unless it is clear that both elements are operating leases, in which case the entire lease is classified as an operating lease.

It may be difficult and even impracticable to determine the fair value of the asset acquired in the lease; however, the entity may elect to measure the asset capitalised under a finance lease at fair value at the date of transition in accordance with the optional exemption in Ind AS 101.

that does not take the legal form of a lease but conveys a right to use an asset (e.g. an item of property, plant or equipment) in return for a payment or series of payments. Examples of arrangements in which one entity (the supplier) may convey such a right to use an asset to another entity (the purchaser), often together with related services, include:

- outsourcing arrangements (e.g. the outsourcing of the data processing functions of an entity);
- arrangements in the telecommunications industry, in which suppliers of network capacity enter into contracts to provide purchasers with rights to capacity;
- take-or-pay and similar contracts, in which purchasers must make specified payments regardless of whether they take delivery of the contracted products or services (e.g. a take-or-pay contract to acquire substantially all of the output of a supplier's power generator).

Considerations of Appendix C to Ind AS 17:

Appendix C to Ind AS 17 addresses the following considerations:

(a) how to determine whether an arrangement is, or contains, a lease as defined in Ind AS 17;

(b) when the assessment or a reassessment of whether an arrangement is, or contains, a lease should be made; and

(c) if an arrangement is, or contains, a lease, how the payments for the lease should be separated from payments for any other elements in the arrangement.

Exemption under Ind AS 101– Determining whether an arrangement contains a lease:

Para D9 of Ind AS 101 states that "A first-time adopter may apply paragraphs 6-9 of "Appendix C of Ind AS 17 - Determining whether an Arrangement contains a Lease" to determine whether an arrangement existing at the date of transition to Ind ASs contains a lease on the basis of facts and circumstances existing at the date of transition to Ind AS, except where the effect is expected to be not material."

Analysis - There are no explicit exemptions or exceptions in Ind AS 101 from retrospective application of Ind AS 17 Leases. A first time adopter is therefore required to recognise all assets held under finance lease at the date of transition. If not previously recognised, this involves determining the fair value of the asset at the inception of the lease (or the present value of the minimum lease payments, if lower) depreciated to the date of transition and calculating the finance lease liability based on the net present value of the minimum lease payments, amortised using the rate implicit in the lease (or, in certain circumstances, the lessee's incremental borrowing rate). It may be difficult and even impracticable to determine the fair value of the asset acquired in the lease; however, the entity may elect to measure the asset capitalised under a finance lease at fair value at the date of transition in accordance with the optional exemption in Ind AS 101.

Appendix C to Ind AS 17 specifies criteria for determining, at the inception of an arrangement, whether the arrangement contains a lease. It also specifies when an arrangement should be reassessed subsequently. Ind AS 101 provides an exemption from these requirements. Instead of determining retrospectively whether an arrangement contains a lease at the inception of the arrangement and subsequently reassessing that arrangement as required in the periods prior to transition to Ind ASs, entities may determine whether arrangements in existence on the date of transition to Ind ASs contain leases by applying paragraphs 6 to 9 of Appendix C to Ind AS 17 to those arrangements on the basis of the facts and circumstances existing at the date of transition, except where the effect is not expected to be material.

Hence, for the purpose of determining whether the arrangement existing at the date of transition to Ind ASs contains a lease, analysis need to be made based on the facts and circumstances existing at the date of transition. Once it is determined that the arrangement existing at the date of transition to Ind ASs contains a lease based on the facts and circumstances existing at the date of transition, then the assessment would be to determine whether the arrangement is a finance lease or an operating lease based on the substance of the transaction rather than the form of the contract at the inception of the lease and not on the date of transition to Ind ASs.

Determining whether an arrangement is, or contains, a lease shall be based on the substance of the arrangement and requires an assessment of whether:

(a) fulfilment of the arrangement is dependent on the use of a specific asset or assets (the asset):-
Analysis- Although a specific asset may be explicitly identified in an arrangement, it is not the subject of a lease if fulfilment of the arrangement is not dependent on the use of the specified asset. For example, if the supplier is obliged to deliver a specified quantity of goods or services and has the right and ability to provide those goods or services using other assets not specified in the arrangement, then fulfilment of the arrangement is not dependent on the specified asset and the arrangement does not contain a lease. A warranty obligation that permits or requires the substitution of the same or similar assets when the specified asset is not operating properly does not preclude lease treatment. In addition, a contractual provision (contingent or otherwise) permitting or requiring the supplier to substitute other assets for any reason on or after a specified date does not preclude lease treatment before the date of substitution.

(b) the arrangement conveys a right to use the asset:-
Analysis- An arrangement conveys the right to use the asset if the arrangement conveys to the purchaser (lessee) the right to control the use of the underlying asset. The right to control the use of the underlying asset is conveyed if any one of the following conditions is met:
(a) The purchaser has the *ability or right to operate the asset or direct others to operate* the asset in a manner it determines while obtaining or controlling more than an insignificant amount of the output or other utility of the asset.
(b) The purchaser has the *ability or right to control physical access to the underlying asset* while obtaining or controlling more than an insignificant amount of the output or other utility of the asset.
(c) Facts and circumstances indicate that it is remote that one or more parties other than the purchaser will take more than an insignificant amount of the output or other utility that will be produced or generated by the asset during the term of the arrangement, and the price that the purchaser will pay for the output is neither contractually fixed per unit of output nor equal to the current market price per unit of output as of the time of delivery of the output.

Example- Arrangement that contains a lease
A production company (the purchaser) enters into an arrangement with a third party (the supplier) to supply a minimum quantity of gas needed in its production process for a specified period of time. The supplier designs and builds a facility adjacent to the purchaser's plant to produce the needed gas and maintains ownership and control over all significant aspects of operating the facility. The agreement provides for the following:

- The facility is explicitly identified in the arrangement, and the supplier has the contractual right to supply gas from other sources. However, supplying gas from other sources is not economically feasible or practicable.
- The supplier has the right to provide gas to other customers and to remove and replace the facility's equipment and modify or expand the facility to enable the supplier to do so. However, at the inception of the arrangement, the supplier has no plans to modify or expand the facility. The facility is designed to meet only the purchaser's needs.
- The supplier is responsible for repairs, maintenance, and capital expenditures.
- The supplier must stand ready to deliver a minimum quantity of gas each month.

The term insignificant is not defined under Ind AS. The entity has to determine what amounts to an insignificant amount of output or other utility of the asset on case to case basis at the time of assessment of each transaction under Appendix C to Ind AS 17.

If an arrangement contains a lease, the parties to the arrangement shall apply the requirements of Ind AS 17 to the lease element of the arrangement, unless exempted from those requirements in accordance with paragraph 2 of Ind AS 17.

- Each month, the purchaser will pay a fixed capacity charge and a variable charge based on actual production taken. The purchaser must pay the fixed capacity charge irrespective of whether it takes any of the facility's production. The variable charge includes the facility's actual energy costs, which amount to about 90 % of the facility's total variable costs. The supplier is subject to increased costs resulting from the facility's inefficient operations.
- If the facility does not produce the stated minimum quantity, the supplier must return all or a portion of the fixed capacity charge.

Assessment

The arrangement contains a lease within the scope of Ind AS 17 *Leases*. An asset (the facility) is explicitly identified in the arrangement and fulfilment of the arrangement is dependent on the facility. Although the supplier has the right to supply gas from other sources, its ability to do so is not substantive. The purchaser has obtained the right to use the facility because, on the facts presented—in particular, that the facility is designed to meet only the purchaser's needs and the supplier has no plans to expand or modify the facility—it is remote that one or more parties other than the purchaser will take more than an insignificant amount of the facility's output and the price the purchaser will pay is neither contractually fixed per unit of output nor equal to the current market price per unit of output as of the time of delivery of the output.

Separating payments for the lease from other payments

If an arrangement contains a lease, the parties to the arrangement shall apply the requirements of Ind AS 17 to the lease element of the arrangement, unless exempted from those requirements in accordance with paragraph 2 of Ind AS 17. Accordingly, if an arrangement contains a lease, that lease shall be classified as a finance lease or an operating lease in accordance with paragraphs 7–17 of Ind AS 17. Other elements of the arrangement not within the scope of IND AS 17 shall be accounted for in accordance with other Standards.

For the purpose of applying the requirements of Ind AS 17, payments and other consideration required by the arrangement shall be separated at the inception of the arrangement or upon a reassessment of the arrangement into those for the lease and those for other elements on the basis of their *relative fair values*. The minimum lease payments as defined in paragraph 4 of Ind AS 17 include only payments for the lease (i.e. the right to use the asset) and exclude payments for other elements in the arrangement (e.g. for services and the cost of inputs).

In some cases, separating the payments for the lease from payments for other elements in the arrangement will require the purchaser to use an estimation technique. For example, a purchaser may estimate the lease payments by reference to a lease agreement for a comparable asset that contains no other elements, or by estimating the payments for the other elements in the arrangement by reference to comparable agreements and then deducting these payments from the total payments under the arrangement.

Example - Separating payments for the lease from other payments

A production company (the purchaser) enters into an arrangement with a third party (the supplier) to supply a minimum quantity of gas needed in its production process for a specified period of time. The supplier designs and builds a facility adjacent to the purchaser's plant to produce the needed gas and maintains ownership and control over all significant aspects of operating the facility. The Company charges ₹250,000/- per month which includes payments for the lease and payments for services and the cost of inputs.

A purchaser may estimate the lease payments by reference to a lease agreement for a comparable asset that contains no other elements, or by estimating the payments for the other elements in the arrangement by reference to comparable agreements and then deducting these payments from the total payments under the arrangement.

Assessment

As required by Appendix C to Ind AS 17, charges of ₹250,000/- per month received by the Company needs to be separated for payments for the lease (i.e. the right to use the asset) and payments for services and the cost of inputs. Suppose the fair value of lease payment amounts to ₹100,000/- and payment for services and the cost of inputs amounts to ₹150,000/-, then the amount of ₹100,000/- towards the lease payment only needs to be considered for the assessment of determination of lease and not the entire amount of ₹250,000/-.

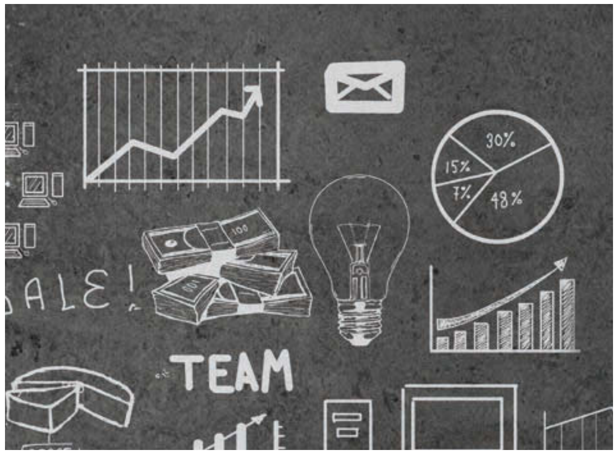
Similarly, in the above example, if the determination of fair value of lease payment and other payment is not possible to be determined then the entity need to use the estimation technique to separate the payment for the lease from other payments.

It may be noted that Appendix C to IND AS 17 deals only with whether the arrangement contains a Lease or not. It does not deal with whether the arrangement is a finance lease or an operating lease. Hence, based on the terms and conditions of the agreement/arrangement, it is concluded that the arrangement contains a lease, one needs to go back to Ind AS 17 to determine whether the arrangement is a finance lease or operating lease.

Other factors that need to be considered for Classification of Leases

The standard requires an entity to assess the classification of leases as finance or operating leases in accordance with the general rules in paragraphs 7-13 given in Ind AS 17. The standard takes a more principles-based substance over form approach and list down the examples and indicators that would normally lead to a lease being classified as a finance lease. The classification of leases adopted in the standard is based on the extent to which the risks and rewards incidental to ownership of a leased asset lie with the lessor or the lessee. Risks include possibility of losses from idle capacity or technological obsolescence and rewards may be represented by the expectation of profitable operation over the asset's economic life and a gain from appreciation in value or realisation of residual value. The economic life therefore include additional lease terms with the same or different lessees.

The difficulty tends to emerge on classifying leases where only one condition is fulfilled through the terms of lease, but the lessor retains all the elements of risk relating to the assets. The important point



would be that the tests mentioned in para 10 of IND AS 17 are not explicit requirement of the standard and should not be applied in isolation, but it may be a useful tool in practice in attempting to determine the economic substance of lease arrangement. Hence, one needs to apply other indicators regarding classification which are as follows -

- Transfer of ownership of asset at the end of lease term
- Whether bargain purchase option available with lessee
- Lease Term vs. Economic life of asset
- Whether the leased assets are of specialised nature
- Gain or losses from fluctuation in fair value of residual value – Residual value risk
- Ability of lessee to extend lease term of asset at substantially lower value than market value.

Hence, while determining whether the arrangement is a finance lease or an operating lease one needs to analyse the examples of situations mentioned in para 10 of Ind AS 17 along with the analysis of whether the risk and rewards incidental to ownership of a leased asset lie with the lessor or the lessee.

Conclusion

The implementation of Ind AS 17 standard would require the entity to relook at the transactions entered into by the entity in the past to determine whether an arrangement existing at the date of transition to Ind ASs contains a lease on the basis of facts and circumstances existing at the date of transition to Ind AS. If the arrangement contains a lease the arrangement need to be accounted for as per the principles of Ind AS 17. ■

To be able to lead others, a man must be willing to go forward alone. - Harry S. Truman

Anomalies in Taxation of Salary Income in India

Salaried class is considered the most regular Income Tax payers, given the nature of this class to avoid hassles, transparent nature of income and stringent provisions of TDS. However, there are certain anomalies in the provisions taxing salary income in India which need to be addressed. First is the need to restore Standard Deduction earlier allowed u/s 16 (i) of the Income-tax Act, 1961 to consider the incidental expenses incurred by them. Second is to allow deduction for Conveyance Expenses and House Rent paid whether any allowance is paid to them for this purpose or not. Third is the upward revision of exemption for Education/Hostel Allowance for children of employees. Fourth is to make provision for deducting amount, if any, recovered from outgoing employees in lieu of notice period from taxable income. Fifth is providing an option to retiring employees to keep their PF accumulations in a Fund and the Sixth is abandoning the idea of taxing withdrawals from PF forever. Read on to know more…..

Salaried class assessees are considered to be the most regular Income Tax payers in India. Since most of them like hassle free life, they don't want to take any risk of getting notices from the Income Tax Department and approaching experts to get these replied. Hence, they pay the tax even when there is some confusion as to whether it is actually payable or not. Moreover, the transparent nature of the source of their income and stringent provisions of TDS do not leave chances of any doubt regarding payment of due taxes in respect of income from salary.

Surprisingly, salaried class has to pay tax on almost their entire gross salary income, as they have only a few options for tax saving, like getting a portion of their pay packet as House Rent Allowance (HRA) or Transport Allowance *etc.* As regards deduction for investments made which are eligible u/s 80C, payment against Medical Insurance Premium u/s 80D, payment of House Rent u/s 80GG *etc.*, these are available to all assessees whose income may be taxed under any head and hence, cannot be said to be available to the salaried tax payers only.

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Moreover, if we go through the provisions of the Income-tax Act, 1961 along with the Income Tax Rules, 1962 (referred to as the 'Act' and the 'Rules' respectively hereinafter in this Article) regarding taxing of salary income, we will find certain anomalies which need to be addressed, keeping in view of not only the overall contribution of salaried class in the revenue from Income Tax but also to make these provisions appear 'Just' and 'Equitable'. These anomalies or inconsistencies may be discussed as under –

1. No rebate for incidental expenses

Under all the heads of Income except Salary, incidental expenses incurred by the assessees to earn the income being subjected to tax are deducted for the purpose of calculation of income taxable under that head. For example, in the case of Income from House Property, a Standard Deduction @ 30% of the annual value is allowed in addition to municipal taxes paid, (apparently towards other expenses in connection with the concerned house property like repairs, insurance *etc.*), apart from interest on borrowed capital u/s 24 of the Act.

In the case of Business Income, deduction for such expenses is allowed (unless the income is 'deemed' under certain provision of the Act, like determination of profits or gains of business of plying, hiring or leasing goods carriages u/s 44AE of the Act) under provisions of Section 28 to 44 of the Act. Regarding Income from Capital Gains, since the taxable income is ascertained after deducting cost of acquisition of capital asset from the transfer value thereof, the expenses incurred to earn such income are automatically considered. In the same manner, while computing taxable Income from Other Sources, deduction for such expenses is allowed u/s 57 of the Act.

However, no such deduction is allowable in case of Salary Income, though the salaried persons also have to incur certain expenses to earn salary, like on purchasing of books and periodicals, obtaining membership of professional bodies, attending seminars to update their knowledge, joining certain courses, preparing for and appearing in certain examinations to get promotions in their existing jobs or finding better jobs, making payment to placement agencies to find a new job (though many such agencies charge fee from the employers only, still some to charge it from both sides) *etc.*

There is a strong case that this deduction should be restored on the grounds of justice, equity and fairness, to put the salaried class at par with other assessees (in view of the provisions of Article 14 of the Constitution of India, guaranteeing all, equality before the law), which may be fixed, say @ 5% of Gross Salary Income, subject to maximum ₹30,000/- in a year.

Since it is difficult to assess the quantum of such expenses in each individual case, a portion of Salary Income was being allowed earlier as 'Standard Deduction' u/s 16 (i) of the Act on uniform basis but it was withdrawn later w. e. f. the Assessment Year 2006-07. Accordingly, there is a strong case that this deduction should be restored on the grounds of justice, equity and fairness, to put the salaried class at par with other assessees (in view of the provisions of Article 14 of the Constitution of India, guaranteeing all, equality before the law), which may be fixed, say @ 5% of Gross Salary Income, subject to maximum ₹30,000/- in a year.

2. Undue condition of getting specified amount as allowance from the employer for claiming deduction for certain expenses

There are certain provisions in the Act, restricting deduction for certain expenditure incurred by the salaried assessees, to the condition that they must be in receipt of allowances of the specified nature from their employers. This condition seems to discriminate between the employees who are getting allowances from their employers as such and those who are not getting these. In fact, getting an allowance from employer or not depends on the pay structure of the employer and is not in the hands of an employee. Though some employers give the liberty to their employees to bifurcate their agreed pay packets into as many elements as they want to reduce their tax burden, however, most of the employers adopt a uniform pay policy so as to avoid dissatisfaction among the rank and file of their employees and also to rule out the chances of complications resulting from such liberty being given to the employees.

Actually, incurring of such expenditure by the assessee does not depend on the fact whether an allowance is being paid by the employer or not. If these expenses are to be incurred by an employee, these are to be, whether the employer pays any such allowance or not. Since these expenses are incurred by the employees in connection with their employment, the criteria of employees getting something as allowance from their employers for claiming deduction must be done away with, while retaining only the condition of incurring the specified expenditure. Two provisions of this nature are being discussed here below-

A. Transport Allowance

Presently, if an employee is getting any payment from his employer as Transport Allowance to meet out his expenditure for the purpose of commuting between place of his residence and the place of his duty, a sum up to ₹1,600/- per month is exempted out of it u/s 10 (14) read with Rule 2BB. However, if he is not getting any amount from his employer as such, he cannot claim any exemption on this score, though, both these class of employees have to incur the same amount of expenditure towards conveyance. It, therefore, seems to be quite logical that this deduction should be allowed to all employees who do not reside in the office/factory campus and have to travel by conveyance from residence to work place (whether in public transport or by an owned vehicle, maintained by them mainly for this purpose, for which they cannot even claim depreciation) except in case where the conveyance is provided by the employer.

In fact, this expense should be allowed as an incidental expense incurred to earn salary income as a fixed portion of salary (with a ceiling of course) as the amount incurred by an employee for this purpose normally varies in proportion to his salary income. For example, an employee residing in Delhi at a distance of about 15 km from his work place and earning about ₹5.00 lakh per annum, would like to travel by Auto and/or Bus/Metro or would maintain a two wheeler for this purpose and may have to spend ₹70-80 per day on these (or ₹22500/- per annum, for 300 working days in a year @ ₹75/- per day on average basis), whereas an employee earning more than ₹5.00 lakh per annum may like to travel by his own car for which he may have to incur a sum of ₹150/- per day, @ ₹5/- per km. for a to & from distance of 30 km. (or ₹45,000/- per annum, @ ₹150/- per day for 300 working days in a year on average basis).

Hence an employee, not residing in the campus of his work place and also not provided with conveyance facilities by his employer, must get an extra deduction on account of Conveyance Expenses as a percentage of his gross salary income which may be fixed for metro cites, say @ 5%, subject to maximum of ₹30,000/- and for other cities @ 2.5% subject to maximum of ₹15,000/-, whether the employee is in receipt of any allowance for this purpose or not.

An employee, not residing in the campus of his work place and also not provided with conveyance facilities by his employer, must get an extra deduction on account of Conveyance Expenses as a percentage of his gross salary income which may be fixed for metro cites, say @ 5%, subject to maximum of ₹30,000/-

B. House Rent Allowance (HRA)

An employee who is specifically granted an allowance (by whatever name called) by his employer to meet expenditure, actually incurred on payment of rent in respect of residential accommodation occupied by him, can claim exemption u/s 10 (13A) read with Rule 2A, to the least of the following, whether he owns any residential accommodation or not–

a) An amount equal to 50% of salary, where the residential house is situated at Mumbai, Kolkata, Delhi or Chennai and amount equal to 40% thereof where the residential house is situated at any other place.
b) HRA received by the employee in respect of the period during which the rental accommodation is occupied by him during the previous year.
c) The excess of rent paid over 10% of salary.

Out of the above three, in most of the cases either it is item b) i.e. HRA received by the employee, or item c) i.e. the excess of rent paid over 10% of salary which is the least, as no prudent person would like to pay 60% or 50% portion, as the case may be, of his salary [after adding 10% in the ceiling mentioned in item a), so as to reduce the same from rent paid under item c), only then the item a) can be equal to or lesser than the item c)]. However, an employee (or any other assessee also) not getting any such allowance at any time

Cost of education has gone manifold during this period, it needs a suitable upward revision, say to ₹500/- and 1,500/- per month per child respectively to give some relief to the salaried tax payers.

during the previous year but residing in a rented accommodation, would get a deduction u/s 80GG of the Act in respect of rent paid, if he or his specified relatives do not own any residential accommodation at the place of his work and also if he owns any residential accommodation at any other place but does not claim concession in respect of self occupied house property u/s 23 (2) (a) or 23 (4) (a) of the Act. The amount deductible will be the least of the following -

a) ₹5,000/- (increased from ₹2,000/- under Budget proposals 2016-17) per month.
b) 25% of his total income (excluding capital gains and other specified sums)
c) The excess of rent paid over 10% of total income (excluding capital gains and other specified sums).

From the above, it appears that though the provisions of Section 10 (13A) are more lenient and the deduction allowed is also more in comparison to the exemption allowed u/s 80GG but the former still need revision for the benefit of employees. Since taking a house on rent near work place is incidental to employment, the criteria of HRA being paid to the employee [as mentioned at item b) hereinabove] must be removed while calculating the amount eligible for exemption u/s 10 (13A) read with Rule 2A, though the limit of salary which is equal to 50% and 40% respectively at present [as mentioned at item a) hereinabove] may be revised at a slightly lower level, to rationalise the deduction, if required.

3. No revision in the exemption limit of Children's Education/Hostel Allowance since last about 20 years

An allowance paid by the employer for the education of children of his employee or to meet out their hostel expenditure (by whatever name called) is exempt u/s 10 (14) read with Rule 2BB to the extent of ₹100/- and ₹300/- per month per child respectively in respect of maximum 2 children. However, the amount of these exemptions which was increased from ₹50/- and ₹150/- per month per child respectively w.e.f. 01-08-1997 to present ₹100/- and ₹300/- respectively, has not been revised since last about 20 years. As everybody knows, cost of education has gone manifold during this period, it needs a suitable upward revision, say to ₹500/- and 1500/- per month per child respectively to give some relief to the salaried tax payers.

4. No deduction of the amount recovered by an employer from outgoing employee, against short notice given, before leaving the employment

There are cases where employers make some recovery from the employees leaving an organisation, if the notice given by them for leaving their jobs falls short of the period specified as per terms of their employment. Since under the present Income Tax Law, there is no provision to give credit of such recovery from employees while calculating their taxable Salary Income, the employers cannot do that. On the other hand, in case any reimbursement against such recovery is made to such employees either in full or in part, by their succeeding employers, the amount so reimbursed is added by them to the Salary Income of such employees and taxed as such.

Here the anomalies are –

a) though the previous employer takes back a part of the salary paid to his employee, his salary income is not reduced with the amount recovered for the purpose of calculating his income tax liability. In fact, when anything is recovered from recipient of an income on account of such reasons, the income is automatically reduced to that extent.
b) the employee had to pay this amount to get increased salary (which is normally the case) from his succeeding employer which is again subjected to tax. Hence, not granting deduction for such recovery will also amount to levying tax on an Income without reducing incidental expenses incurred to earn that Income.
c) when the total salary paid by the employer, be it in the form of cash, perquisites or fringe benefits, is being subjected to tax, recovery of some portion from the employee out of that salary should also be reduced from income for the purpose of calculating his income tax liability, otherwise it will amount to levy of 'Tax' without 'Income' as

far as the tax on the amount so recovered by the employer is concerned.

d) the employer who recovers such amount from the outgoing employee, pays Income Tax thereon, as this amount is credited by him in the Salary Paid A/C or in the Other Income A/C, thus reducing his expense or increasing the income, which is subjected to tax. Hence, taxing the same in the hands of the concerned employee, means taxing the sum twice, once in the hands of the employer and then again in the hands of the employee.

Accordingly, to provide justice in such cases, it is quite logical that there should be a provision in the Rules, under which the previous employer has to reduce the salary income of outgoing employees, with the amount recovered from them, if any, in *lieu* of notice period, while calculating their income tax liability. Not only this, if after giving credit for the amount so recovered, the net salary from previous employer shows negative income for that year (such a situation may arise when the employee leaves job at the beginning of a financial year), the employer should give a certificate for that and the amount of such negative income be adjusted from his salary income from next employer. Of course, if the succeeding employer reimburses something towards such recovery, it should invariably be subjected to tax on his part.

5. Non-availability of a suitable investment option before retiring employees

Previously, employees who used to get retired and did not understand the intricacies of the share market or other investment options like buying of an immovable property to earn capital appreciation/ rental income therefrom, used to keep their PF accumulations with the trusts managing PF, from where they continued earning the same rate of interest, they used to get earlier which was also exempt from tax. But from the Financial Year 2011-12, the employees were not getting any interest on their PF accumulations, if they continued keeping their PF accumulations with the PF trust beyond 3 years after retirement.

To provide justice in such cases, it is quite logical that there should be a provision in the Rules, under which the previous employer has to reduce the salary income of outgoing employees, with the amount recovered from them, if any, in *lieu* of notice period, while calculating their income tax liability.

The EPFO (Employees Provident Fund Organisation) has now decided to provide interest on such 'Inoperative Accounts' (wherein PF contributions have not been received for 36 months) from 1st April, 2016, which is likely to benefit over 9 crore such account-holders having total deposits of ₹32,000 crore approx.

This was quite unreasonable that a person who continued keeping his hard earned money with the Custodian for use in old age, is abruptly deprived of the benefit of interest on his funds. Fortunately, the EPFO (Employees Provident Fund Organisation) has now decided to provide interest on such 'Inoperative Accounts' (wherein PF contributions have not been received for 36 months) from 1st April, 2016, which is likely to benefit over 9 crore such account-holders having total deposits of ₹32,000 crore approx.

There was another controversy over taxability of interest accrued on PF accumulations after cessation of employment of PF members, when the ITAT (Income Tax Appellate Tribunal) held, in the case of *ONGC Ltd. CPF Trust vs. ITO (2005), 98 TTJ 1111 (Del.)*, that such interest is subject to TDS u/s 194A of the Act, in view of the fact that after cessation of employment, the status enjoyed by the member as 'employee' gets changed and hence the interest accrued on PF accumulations cannot be treated as "Income from Salary', for which 'employer-employee' relationship is necessary. After this decision, many PF trusts started deducting TDS on such interest and the employees (retired, of course) had to bear the consequences. It was again a paradoxical situation, wherein a person's interest income was being treated exempt from tax when he was in earning capacity, but it ceases to be exempt and starts getting taxed after his retirement when he loses the regular source of his income.

Hence, the Government should seriously think over making clear rules to allow retaining of PF accumulations by the retired employees with the trusts and continue treating the interest accrued thereon as exempt, or form a separate fund wherein the retiring employees from any sector, may get their PF accumulations transferred, with assured reasonable return which must be exempt from tax, with an option to get an annuity on monthly basis, and also to withdraw a specified portion of the original sum in his life time, under certain specified circumstances like illness, marriage of ward *etc.*, so that they can get a safe platform to park their money and earn an assured regular income. This is all the more necessary in view of the fact that the coverage under social security schemes in India, is still not sufficient to take care of the citizens in their old age.

6. Proposal to tax the withdrawals out of PF accumulation

Presently, there is no provision in the Indian Income Tax Law for taxing the withdrawals from PF. However, it was being considered by the Union Government since long which resulted into a provision in Budget Proposals 2016-17, to tax a portion of withdrawals from the PF accumulations. Though due to stiff opposition of the proposal by all and sundry and also by intervention of the Prime Minister, the proposal was taken back, however, given the chances of revival of any proposal of this nature in future, it is worth to discuss the pros and cons of the issue–

There are 4 ingredients of Provident Fund accumulations viz. self contribution of employee made over a period of time, interest accumulated thereon, contribution made by the employer and the interest accumulated thereon.

As regards position of own contribution of employee, it cannot be taxed as income because it is deposited by him out of his income which was already subjected to tax. Hence, at the time of withdrawal thereof, it is nothing but the refund of amount invested by the employee and not an income earned by him. Even if it is found taxable as a reversal of deduction already claimed by him on such investment either under the erstwhile Section 88 or the present Section 80C, it will not stand just for retrospective application, as in that case, the employee should have been given an option to avail such exemption or not by making it clear to him that this exemption would be reversed at the time of withdrawal of the amount post his retirement.

Moreover, it may be that the employee might have invested more than the amount eligible for exemption u/s 80C, making it difficult to ascertain, as to against which part of his investment, he actually availed the benefit at first, thus opening a Pandora's box giving rise to filing of number of Court cases. For example, an employee spent ₹40,000/- as Tuition Fee of his daughter/son, paid ₹50,000/- towards repayment of principal amount of Housing Loan taken by him, invested ₹30,000/- as Life Insurance Premium, purchased National Savings Certificates (NSCs) worth ₹20,000/- and deposited ₹60,000/- in PF, in a year. However, against this total amount of ₹200,000/-, he will get deduction u/s 80C for ₹150,000/- only.

The Government should seriously think over making clear rules to allow retaining of PF accumulations by the retired employees with the trusts and continue treating the interest accrued thereon as exempt

Now, at the time of withdrawal of such amount from PF, against which portion of the total investment ₹200,000/-, the assessee would be deemed to have claimed deduction earlier? Even if it is proposed to be considered on proportionate basis, then the amount of tuition fee paid is never going to be received back. Hence, he may claim that he got deduction for full payment made towards Tuition Fee, repayment of Housing Loan, Life Insurance Premium and NSCs purchased, while claiming the remaining ₹10,000/- only against PF contribution.

Now come the other three portions of PF accumulation namely, interest accumulated on own contribution, amount contributed by the employer and the interest accumulated thereon. These should also not be taxed at the time of withdrawal, being not the income of current period but earned gradually from year to year in a long span of time. If these were to be taxed at all, why at first these were exempted? Suppose, instead of getting exemption from tax, these were declared taxable at the initial stage itself, there may be cases where there would be no tax on such income at all, or the tax rate could be lower, given the lower income of the assessees at that time. Moreover, the employee might have resorted to other means of tax saving like obtaining more housing loan *etc.*, or the interest could have been exempt under some other section (like 80L was allowing earlier) which he did not claim at that time, as he was not given option to get such income taxed at that point of time.

In this way, considering the contribution of salaried tax payers in the revenue from Tax and their vulnerable position, it is expected that their case would be taken up by the Finance Minister on just, equitable and humanitarian grounds on the lines of suggestions given hereinabove. ■

You see things and you say 'Why?'. But I dream things that never were and I say 'Why not?'. - George Bernard Shaw

Special Audit under Service Tax Law by Department Officials

The Finance Act, 2012, introduced a new Section 72A in Chapter-V, w.e.f. 28th May, 2012 on "Special Audit" which empowers the Principal Commissioner/Commissioner of Central Excise to direct any person liable to pay service tax to get his accounts audited from a Chartered Accountant or Cost Accountant as nominated by Principal Commissioner/Commissioner subject to certain conditions specified therein. Further, Rule 5A of the Service Tax Rules, 1994, deals with access to any premises registered under these rules, by any Officer authorised by the Commissioner or audit party deputed by the Commissioner or the Comptroller and Auditor General of India. In this article, the author has examined the validity of Rule 5A(2) of the Service Tax Rules, 1994, in view of the recent judgments on the issue. Read on to know more….

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The place of beginning for scrutinising and verifying whether assessee is duly discharging service tax liability, by the department, is serving scrutiny notice on assessee intimating that an audit team would be verifying the relevant records of the business of the assessee. In this regard, to begin with, it would be germane to acquaint with the relevant provisions of service tax law under which records of the assessee could be verified. These provisions are discussed below:

a. At the outset it requires to be noted that unlike the Income -tax Act, 1961 or even the Delhi Value Added Tax Act, 2004 there is no provision in the Act for re-assessment of a service tax return. There can be a self-assessment in which case the return filed by the appellant is accepted as such and tax amount indicated therein is accepted as being correct. However, under Section 72 of the Act two scenarios are envisaged. One scenario is where a person who is liable to pay service tax fails to furnish a return u/s 70. The second is where such person has filed a return but "fails to assess the tax in accordance with the provisions of this Chapter or Rules thereunder". The Assessing Officer (AO) is in either scenario empowered to require the production of such accounts, documents or other evidences as he may deem necessary and after taking into account all the relevant material which is available or which he has gathered, give an order in writing after complying with the rules of natural justice.

b. Further, Section 72A provides for a Special Audit. The scheme is that in the first instance Commissioner has to record "reasons to believe" that the person who is liable to pay service tax has:
   i. Failed to correctly declare or determine the value of the taxable service; or
   ii. Wrongly availed or utilised credit or paid tax beyond the normal rebates having regard to the nature of the taxable services provided or by means of fraud, collusion or any willful misstatement or suppression of facts; or
   iii. Operations spread out in multiple locations and it is not practicable to obtain a true and complete picture of accounts from the registered premises in the jurisdiction of the concerned Commissionerate.

It is only where one of the above three contingencies exists that the Commissioner may direct the appellant to "get his accounts audited either by a Chartered Accountant or a Cost Accountant nominated by such Commissioner". The extent of audit and period for which it should be conducted is also to be specified by the Commissioner.

Prior to 28th May, 2012 power for conducting Special Audit, as envisaged by introducing Section 72A, was derived from Section 14AA of the Central Excise Act, 1944. Section 83 of the service tax law applies said Section 14AA mutatis mutandis to the service tax law.

Prior to 28th May, 2012 power for conducting special audit, as envisaged by introducing Section 72A, was derived from Section 14AA of the Central Excise Act, 1944. Section 83 of the service tax law applies said Section 14AA mutatis mutandis to the service tax law.

c. Further, the power to search u/s 82 of the Act is also hedged in by some limitations. One such limitation is the requirement of the officer to record reasons to believe that (i) there are documents or books that have been secreted in a place (ii) such documents or books are useful or relevant for any proceedings. A third safeguard is that the provisions of the Code of Criminal Procedure, 1973 (Cr PC) pertaining to the search apply *in toto* to any search in exercise of powers u/s 82 of the Act. Therefore, even the power u/s 82 cannot be said to be totally without guidelines or restrictions.

The above discussion elucidates that department has the power to scrutinise and verify the assessee records only in specified circumstances.

Further, Ld. Department is duty bound to give the reference to statutory provision mentioning reason for conducting said scrutiny and verification as a matter of principle of natural justice. To buttress the view taken, reliance is placed on the judgment of the Apex Court in the case of *Sahara India vs. CIT (2008) 14 SCC 151* in which it was held *"that in any event, an audit, since it carries civil consequences*[1]*, cannot be ordered without a notice issued to the assessee, indicating reasons for the audit."* However, if the said notices do not give the reference to statutory provisions of the Finance Act, 1994 under which said scrutiny and verification is ordered or in other words, if reason for conducting the said scrutiny and verification is *non liquet*; in the absence of reference to the adequate statutory provision, whether in pursuance of provisions explicated in para a), b) or c) as mentioned above, it can be contended that said notice is *contra legem.*

Where the department serves the notice for conducting the audit under Section 72A of the

[1] *The condition precedent for an order of special audit is reason to believe that the circumstances stipulated in the various sub-sections of Section 72A exist. Such insinuation of wrongful act affects the citizen in his social life and would come within the ambit of civil consequences as laid down in Sahara India (Firm) Lucknow supra.*

Act, reference to Rule 5A of the Service Tax Rules, 1994 is given, *via* which schedule for visit by the departmental officials is intimated. At this juncture, with due reverence to this legal proceeding of audit by audit wing, we wish to reproduce the legal provisions which provide accentuation whether audit party has been empowered to perform service tax audit or not.

Meaning of the term 'Rule'

Before proceeding further, we would like to reproduce the legal meaning of this term 'rule' in order to prepare a platform for subsequent submission, as *'a self-imposed guide for conduct' or 'a rule of procedure'.* The rules are basically the guide which prescribe the procedure that needs to be followed in order to regulate some action. The law is also well settled that a rule acquires statutory force, so long as it

- First, conforms to the provision of statute under which it is framed and
- Second, it must be within rule making authority of the executive authority charged with framing the rules.

Reliance has been placed on *Municipal Corporation vs. Birla Cotton, Spinning and Weaving Mills, AIR 1968 SC 1232* and *General Officer, Commanding in Chief vs. Subhash Chandra Yadav, (1988) 2 SCC 351; Dr. Mahachandra Prasad Singh vs. Honourable Chairman, Bihar Legislative Council and Ors., (2004) 8 SCC 747.*

In a nutshell, the rules are basically the guide which prescribe the procedure that needs to be followed in order to regulate some action. Such general standard or guide to conduct having behind it the sanction of a statutory provision is a statutory rule having the statutory force.

Power to make Rules

Now moving towards the legal provision of Section 94, the Central Government has been empowered with the following:

- General powers to make rules and
- Specific powers to make rules on twenty one (21) mentioned subjects.

At the outset, relevant extract of Section 94 of *ibid* which is applicable in the instant case is reproduced below:

"*94. Power to make rules*

(1) The Central Government may, by notification in the official gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

……..

(k) Imposition, on person liable to pay service tax, for the proper levy and collection of the tax, of duty of furnishing information, keeping records and the manner in which such records shall be verified.

…….

(n) Any other matter which by this Chapter is to be or may be prescribed."

Both of these powers have been given for carrying out the provisions of this Chapter V of the Finance Act, 1994. To elucidate the purpose of these rules, we would like to refer the meaning of term *'carrying out'* in the *Advance Law Lexicon Legal Dictionary* wherein this term has been given meaning *'to accomplish'* or *'to put into operation'.* Putting reliance on this meaning, it can be succinctly contended that the Central Government, *vide* Section 94, has been empowered to make rules '*to put into operation*' the provisions of the Chapter i.e. '*to accomplish*' that provision. Taking discussion into upper level, it can be contended that Central Government could make rules only on those subject matters which are already contained under the provision of this Chapter V and hence these rules would only be *intra-vires* to the main provisions. Contrary to this, if this Chapter does not contain any provision for which Central Government has made rules '*to accomplish*' them or '*to put them into operation'* then such rules would, in the eyes of law, be considered as *ultra-vires* and would not be made applicable. The "generality" of rule-making power conferred under Section 94(1) is thus only to the extent that rules made in exercise of that power are in conformity with the provisions of the statute.

Central Government could make rules only on those subject matters which are already contained under the provision of this Chapter V and hence these rules would only be *intra-vires* to the main provisions. Contrary to this, if this Chapter does not contain any provision for which Central Government has made rules 'to accomplish' them or 'to put them into operation' then such rules would, in the eyes of law, be considered as *ultra-vires* and would not be made applicable.

Section 72A- Special Audit was recently introduced *vide* Finance Act, 2012 wherein if the Commissioner has reason to believe that any of the specified defaults have been made by the assessee, then they may direct the assessee to gets its accounts audited by a Chartered Accountant or Cost Accountant.

Keeping this discussed principle of *ex aequo et bono* in mind while interpreting clause (k) of this Section 94(2) under the shed of which the Ld. Audit Wing issues moot notice to the assessee to scrutinise and verify their relevant records, we would like to highlight the relevant extract of this clause *vis-à-vis* scrutiny or verification of records:

"Of duty of furnishing information, keeping records and the manner in which such records shall be verified."

Based on this, it can be contended that the Central Government may make rules to put into operation the provisions of this Chapter, *inter-alia,* the manner of verification of records kept by the assessee. Making harmonious interpretation of this clause, the Central Government may make rules only for 'the manner' in which verification of records could be made and accordingly, the Central Government is not empowered to authorise any party who shall conduct audit of the assessee under the regime of service tax and verify the records. Based on this, rules specifying the manner could be made under the coverage of this impugned section never except when this Chapter contains the provision of verification of records of the assessee. *The expression 'verified' has to be interpreted in the context of what is permissible under the Act itself.* In addition, the party who shall be authorised to conduct the audit of service tax shall take shed only of the Act and hence shall be governed by the Chapter V of the Act and the manner in which such verification could be done shall be governed by the rules framed by the Central Government.

'Verify' is not wide enough to permit the audit of the accounts of the noticee by any officer of service tax department. Acknowledging audit by a departmental officer amounts to confessing that the audit by a Chartered Accountant or a Cost Accountant is more desire than reality.

Statutory Provision related to Audit

On perusal of this Chapter, there is one specific *"Section 72A- Special Audit"* which was recently introduced *vide* Finance Act, 2012 wherein if the Commissioner has *reason to believe* that any of the specified defaults have been made by the assessee then they may direct the assessee to gets its accounts audited by a Chartered Accountant or Cost Accountant. The relevant subsection has been reproduced below for the kind reference:

"(1) If the Commissioner of Central Excise, has reasons to believe that any person liable to pay service tax (herein referred to as "such person"),—

(i) has failed to declare or determine the value of a taxable service correctly; or

(ii) has availed and utilised credit of duty or tax paid—

(a) which is not within the normal limits having regard to the nature of taxable service provided, the extent of capital goods used or the type of inputs or input services used, or any other relevant factors as he may deem appropriate; or

(b) by means of fraud, collusion, or any wilful mis-statement or suppression of facts; or

(iii) has operations spread out in multiple locations and it is not possible or practicable to obtain a true and complete picture of his accounts from the registered premises falling under the jurisdiction of the said Commissioner,

He may direct such person to get his accounts audited by a Chartered Accountant or Cost Accountant nominated by him, to the extent and for the period as may be specified by the Commissioner..."

Rule 5A of Service Tax Rules, 1994

Now reference has been made to the Service Tax Rules, 1994 to know the manner of verification prescribed therein.

There is one *"Rule 5A-Access to a registered premises"* which directs assessee to make available the records, cost audit reports, income tax audit report *etc.* on demand made by various service tax authorities *inter-alia* including CAG. Relevant extract has been mentioned below:

"(2) Every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a Cost accountant or Chartered accountant

nominated under Section 72A of the Finance Act, 1994,-

(i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;

(ii) the cost audit reports, if any, under Section 148 of the Companies Act, 2013 (18 of 2013); and

(iii) the income-tax audit report, if any, under Section 44AB of the Income Tax Act (43 of 1961)

for the scrutiny of the officer or the audit party, or the Cost Accountant or Chartered Accountant, within the time limit specified by the said officer or the audit party or the Cost Accountant or Chartered Accountant, as the case may be."

Application of Provision of Service Tax Law on subject topic

Applying this section in the instant case, the audit party neither falls under the meaning of 'Chartered Accountant' nor under 'Cost Accountant' to audit the accounts of assessee nominated by him.

At this juncture, we would like to submit that since the parent statute in this regard is the Finance Act, 1994 itself which does not authorise a general audit by audit party, other than Chartered Account or Cost Accountant, envisioned by the impugned Rule 5A(2). Moreover, rules cannot exceed the bounds of the statute and rules may only give effect to the statute's provision and intent and cannot be used to create substantive rights, obligation, or liabilities that are not within the contemplation of statute. There is a distinction between auditing the accounts of noticee and verifying the records of the noticee. Audit is a special function which has to be carried out by a duly qualified person like a Cost Accountant or a Chartered Accountant. It cannot possibly be undertaken by any officer of the service tax department. Based on this, since Section 72A which is the only section under which service tax audit can be conducted, hence verification of accounts by audit personnel of Ld. Commissioner which is not empowered under this impugned section cannot conduct or direct the audit of any person who is liable to pay service tax under the regime of service tax law.

Rules cannot exceed the bounds of the statute and rules may only give effect to the statute's provision and intent and cannot be used to create substantive rights, obligations, or liabilities that are not within the contemplation of statute.

Directing the special audit by a departmental officer would flout the fundamental tenets of the service tax law.

To buttress this view, reliance has been placed on the recent judgment of the Delhi High Court in the matter of *M/s Travellite (India) [W.P. (C) 3774/2013, C.M. No. 7065/2013]* wherein it was held that Rule 5A(2) of STR is *ultra vires* since it overrides the statutory Section 72A. Against the aforementioned judgment of that court in *Travellite (India) [W.P. (C) 3774/2013, C.M. No. 7065/2013],* Special Leave Petition No. 34872/2014 was filed in the Supreme Court by the Union of India. By order dated 18th December, 2014, the Supreme Court while directing notice in the said Special Leave Petition directed that there would be a stay of the operation of the decision of that court in *Travellite (India) vs. Union of India (supra).*

However, the amended clauses have also been held as *ultra-vires* in the recent judgment of the Delhi High Court in the matters of *M/s Mega Cabs (P.) Ltd vs. Union of India [2016] 6 TMI 163 (Delhi) [W.P. (C) 5192 of 2015, C.M. No. 9417/2015].* Held that Section 94(2)(k), Rule 5A(2) of Service Tax Rules, 1994, suffers from vice of excessive delegation and Circular No. 181/7/2014 ST dated 10-12-2014 is *ultra vires* the Finance Act. Against the aforementioned judgment of that court in *M/s Mega Cabs (P.) Ltd, Special Leave Petition No. 26675/2016* was filed in the Supreme Court by the Union of India. By order dated 26th September, 2016, the Supreme Court while directing notice in the said Special Leave Petition directed that there would be a stay of the operation of the decision of that court in *M/s Mega Cabs (P.) Ltd vs. Union of India (supra).*

As on date, it can be contended that there is no statutory power with the department to order special audit by departmental officials because the matter is still pending before Supreme Court. Further, it can also be contended that the validity of audit proceedings should be made subject to the outcome of decision of Apex Court in abovementioned cases. ■

We make a living by what we get, but we make a life by what we give. - Winston Churchill

All about e-Filing

In order to carry out e-filing on MCA21, you have facility to download the e-form and fill it in an offline mode. Every form has the facility to pre-fill the data available in MCA21 system. Once the e-form is filled, you would need to validate the e-form using Pre-scrutiny button. You would then have to affix the relevant digital signatures and save the form. You would need to be connected to the internet to carry out the pre-fill and pre-scrutiny functions. The step by step process is given below. The filled up e-form as per relevant instruction kit needs to be uploaded on the MCA21 portal. On successful upload, the Service request number would be generated and you would be directed to make payment of the statutory fees. The step by step process is given below. Once the payment has been made, the status of your payment and filing status can be tracked on the MCA21 portal by using the 'Track Your Payment Status' and 'Track Your Transaction Status' link respectively.

Regulatory Filings: Ministry of Corporate Affairs

MCA Requirements

Keeping in tune with the e-Governance initiatives the world over, Ministry of Company Affairs (MCA), Government of India, has initiated the MCA21 project, which enables an easy and secure access to MCA services in a manner that best suits the corporate entities and professionals besides the public. MCA21 is intended to achieve all the objectives of a versatile e-Governance project. The project has been named MCA21 as it aims at repositioning MCA as an organisation capable of fulfilling the aspirations of its stakeholders in the 21st century. Rather than compelling the business community to physically travel to MCA offices, MCA services are available at the place of their choice, be it their homes or offices.

Compilation[1]: CA. Gaurav Garg

(The compiler is a member of the Institute, who may be contacted at gourav.garg@hotmail.com.)

XBRL (eXtensible Business Reporting Language) filings of financial statements for accounting year commencing on or after 01.04.2014 have been enabled on MCA website with effect from 08.10.2015. Stakeholders are also advised to refer to the Filing Manual available on the XBRL portal for filing the financial statements in XBRL format. Companies in India that meet specified criteria need to file their financial statements with the MCA in XBRL format.

In the initial phase, the MCA requirement of filing annual reports in XBRL format applies to:

- All companies listed in India and their Indian subsidiaries; or

[1] *Sources include http://xbrltool.mca.gov.in/MCA21/dca/WebHelp/; http://www.mca.gov.in/MinistryV2/aboutefilingforllp.html; http://www.mca.gov.in/Ministry/pdf/NCA_Nomenclature.pdf; and http://www.mca.gov.in/MinistryV2/allaboutefiling.html.*

- All companies having a paid up capital of INR 5 crores and above; or
- All companies having a turnover of INR 100 crores and above.

However, banking companies, insurance companies, power companies and Non-Banking Financial Companies (NBFCs) are currently exempt from the filing requirements.

E-forms are available for the below mentioned Services:

- Approval Services (Headquarters)
- Approval Services (Regional Director)
- Approval Services (Registrar of Companies)
- Change Services
- Charge Management
- DIN Forms
- Incorporation services
- Compliance Related Filing
- Informational Services
- Investor Services
- Provisions related to Managerial personnel
- Annual filing e-Forms
- Addendum Form
- Annual filling XBRL e-Forms
- Limited liability partnership (LLP) forms
- Refund e-Form
- Bank Account e-Form.

Steps given below to proceed to do E-Filing:

- Select a category to download an eForm from the MCA 21portal (with or without the instruction kit)
- At any time, you can read the related instruction kit to familiarise yourself with the procedures (you can download the instruction kit with e-form or view it under Help menu).
- You have to fill the downloaded eForm.
- You have to attach the necessary documents as attachments.
- You can use the Prefill button in e-Form to populate the grayed out portion by connecting to the Internet.
- The applicant or a representative of the applicant needs to sign the document using a digital signature.
- You need to click the Check Form button available in the e-Form. System will check the mandatory fields, mandatory attachment(s) and digital signature(s).
- You need to upload the e-Form for pre-scrutiny. The pre-scrutiny service is available under the Services tab or under the e-Forms tab by clicking the Upload e-Form button. The system will verify (pre-scrutinise) the documents. In case of any inadequacies, the user will be asked to rectify the mistakes before getting the document ready for execution (signature).
- The system will calculate the fee, including late payment fees based on the due date of filing, if applicable.
- Payments will have to be made through appropriate mechanisms - electronic (credit card, Internet banking) or traditional means (at the bank counter through challan).
  (a) Electronic payments can be made at the Virtual Front Office (VFO) or at PFO
  (b) If the user selects the traditional payment option, the system will generate 3 copies of pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorised for accepting challan payments.
- The payment will be exclusively confirmed for all online (Internet) payment transactions using payment gateways.
- Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).
- MCA21 will provide a unique transaction number, the Service Request Number (SRN) which can be used by the applicant for enquiring the status pertaining to that transaction.
- Filing will be complete only when the necessary payments are made.
- In case of a rejection, helpful remedial tips will be provided to the applicant.
- The applicants will be provided an acknowledgement through e-mail or alternatively they can check the MCA portal.

Nomenclature of various forms prescribed under the provisions of the Companies Act, 2013:

Forms under the new Act are mandatorily numbered alpha-numeric. Initial of forms is to be started with alphabet of two or three letters based on the subject of the Chapter, followed by serial number of the form. Summary of chapter wise nomenclature of forms:

Chapter No.	Particulars of Chapter	Form No. Starts with
II.	INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO	INC
III.	PROSPECTUS AND ALLOTMENT OF SECURITIES	PAS
IV.	SHARE CAPITAL AND DEBENTURES	SH
V.	ACCEPTANCE OF DEPOSIT BY COMPANIES	DPT
VI.	CHARGES	CHG
VII.	MANAGEMENT AND ADMINISTRATION	MGT
VIII.	DECLARATION AND PAYMENT OF DIVIDEND	DIV
IX.	ACCOUNTS OF COMPANIES	AOC
X.	AUDIT AND AUDITORS	ADT
XI.	APPOINTMENT AND QUALIFICATIONS OF DIRECTORS	DIR
XII.	MEETINGS OF BOARD AND ITS POWERS	MBP
XIII.	APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL	MR
XXI.	COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT	URC
XXII.	COMPANIES INCORPORATED OUTSIDE INDIA _ FOREIGN COMPANY	FC
XIV.	REGISTRATION OFFICES AND FEES	GNL
XVI.	NIDHIS	NDH
VII.	SPECIAL COURT	MAC
XIX.	MEMORANDUM OF APPEAL	ADJ
XIX.	MISCELLANEOUS	MISC

Mapping of new e-forms:

MCA had proposed to introduce 39 new e-forms w.e.f. 14.04.2014 and 7 e-forms w.e.f. 28.04.2014. This newly notified 46 e-forms are available for uploading effective from 10 AM from 28th April 2014. Earlier, it was planned to roll out the forms on 14th April, 2014 but it was later deferred to 28th April, 2014 in order to do a single phase roll out rather than a staggered roll out.

S. No.	e-Form (Companies Act, 2013)	Corresponding eForm (Companies Act, 1956)	Purpose of Form as per Companies Act, 2013
1	INC-1	1A	Application for reservation of name
2	INC-2	New form	Form for Incorporation and nomination (One Person Company)
3	INC-3	New form	Form for consent of nominee of One Person Company
4	INC-4	New form	Form for change in member/nominee of One Person Company
5	INC-5	New form	Form for intimation of exceeding threshold of One Person Company
6	INC-6	New form	Application for Conversion
7	INC-7	1	Application for Incorporation of Company (Other than One Person Company)
8	INC-12	-	Application for grant of License under Section 8

S. No.	e-Form (Companies Act, 2013)	Corresponding eForm (Companies Act, 1956)	Purpose of Form as per Companies Act, 2013
9	INC-18	New form	Application to Regional Director for conversion of Section 8 company into any other kind of company
10	INC-20	New form	Intimation to Registrar of revocation or surrender of license issued under Section 8
11	INC-21	19	Declaration prior to the commencement of business
12	INC-22	18	Notice of situation or change of situation of registered office and verification
13	INC-23	1AD, 24AAA	Application to Regional director for approval to shift the registered office from one state to another state or from jurisdiction of one registrar to another within the state
14	INC-24	1B	Application for approval of Central Government for change of name
15	INC-27	1B, 62	Conversion of public company into private company or private company into public company
16	INC-28	21	Notice of order of the Court or other authority
17	PAS-3	2	Return of allotment
18	SH-7	5	Notice to Registrar for alteration of share capital
19	SH-8	New form	Letter of offer
20	FTE	-	Application for striking off the name of company under the Fast Track Exit(FTE) Mode
21	SH-11	4C	Return in respect of buy back of securities
22	CHG-1	8	Application for registration of creation, modification of charge (other than those related to debentures) including particulars of modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI)
23	CHG-4	17	Particulars for satisfaction of charge
24	CHG-6	15	Notice of appointment or cessation of receiver or manager
25	CHG-8	-	Application to Central Government for extension of time for filing particulars of registration of creation/modification /satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/ modification/satisfaction of charge
26	CHG-9	10	Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures
27	MGT-6	22B	Form of return to be filed with the Registrar
28	MGT 7	20B	Form for filing annual return by a company having a share capital with the Registrar

S. No.	e-Form (Companies Act, 2013)	Corresponding eForm (Companies Act, 1956)	Purpose of Form as per Companies Act, 2013
29	MGT-14	23	Filing of Resolutions and agreements to the Registrar under Section 117
30	MGT-15	New form	Form for filing Report on Annual General Meeting
31	DIR-3	DIN1	Application for allotment of Director Identification Number
32	DIR-3C	New form	Intimation of Director Identification Number by the company to the Registrar DIN services
33	DIR-6	DIN4	Intimation of change in particulars of Director to be given to the Central Government
34	DIR-11	New form	Notice of resignation of a director to the Registrar
35	DIR-12	32, 32AD	Particulars of appointment of directors and the key managerial personnel and the changes amongst them
36	MR-1	25C	Return of appointment of managing director or whole time director or manager
37	MR-2	25A	Form of application to the Central Government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing director or whole time director or manager and commission or remuneration to directors
38	MR 3	66	Form for submission of compliance certificate with the Registrar
39	URC-1	37, 39	Application by a company for registration under Section 366
40	FC-1	44	Information to be filed by foreign company
41	FC-2	49, 52	Return of alteration in the documents filed for registration by foreign company
42	FC-3	52	List of all principal places of business in India established by foreign company
43	FC-4	PTII	Annual Return
44	GNL-1	61	Form for filing an application with Registrar of Companies
45	GNL-2	62	Form for submission of documents with Registrar of Companies
46	GNL-3	1AA	Particulars of person(s) or director(s) or charged or specified for the purpose of Section 2(60)
47	ADJ	New form	Memorandum of Appeal
48	MSC-1	New form	Application to ROC for obtaining the status of dormant company
49	MSC-3	New form	Return of dormant companies
50	MSC-4	New form	Application for seeking status of active company
51	RD-1	24A	Form for filing application to Regional Director

S. No.	e-Form (Companies Act, 2013)	Corresponding eForm (Companies Act, 1956)	Purpose of Form as per Companies Act, 2013
52	RD-2	24AAA	Form for filing petitions to Central Government (Regional Director)
53	CG-1	65	Form for filing application or documents with Central Government
54	AOC 4	23AC	Form for filing balance sheet and other documents with the Registrar
55	AOC 4	23ACA	Form for filing Profit and Loss account and other documents with the Registrar
56	-	5INV	Statement of unclaimed and unpaid amounts
57	AOC 4 XBRL	23ACA-XBRL	Form for filing XBRL document in respect of Profit and Loss account and other documents with the Registrar
58	AOC 4 XBRL	23AC-XBRL	Form for filing XBRL document in respect of balance sheet and other documents with the Registrar
59	CRA 2	23C	Form of application to the Central Government for appointment of cost auditor
60	CRA 3	23D	Form for Information by Cost Auditor to Central Government
61	CRA 4	I-XBRL	Form for filing XBRL document in respect of cost audit report and other documents with the Central Government
62	ADT-1	New form	Information to the Registrar by Company for appointment of Auditor
63	ADT-2	New form	Application for removal of auditor(s) from his/their office before expiry of term
64	ADT-3	New form	Notice of Resignation by the Auditor

MCA *vide* General Circular 08/2016 dt. 29th July, 2016 has announced relaxation of additional fee and extension of due date for filing of AOC-4 and MGT-7, i.e. it has decided to allow filing of financial statements/annual returns by 29.10.2016 where due date for holding AGM is on or after 01.04.2016 without payment of additional filing fee, as under:

MCA General Circular 08/2016 dt. 29th July, 2016:

1. Ministry have revised form AOC-4 which would be deployed shortly. Further, Form AOC-4 (XBRL) and Form AOC-4 (CFS) are also under revision and this may be available for deployment by end of August, 2016.
2. As per the relevant provisions of the Companies Act, 2013, the financial statements and Annual Returns will have to be filed by the Companies within 30 days and 60 days of conclusion of AGM or the last day by which AGM ought to have been held, as the case may be.
3. In the light of the above and. keeping in view that some time could be required for companies to get familiarised with filing of the new forms,

XBRL (eXtensible Business Reporting Language) filings of financial statements for accounting year commencing on or after 01.04.2014 have been enabled on MCA website with effect from 08.10.2015. Stakeholders are also advised to refer to the Filing Manual available on the XBRL portal for filing the financial statements in XBRL format.

it has been decided to allow companies to file financial statements and Annual Returns on or before 29.10.2016 where due date for holding of the Annual General Meeting is on or after 01.04.2016, without payment of additional filing fee.

Prerequisite Software for E-Filing:

For e-Filing on MCA21 your Computer must have the following components installed:

- Windows 2000 or later
- All users using below mentioned services on MCA21 are required to have Windows or later and JRE (Java Runtime Environment) installed on their machine -
  - Any user logging on MCA21 using a DSC
  - Any existing user registering/updating a DSC
  - Any new user registering using a DSC
- Internet Explorer v6.0 and above
- Mozilla Firefox
- Adobe Reader from version XI or later
- JRE (Java Runtime Environment)

Get answers to frequently asked questions about the E-forms:

- **How to file paper attachments with the E-form?**
  You have to first get the paper attachments scanned and saved as a soft copy in PDF format. Then attach the same in the attachment section of the eForm by clicking the appropriate 'Attach' button.
- **How to upload/ submit the scanned documents?**
  You can upload / submit the scanned documents by attaching the same with the e-form and submitting on the MCA Portal.

How to ensure that the size of scanned PDF documents is not excessive?
To ensure that the size of scanned PDF document is within the permissible size limits, it is recommended that scanning should be done in 'black & white' mode at 200 dpi resolution and should not exceed 2.5 MB.

- **How to sign an e-form?**
  An e-form can be signed by the authorized signatory/ representative using the Digital Signature Certificate (DSC). Click the red color signature box in the e-form to affix the digital signature. To avoid increase in size of the e-form beyond permissible limit of 2.5 MB, always affix the DSC using the 'Sign and Save As' option.
- **How to make offline payment?**
  If you are not having a credit card or Internet banking facility, you can make payment at the counter of an authorised bank through the pre-filled challan generated by the system after e-filing. Payments of value above 50,000, stakeholders would have the option either to make the payment in electronic mode, or paper challan. However, such payments would also be made in electronic mode w.e.f 1st October' 2011.) For the purpose of collection of payments, numerous branches in all major cities and towns of the following five Banks have been authorised:
  - State Bank of India
  - Punjab National Bank
  - Indian Bank
  - ICICI Bank
  - HDFC Bank

  Details of the branches of the above banks offering this facility are given on 'List of Authorised Banks' link on the MCA21 portal.

On Successful e-filing and payment you can view the status of your transaction using the "Track your transaction status" link and you would be required to enter the SRN no. Once the form has been approved by the concerned official of the Ministry, you will receive an email regarding the same and the status of the form will get changed to Approved. In case the status is other than approved, you would need to take the necessary action as detailed below:

- **Is the Transaction status of your SRN 'Required Resubmission'?**
  In this case you are required to re-submit your eForm to rectify the defect(s)/ incompleteness pointed out by the concerned MCA office, before the due date mentioned in the status of

As per the relevant provisions of the Companies Act, 2013, the financial statements and Annual Returns will have to be filed by the Companies within 30 days and 60 days of conclusion of AGM or the last day by which AGM ought to have been held, as the case may be.

your SRN. If you fail to re-submit your eForm within prescribed period, you will be required to file the eForm afresh with payment of fee and additional fee, as applicable.

- **Is the Transaction status of your SRN 'Pending for approval under regulation 17(6)'?**
  It means that the eForm is pending for the want of requisite approval from Central Government, Regional Director, Company Law Board or any other competent authority.
- **How to view public documents facility on the MCA portal?**

To avail the same you can register yourself on the MCA portal and click on the 'View Public Documents' link to view the documents of the specific companies available for viewing to public pertaining to specific company(s). Once you select the company(s), you will be prompted to make the payment of 50/- per company. On receipt of the payment, you will be able to view the documents for a period of three hours from the time you start viewing.

Common errors committed while availing services on MCA portal:

1. **Payment of challan not done before the expiry date:** If payment of challan is not made before the expiry date, the transaction gets cancelled and applicant needs to file the eForm again on MCA portal to generate a fresh challan for payment.
2. **Payment of fees (via challan) through other option:** Once a challan is generated, its payment has to be made in an authorised bank branch. Payment against e-Filing should not be made using any mode of payment on MCA portal e.g. Miscellaneous Fee option, as in such a case the payment made does not get linked with the original Filing Transaction/SRN.
3. **Duplicate Payment:** Always check the payment status of original/previous SRN before trying to make payment again for the same transaction. If the payment status is 'Paid' do not pay again.
4. **Verification of status of e-Filing:** The SRN No. is the key for verification of status of e-Filing. Please note down the SRN generated by the system before making the payment/for the purpose of checking the payment/transaction status.

An e-form can be signed by the authorised signatory/ representative using the Digital Signature Certificate (DSC). Click the red color signature box in the e-form to affix the digital signature. To avoid increase in size of the e-form beyond permissible limit of 2.5 MB, always affix the DSC using the 'Sign and Save As' option.

5. **Inspection of public documents:** On confirmation of payment, a link is made available under 'My documents' tab to view the documents online. This link will be valid for seven days – you can view these documents anytime within 7 days of appearing those under 'My Documents'. However, online viewing is provided for continuous three hours maximum, once you begin this activity.
6. **E-Form version used is not latest:** Always download a fresh eForm for e-Filing from the MCA portal.
7. **Uploading eForm in case of "Required Resubmission":** If the transaction status is "Required Resubmission", the eForm needs to be filled again correctly and filed against the original SRN. Do not use 'Addendum' option as transaction through 'addendum' will not be processed against 'Resubmission'. 'Addendum' facility is used for providing additional information, if any, to ROC.
8. **Mistaking the status "Required Resubmission" as rejection of the e-form and take no action.** If the status of SRN is "Required Resubmission", then file the eForm again by giving SRN of original filing and uploading e-Form by clicking 'Resubmit' button, under 'upload' link. After re-submission the status of SRN will change and eForm will be available for processing at ROC office. ■

Positive thinkers have a solution for every problem, Negative thinkers have a problem for every solution. Stay Positive! . - Steven Aitchison

Companies Deposit Rules - in pursuit of harmony

Deposits, under the Companies Act, are an additional avenue of raising funds from the public and the members of the Company. The Companies Act, 1956, intent of the law has always been to regulate the acceptance of deposits by the Companies, as lack of regulations often encouraged companies to compromise on the interest of depositors/stakeholders. While the regulations are necessary to protect the interest of the depositors/stakeholders, it needs to be ensured that regulations do not affect the mobilisation of funds for legitimate purposes. The promulgation of the Companies Act, 2013 provisions governing deposits have been amended multiple times indicating the Government's commitment to clear any ambiguity in the law relating to deposits. With an aim to give a life line to the start up ecosystem in India, Ministry of Corporate Affairs has amended the deposit regulations to pave the way for the new categories of exemptions from deposits, clarifications in the existing exemptions from deposits while ensuring the interest of stakeholders by way of mandatory disclosures in the financial statements. The article attempts to summarise the state of law pertaining to deposits, to give a clear picture of the various exemptions available to the corporate.

Background:

The basic framework for accepting deposits under the Companies Act 2013 (2013 Act) regulates the manner in which a Company can borrow funds from public, its shareholders and directors. As per the 2013 Act, a Private Company can only accept loans/ borrowings from its shareholders up to a certain threshold[1]. Public Companies fulfilling eligibility criteria[2] based on their net worth or turnover may accept deposits from public, while enjoying privilege to accept deposits from its members as well.

Deposit regulations are largely focused on enhancing investor protection which is being ensured by the 2013 Act through credit rating of company, issuance of detailed circular inviting deposits, reporting to Registrar Companies and appointment of deposits trustee *etc*.

As per the 2013 Act, deposits include any receipt of money by way of deposit or loan or in any other form by a company. The intent of the law to broad base the coverage of the deposits can be seen in definition of deposits. In order to keep the genuine financial and commercial transactions out of ambit of deposits, Companies (Acceptance of Deposits) Rules, 2014 ("Deposit Rules") prescribes certain exemptions from rigorous provisions of deposits.

CS. Sandeep Mehra and CS. Amitava Banerjee

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[1] 100% of aggregate value of paid up share capital and free reserves
[2] Networth of at least INR 100 Crore or Turnover of at least INR 500 Crore

In order to catalyse the startup[3] initiative of the Government of India, an additional exemption category has been made in Deposit Rules to exempt receipt of funds by startup in the form of convertible notes[4].

The Government of India has once again strived to strike a balance between depositor's protection and ease of accessing the source of deposit funding by bringing changes to the extant deposit rules.

The Ministry of Corporate Affairs *vide* its notification[5] has brought in amendment to the deposit rules. The amendment seeks to introduce new categories of exemptions from deposit regulations, changes in the existing deposit rules and mandatory disclosures governing the acceptance of deposits by the companies.

Many new exemptions have also been brought into light to reduce the compliance burden of companies.

These amendments are divided into three parts:

Part I: Introduction of new exemptions in the definition of 'Deposits'

Part II: Alterations to existing provisions

Part III: Disclosure Requirements

Part I: Introduction of new exemptions in the definition of 'Deposits'

Subject Matter	Changes Introduced	Relevant Rule	Analysis
Startups	Amount of INR 25 lakh or more received by a Startup in a single tranche, by issue of convertible note which shall be converted into equity or repaid in maximum 5 years. (Meaning of 'Start-up' and 'Convertible note' are given in explanation to the sub-clause)	Sub-clause (xvii) of Rule 2(1)(c)	The convertible notes are promissory notes which are the most preferred instrument by Start-ups in India. As a result of this amendment, a start-up company shall not be required to comply with the deposit provisions if an investment is received through issue of such instrument, subject to condition for conversion or repayment within 5 years.
Receipt of advances in ordinary course of business	Any advance sum received for future provisioning of services in relation to warranty or maintenance service as under written agreement shall not be treated as a 'Deposit'. However, the period for such provisioning of service shall be as per common business practice, subject to a maximum of 5 years.	Item (e) of Sub-clause (xii) of Rule 2(1)(c)	These provisions have been inserted to reduce unnecessary compliance burden which may be experienced by a relevant company during its ordinary course of business.
	Any advance received by a company which is allowed by a Sectoral Regulator with directions of Central/State Government shall not be treated as 'Deposit'.	Item (f) of Sub-clause (xii) of Rule 2(1)(c)	
	Any advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications.	Item (g) of Sub-clause (xii) of Rule 2(1)(c)	

[3] *Start-up Company means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 180(E) dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.*

[4] *Convertible Note means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.*

[5] *Notification: MCA notified Companies (Acceptance of Deposits) Amendment Rules, 2016 on 29th June 2016*

Subject Matter	Changes Introduced	Relevant Rule	Analysis
Listed Unsecured Non-Convertible Debentures (NCD)	Amount raised by issue of Listed Unsecured NCD shall not be treated as 'Deposit'.	Rule 2(1)(c)(ixa)	The following type of debentures shall still be governed under the provisions of 'Deposits' • Debentures secured by second or third charge • Debentures secured by intangible assets • Unlisted unsecured Debentures.
Amounts invested in a company by Specified Entities	Any amount received by the company under any collective investment scheme in compliance with SEBI regulations.	Sub-clause (xvi) of Rule 2(1)(c)	These kind of investments have been specifically excluded from the definition of 'Deposit'.
	Any amount received by a company from AIF, Domestic VCF or MF registered with SEBI.	Sub-clause (xviii) of Rule 2(1)(c)	
Amount received by a Chit Fund	Any amount received by way of subscription in respect of a chit under the Chit Fund Act.	Sub-clause (xv) of Rule 2(1)(c)	The activities of a Chit Fund are regulated by the State Government as a result of which such receipt of sums are kept outside deposit provisions.

Part II: Alteration to Existing Provisions

Subject Matter	Existing Provision	Amendment	Relevant Rule
Increase in period of conversion of Bonds and Debentures	Amount raised by issue of Bonds or Debentures which were compulsorily convertible into shares within 5 years, were not treated as 'Deposits'.	The period of conversion has been raised to 10 years. Hence, a company raising an amount through such an issue need not comply with the deposit provisions upto 10 years.	Sub-clause (ix) of Rule 2(1)(c)
Clarification on non-interest bearing amount	'Deposit' shall not include any non-interest bearing amount received or held in trust.	The amendment seeks to clarify this exception by providing that a non-interest bearing amount received and held in trust shall be excluded from the definition of 'Deposit'.	Sub-clause (xi) of Rule 2(1)(c)
Clarification in respect of sums received by a Nidhi Company	In case of a Nidhi Company: a) Any amount received by the Company from a person with a promise to give returns on such sum on completion of period promised, OR b) Any additional contribution made by such company over and above such amount as a part of such promise shall be treated as 'Deposit'.	a) Any amount received by the Company from a person with a promise to give returns on such sum on completion of period promised, OR b) Any additional contribution made by such company over and above such amount as a part of such promise shall not be treated as 'Deposits' if the same falls under any of exemption specified in Rule 2(1)(c).	Explanation to Sub-clause (xiv) of Rule 2(1)(c)
Limit of acceptance of deposits from members	The existing provisions puts a cap on the quantum of deposits that can be raised by a company referred to Section 73(2) of Companies Act, 2013 from its members, i.e. 25% of paid up share capital, free reserves and securities premium account.	This limit has been enhanced under the amendments which raises the cap to 35% of paid up share capital, free reserves and securities premium account.	Rule 3(3) Clause (a)

Subject Matter	Existing Provision	Amendment	Relevant Rule
Limits For Private Companies	Private companies can accept deposits from its members up to a limit of 100% of paid up share capital, free reserves and securities premium account, without complying with provisions of Section 73(2)(a) to (e), subject to reporting requirements of ROC.	The exemption provided to private companies was vide MCA notification dated 5 June 2015 under Section 462 of Companies Act, 2013. The exemption was not yet incorporated under the Deposit Rules. Hence, with a view to align the Deposit Rules along with the private companies' exemption, this amendment has been introduced.	Inserted as a proviso to sub-rule (3) of Rule 3
Additional provisions related to Credit Rating have been inserted	Every eligible company shall obtain credit rating every year of the deposits accepted by it which shall not be below the minimum investment grade ratings of specified credit rating agencies as provided under the Rules itself.	The criteria has been partially amended to provide that the rating shall not be below the minimum investment grade rating or other specified credit rating of fixed deposits from any of approved credit rating agencies for NBFCs	Rule 3(8)
Extension of time limit for accepting deposits without insurance	Companies may accept deposits without deposit insurance contract till 31st March 2016 or till the availability of deposit insurance product (Whichever is earlier).	This date has been extended to 31st March 2017. The remaining provision shall remain unchanged.	Proviso to Rule 5(1)
Issue of Circulars to members	Eligible companies inviting deposits shall issue circular in form of advertisement in Form DPT-1 which shall be published in English and Vernacular Language Newspaper.	Clarification has been made in cases of inviting deposits by eligible companies. The amendment omits the requirement of providing individual circulars to each member [As required under Rule 4(1)] when an eligible company invites deposits from public, subject to newspapers publishing and website disclosures of such Circular.	Rule 4(2)

Part III: Other Amendments

Subject Matter	Existing Provision	Proposed Amendment	Relevant Rule
Disclosures in Financial Statements	N.A	Every company other than private company shall disclose by way of notes in the financial statements, the amounts received from its directors in the relevant financial year.	Rule 16A(1)
		Private companies shall also make the same disclosures in its financial statements about monies received from its directors or their relatives.	Rule 16A(2)
Insertion of Disclaimer Clause in DPT-1	N.A	The disclaimer clause shall state that the filing of DPT-1 with the Registrar of Companies ("ROC") shall not be construed as if it has been approved by ROC and the ROC disclaims itself from any liability arising out of the failure of the deposit scheme.	Annexure to Rules

Conclusion

These are the much awaited amendments which should have been incorporated in Companies Act, 2013 when the same was being promulgated. These amendments seek to achieve multiple objectives by providing clarity in existing provisions and at the same time fresh exemptions aims to promote ease of doing business in India.

These exemptions would further reduce the unnecessary compliance burden in respect of amounts which, before this proposed amendment, were being treated as 'Deposit' in the eyes of law. From the Corporate Governance perspective, mandatory disclosures to be made in the financial statements is a welcome step.

A focused approach of the Government of India can be seen to promote the start-ups by facilitating the funding sources. It is yet to be seen if Ministry of Corporate Affairs shall issue any detailed guidelines concerning the convertible notes which do not find its place in the 2013 Act. There is a need to bring clarity on procedure to be adopted by companies for issuing the convertible notes.

Though the Government has extended the timelines for taking compulsory deposit insurance by deposit taking companies, yet the inherent defect behind non-availability of deposit insurance products has been overlooked. The Company Law Committee ("CLC") in its report has rightly

The Companies Amendment Bill, 2016 (2016 Bill) proposes to allow defaulting companies in accessing public deposits once the default has been made good and a period of five years had lapsed.

On the other hand, the 2016 bill in order to ensure safety of depositors provides that the deposit repayment reserve shall not be less than 20% instead of 15% of the amount of deposits maturing during the following financial year.

emphasised that deposit insurance products are not available as it is difficult for the Insurance Companies to assess the risks associated with the deposits taking companies.

Even though the amendments seek to resolve some practical difficulties faced by India Inc., yet few fundamental defects still need to be addressed. For instance, life time embargo from raising public deposits[6], in case the Company has made any default in repayment of deposits or interest thereon either under 2013 Act or 1956 Act.

The Companies Amendment Bill, 2016 (2016 Bill) proposes to allow defaulting companies in accessing public deposits, once the default has been made good and a period of five years had lapsed.

On the other hand, the 2016 bill in order to ensure safety of depositors provides that the deposit repayment reserve shall not be less than 20% instead of 15% of the amount of deposits maturing during the following financial year.

The above indicates the approach of the Government to create a balanced framework for deposits, yet the method adopted in bringing such changes through amendments, removal of difficulties order and proposals under 2016 Bill, as and when passed, keeps the situation fluid even after two years of commencement of the 2013 Act. ■

[6] *Section 73 sub-section (2) clause (e) of the Companies Act, 2013*

No act of kindness, no matter how small, is ever wasted. - Aesop

Integrated Reporting – For Better Performance Insight

Historically, corporate reporting focusing mainly on financial performance of companies, their historic performance and their key financial indicators, provided pointers to stakeholders about present and potential performance of the companies. Of late, these reports have started including sections on corporate strategies, social and environment concerns and actions being taken up by the companies. Integrated Reporting is, in part, an outgrowth of a view that present corporate reporting does not meet the evolving information needs of stakeholders in the globalised capital market. Major changes in the way business is conducted and businesses create value have been reported; the context in which the businesses operate has also changed. The author duo in their article reports that these changes are interdependent and reflect trends in globalisation, rising expectations for corporate transparency and accountability, among others. They argue that the acceptability of the Integrated Reporting concept is delayed. Read on to understand the authors' perspective on acceptability of Integrated Reporting and its scope that would ultimately help the companies in connecting better to their stakeholders and thereby in spreading the wings…

CA. Amrit Agrawal and CMA (Dr.) S. K. Gupta

(The former author is a member of the Institute and the latter is a Cost Accountant. The author duo may be contacted at sunilkumar@clcindia.com.)

"The world is changing…corporate reporting too must change."

The Perspective

Historically, corporate reporting has been focused mainly on the financial performance of companies. It provided investors with basic insight into the historic performance of the companies evaluated on key financial indicators. This helped provide the readers with indication of the companies present

An integrated report provides readers with a complete picture of how an organisation is performing by including non-financial information on environmental, social and governance performance along with financial information.

and potential future performance. However, in today's volatile, uncertain, complex and ambiguous business scenario, explaining 'business as usual' is not enough. Stakeholders need the information to assess the value impact of business plans and changes in the business environment. Of late, increasingly, annual reports have attempted to include sections on corporate strategies, social and environment concerns and actions being taken by the company to work responsibly in these areas.

Despite addition of information relating to Social and environmental, most financial reports still do not address the information needs of all stakeholders. In order to assess fulfillment of the environmental, social and governance responsibilities of listed entities, SEBI has mandated listed entities to submit Business Responsibility Reports, as a part of their Annual Reports, describing measures taken by them along the key principles enunciated in the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business' framed by the Ministry of Corporate Affairs (MCA).

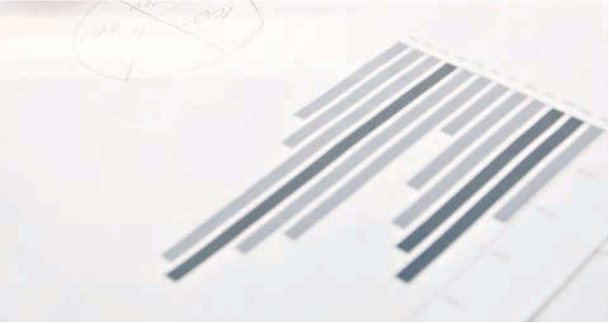
Integrated reporting is the integration of a company's financial report and its corporate social responsibility or sustainability report into a single document. An integrated report provides readers with a complete picture of how an organisation is performing by including non-financial information on environmental, social and governance performance along with financial information. Integrated Reporting is based on Integrated thinking involving consideration of various types of capital, their interaction and impact on short, medium and long term prospects of the company and linkage with strategy, performance and governance.

A key aspect of Integrated Reporting is that it addresses those resources (referred to as Capitals) which the business consumes and creates - financial, manufactured, human, intellectual, natural and social. Integrated Reporting offers the opportunity to centre business reporting on strategy and value creation, to demonstrate how the business uses capital and the extent to which they should continue to be invested in the business. In short, it is about developing an effective integrated management and reporting process for the entire business.

The reality for many companies is that environmental, social and governance issues are having an increasing impact on their ability to operate and generate a profit. As part of its overall objectives, Integrated Reporting recognises that shareholders have a valid interest in understanding how these issues are being managed and the impact they have on the value and sustainability of the business.

Reporting in 21st Century

Integrated Reporting is, in part, an outgrowth of the view that today's corporate reporting will not meet the evolving information needs of stakeholders in the global capital markets. There have been major changes in the way business is conducted, how businesses create value, and the context in which they operate. These changes are interdependent and reflect trends in globalisation, heightened expectations of corporate transparency and accountability, resource scarcity, and environmental concerns, among others. Integrated Reporting is sometimes articulated as being simply the integration of corporate responsibility reporting into existing financial reporting models. Integrated Reporting is more than creating a comprehensive annual report. It can be used as an effective governance tool for performance-oriented management.



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Integrated reports have supplanted corporate annual financial statements and connect the dots on how corporations draw on six sources of capital: natural, manufactured, social, intellectual, human and financial. Integrated Reporting differs from the current reporting practices as under:

Feature	Current reporting	Integrated Reporting
Trust	Narrow disclosures	Greater transparency
Stewardship	Financial	All forms of capital
Thinking	Isolated	Integrated
Focus	Past, financial	Past and future; connected; strategic
Time frame	Short term	Short, medium and long term
Adaptive circumstances	Rule bound	Responsive to individual
Concise	Long and complex	Concise and material
Technology enabled	Paper based	Technology enabled

The profile of corporate stakeholders and their ability to influence business has changed. Today, stakeholders expect to get information about corporate vision and objectives with actions monitored against targets and expectations explicitly identifying and explaining performance variances. Integrated reporting builds on the existing financial reporting model to incorporate non-financial information that can help stakeholders to look beyond companies' short-term results and understand how a company creates and sustains value over the long-term. An integrated report attempts to tell a story about an organisation's journey towards reaching its vision, reporting about its historical and intended performance.

Integrated Reporting framework is expected to:

- Support the information needs of long-term investors, by showing broader and longer-term consequences of decision making;
- Reflect the interconnections between environmental, social, governance, and financial factors in decisions that affect long term performance and condition, making clear the link between sustainability and economic value
- Provide the necessary framework for environmental and social factors to be taken into account systematically in reporting and decision-making
- Rebalance performance metrics away from an undue emphasis on short-term financial performance; and
- Bring reporting closer to the information required by management to run the business strategically.

Early movers on Integrated Reporting concepts are already describing the benefits that they see from better business reporting. They talk of the improved organisational clarity that comes from articulating the business strategy and business model, given that reporting on these matters lies at the heart of Integrated Reporting. They also talk about the business process improvement that comes from consolidating multiple reporting processes for generating different reports into one reporting process for producing all reports, and the significant cost reduction which results.

Apprehensions Impeding Integrated Reporting

Even though the benefits of Integrated Reporting are largely understood, the development and acceptability of the concept is yet tardy. Unless the companies reach a level where they feel that apprehensions are not insurmountable they will not be able to walk the talk. Following apprehensions if addressed appropriately shall pave the way for faster assimilation of Integrated Reporting:

- How to identify what to include in the Integrated Report
- How to ensure credibility of information contained in the Integrated Report
- Who will own the process of development of the Integrated Report
- Professional assistance not available for compiling Integrated Report
- How to quantify non financial aspects of the business
- How to ensure that Integrated Report does not become a sales document
- How to ensure that both positives and negatives of the business are fairly reported
- How to ensure that Integrated Reporting provides a true and fair view of the business.

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Integrated Reporting—Getting Started

In spite of genuine apprehensions and concerns about Integrated Reporting, companies must realise that the benefits far outweigh the efforts and the stumbling blocks. Following is a suggestive approach for implementation of Integrated Reporting:

- Top management must constitute an Integrated Reporting committee with cross functional representation
- Clearly communicate that the committee shall own the process of compiling Integrated Report
- Lay down materiality thresholds for reporting information on economic, social and environmental aspects
- Involve professional content writer for clarity and conciseness in Integrated Report
- Involve a credible agency for assurance of Integrated Report
- Adopt a fair approach towards positive and negative aspects of in Integrated Reporting
- Set a time line for compilation of Integrated Report
- Look at the journey of other companies in the process of compiling Integrated Report and imbibe learning
- Acknowledge and reward the efforts of the committee in compiling Integrated Report.

Approach to Integrated Reporting

Integrated Reporting is essentially an exercise in Enterprise Performance Management and its Communication. It involves an integrated approach that looks at performance of the company and measures the value that it creates by leveraging Strategy, Organisational Structure and Governance in Social, Economic and Environmental context.

- Develop appropriate organisational performance measures/metrics
- Evaluate organisational performance across business segments in the context of Social, Economic and Environmental aspects
- Harvest actionable and relevant information from a deluge of data for developing an Integrated Report.
- Contribute to formulation of organisational structure and strategy that focuses on triple P–People, Profits and Planet and its linkage with governance and performance
- Evaluate and appraise capital value proposition through costing, revenue, profitability, non–financial and non–quantitative analysis

Corporate reporting will continue to evolve with the changing business environment and stakeholder expectations. Adding integrated reporting to management's agenda and to board strategy sessions may help companies determine how to meet these evolving expectations. The integrated reporting concepts shall provide companies a useful framework when considering how to best disclose environmental, social, and governance matters that they have decided to report.

- Write a coherent integrated business story highlighting relevant linkages, keeping it short and simple.

Going Forward

Corporate reporting will continue to evolve with the changing business environment and stakeholder expectations. Adding integrated reporting to management's agenda and to board strategy sessions may help companies determine how to meet these evolving expectations. The integrated reporting concepts shall provide companies a useful framework when considering how to best disclose environmental, social, and governance matters that they have decided to report. Companies may also improve their access to capital and achieve strategic business benefits from integrated thinking.

Integrated Reporting provides huge opportunity for the professionals to assume leadership, demonstrate their ability to facilitate Integrated Reporting and consistently drive the message – "Integrated Reporting is no longer a matter of choice. The stakeholders will in future increasingly demand information on Social and environmental aspects of business and companies which rise to the challenge of providing information required by various stakeholders shall be rewarded with higher valuations and enhanced corporate image." ■

Start-Up India

The present Government under the stewardship of Shri Narendra Modi took oath of office on May 26, 2014. The Prime Minister brought in new ideas of governance, managing the economy and about the social order. The major thrust of the PM has been on harnessing the potential of the youth. India has the largest young population in the world and if its energies are channelised to fuel the growth of the country then India can become a major power in the near future. Perhaps, with this idea in mind, Shri Narendra Modi launched on January 16, 2016, a Start-Up India Scheme. Read on to know more about the initiative…

Introduction

The Government of India has started a new initiative **"STARTUP"** for entities working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property. The government aims to accelerate spreading of the Start-Up Movement:

~ From digital/technology sector to a wide array of sectors including agriculture, manufacturing, social sector, healthcare, education *etc;* and

~ From existing tier 1 cities to tier 2 and tier 3 cities including semi-urban and rural area.

The Action Plan envisages

~ Simplification and Handholding

~ Funding Support and Incentive

~ Industry-Academia Partnership and incubation.

Road Map for Availing Benefits under the Scheme

1. ***Deciding about the Constitution***

   A start up entity can be a Private Limited company/registered Partnership firm/LLP. The definition of Start-up under the Income-tax Act, 1961 has been provided under ***section 80IAC which mentions that the eligible startup for availing the tax benefits shall be a Company/LLP which is incorporated on or after 01.04.2016. Though registered***

CA. Gaurav Jain

(The author is a member of the Institute. He can be reached at jain.gaurav4@gmail.com.)

partnerships are entitled to claim benefits of Startup, however, it appears that income tax benefits shall go only to Companies and LLPs.

2. ***Who can be called a Start-up***
   Any of the entities mentioned in the previous point (1.) which fulfill the following conditions can be called and are eligible for benefits of Startup:
   a. Upto 5 years from the date of incorporation/ registration
   b. Upto the financial year where turnover does not exceeds by ₹25.00 crore.

3. ***Steps before making application***
   I. Obtain the PAN Number before making an application for recognition as startup.
   II. The project shall be one which contains the following feature
      a. It should encompass working towards innovation, development, deployment and commercialisation of new products, processes & services.
      b. It should be driven by ***technology or intellectual property.***
      c. It should aim at development and commercialisation of new products/ services/processes or significantly improved products/services/processes.
      d. It should be one which creates value addition to the customers.
   ➢ The project shall not include:-
      a. Mere development of products/ processes/services without commercialisation.
      b. Undifferentiated products/processes/ services.
      c. Having Development and commercialisation of products/processes/services but no value addition to the customers.
   III. Obtain one of the following documents:-
      a. Recommendation (with regard to innovation nature of business), in a format specified by Department of Industrial Policy and Promotion, ***from any incubator established in post-graduate college in India***; (the list of such colleges is available at http://startupindia.gov.in/upload/List_of_Incubators.pdf) or
      b. Letter of support by any Incubator which is funded (in relation to the project) from Government of India or any State Government as part of any specified scheme to promote innovation; or
      c. Recommendation (with regard to innovative nature of business), in a format specified by Department of Industrial Policy and Promotion, ***from any Incubator recognised by Government of India; or***
      d. Letter of funding of ***not less than 20 percent in equity*** by any Incubation Fund/Angel Fund/Private Equity Fund/ Accelerator/Angel Network duly registered with Securities and Exchange Board of India that endorses innovative nature of the business. Department of Industrial Policy and Promotion may include any such fund in a negative list for such reasons as it may deem fit; or
      e. Letter of funding by Government of India or any State Government as part of any specified scheme to promote innovation; or
      f. Patent filed and published in the Journal by the India Patent Office in areas affiliated with the nature of business being promoted.
   IV. File an application for recognition as a "START-UP" at DIPP through mobile app/ portal of DIPP
      Portal address of dipp:- http://startupindia.gov.in/registration.php
      Mobile app can be downloaded at http://startupindia.gov.in/download-app.php
      Application shall be filed online, no physical movement of documents. Real time recognition number will be allotted, with no tax benefit or IPR benefits. If on subsequent verification, it is found defective due to non-submission of documents/ uploading of other documents/forged documents, the fine of 50% of paid up capital shall be imposed with a minimum penalty of ₹25,000/-.
   V. For availing Tax benefit and IPR (Intellectual Property Rights) related benefits also, the files shall be further sent to inter-ministerial board for evaluation.

It may take some days to get approved, and no time limit has been prescribed in the scheme.

VI. To obtain tax benefits, a certificate of an eligible business shall be required from the Inter-Ministerial Board of Certification consisting of :
   a. Joint Secretary, DIPP
   b. Representative of Department of Science and technology
   c. Representative of Department of Biotechnology

VII. Registration, filing of application and tracking of status of application is very easy. This can be done through mobile apps at any time. The registration certificate can also be downloaded at any time from the said apps.

4. ***Benefits***

Self Certification of Compliance (Notification dated 12.01.2016):- Startup may be allowed self-certify compliance with labour laws. There are 9 departments under labour law.

<table>
<tr><td>The Payment of Gratuity Act 1972</td><td rowspan="7">Implemented by Central and State Government</td><td rowspan="4">Require inspection</td></tr>
<tr><td>The Building and other construction workers (Regulation of employment and conditions of service) Act, 1979</td></tr>
<tr><td>The Inter-state Migrant Workmen (Regulation of employment and conditions of Services) Act 1979</td></tr>
<tr><td>The Contract Labour (Regulation and Abolition) Act 1970</td></tr>
<tr><td>The Trade Unions Act 1926</td><td rowspan="5">Does not require inspection</td></tr>
<tr><td>The Industrial Disputes Act, 1947</td></tr>
<tr><td>The Industrial Employment (Standing Orders)Act 1946</td></tr>
<tr><td>The Employees' Provident Funds and Miscellaneous Provisions Act 1952</td><td rowspan="2">Implemented by Central Government</td></tr>
<tr><td>The Employees' State Insurance Act 1948</td></tr>
</table>

The above-mentioned 4 departments which requires the inspection, is directed not to inspect the startup for first year of inspection and allow the self-certification regime. Startup is required to file the self-certified return from 2nd year onward. Upto the period of three years, no inspection shall be carried out except credible and verifiable complaint of volition of laws is filed in writing and approval is received from one senior level of inspecting officer.

Self Certification under 'The Apprentice Act, 1961': (Notification dated 15.01.2016):- Startup may be allowed self-certify compliance with "The Apprentice Act, 1961" in line with labour law. No inspection for a period of three year.

No Environmental Clearance: (Press information dated 05.03.2016). The total Industry has been divided into four parts, namely, Red Category, Orange Category, Green Category and White Category. The industry falling under the White category shall not require environment clearance. An intimation to the concerned SPCB/PCC shall suffice.

White Category industry consists of non-polluting industry. A list of such industry can be accessed at http://startupindia.gov.in/MoEF_New_Category_of_White_Industries_05_03_2016.pdf

Preferential treatment with regard to participation in Tenders: With the objective to provide the conducive environment to the startup, the Government of India has relaxed the requirement of previous experiences/prior turnover for MSEs under the public procurement policy of MSEs.

In case of tender floated by the Central Ministries/Departments/CPSUs, presently minimum 20% of their requirement shall be met from MSME (Circular dated 10.03.2016). Accordingly, the Government has provided a conducive platform

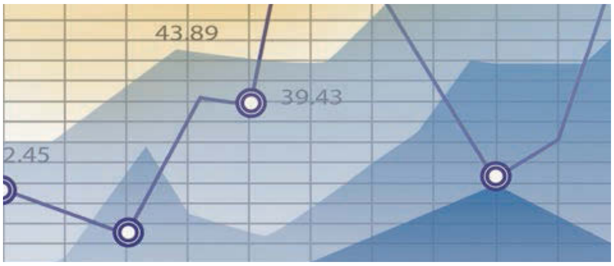
to Startup having no experience, prior turnover but having technical competence can float the tender.

Start-up Hub: Work in a hub with collaboration with Central & State Government, Venture Capitals, Incubators, banks, legal partners, universities, R & D institutions *etc.*, and assist start-up for obtaining finance, feasibility testing, business structuring advisory, enhancement of marketing skills, technology, commercialisation and management evaluation and organising mentorship program with government, incubator, educational institutions who aspire to foster innovation.

Startup Intellectual Property Protection: (Notification dated 22.04.2016)
Facilitate filling of patent, design *etc.*, Fast tracking of start-up, provide panel of facilitator for application of patents is provided. Cost of facilitation shall be borne by the Government. Rebate of 80% on statutory fee is also provided to startup.

Faster exit for startup: Startups with simple debt structure and meeting such criteria as specified may wound up within a period of 90 days from making an application for winding up on a fast track basis. An insolvency professional shall be appointed for swift and easy closure of business.

Finance: The Government will provide the funds of 10,000 crore in over a period of four years for financing the start-up. It will be in the nature of fund of funds (SEBI registered venture funds). The fund of funds shall contribute maximum 50% of the stated daughter fund size.



Credit guarantee mechanism: Shall be provided to banks to encourage the banks to provide venture debt to startup.

Tax exemption–Capital Gains: With the objective to accelerate the funds availability with VCs for investment in startups, Section 54EE is being inserted to provide the capital gain tax exemption for investment of capital gain in such funds.

Tax exemption–Deduction from Income-80-IAC: No income tax for three consecutive years within the block of five years. The conditions to be fulfilled for being eligible for this deduction are enumerated under that section.

Conclusion

The Government under the dynamic leadership of Shri Narendra Modi has thrown a challenge to the youth to come forward and realise their potentials, to become job providers instead of job-seekers and become the engines of growth of the country. In turn, the Government has come out with a variety of benefits to finance, handhold and guide the Start-ups. It is up to the youth to grab the opportunity and become a vital component of the economy of India, the Mighty India if you may so call. ■

Chartered Accountants and the Emerging Startup Revolution in India

Startups will be the next big economic force in India and a startup revolution of sorts is already brewing in our country. According to Union Commerce and Industry Minister Smt. Nirmala Sitharaman, India is world's youngest startup nation with 72 % founders below 35 years of age. Close to 4,400 technology startups exist in India and the number is expected to reach over 12,000 by 2020. India has been pegged at third place behind US and Britain in terms of the number of startups. Chartered accountants can help in promoting the emerging start-up revolution in India. Indian accountancy profession should take note of this emerging trend, as there is an immense untapped potential for the profession in this fast developing startup revolution in the country. While the Government is committed to make Start-up India initiative a scalable reality, the chartered accountants can play a crucial role on the financial front and help facilitate a vibrant start-up ecosystem in India. The chartered accountants should enter into the Indian startup world by offering their multifarious skills and services for the ultimate good of the country's economy and society.

Much of the stress that people feel doesn't come from having too much to do. It comes from not finishing what they started. - David Allen

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals received during September- October 2016 for the reference of Faculty/Students & Members of the Institute.

1 Accountancy

Accounting Standards GAPS in GAAP: Impact on MAT from First Time Adoption (FTA) of IND AS by Dolphy D'Souza. *The Bombay Chartered Accountant Journal*, September 2016, pp.87-90.

CPA Firms Struggling with Succession: Some Leaders Say Staff Members aren't Ready for Important Tasks by Ken Tysiac. *Journal of Accountancy*, September 2016, pp. 27-31.

Effect of IAS/IFRS Adoption on Earnings Management (Smoothing): A Closer Look at Competing Explanations by Vedran Capkun and Dan Collins. *Journal of Accounting and Public Policy*, Vol.35/4, July/August 2016, pp.352-394.

Financial Reporting Quality of Chinese Reverse Merger Firms: The Reverse Merger Effect or the Weak Country Effect? by Kun-Chih Chen and Qiang Cheng. *The Accounting Review*, Vol. 91/5, September 2016, pp. 1363-1390.

How to Keep Clients after an Accounting Practice Sale: Buyers and Sellers Both Must Play Leading Roles to Ensure a Smooth Transition and Maximise Retention by Harry L. Olson. *Journal of Accountancy*, September 2016, pp. 33-37.

Transition to IFRS 15 by Galina Ryltsova. *Accountancy*, Vol. 157/1477, September 2016, pp. 60-63.

2 Auditing

Did the PCAOB's Restrictions on Auditors' Tax Services Improve Audit Quality? by Clive S. Lennox. *The Accounting Review*, Vol. 91/5, September 2016, pp.1493-1512.

Do SOX 404 Control Audits and Management Assessments Improve Overall Internal Control System Quality? by Joseph H. Schroeder and Marcy L. Shepardson. *The Accounting Review*, Vol. 91/5, September 2016, pp. 1513-1541.

International Archival Auditing and Assurance Research: Trends, Methodological Issues and Opportunities by Roger Simnett and Elizabeth Carson. *Auditing: A Journal of Practice and Theory*, Vol.35/3, August 2016, pp. 1-32.

Is Audit Eating Itself: Tight Audit Fees Coupled with Alternative Revenue Streams is Causing Conflicts by Oliver Parry and Andrew Gambier. *Accountancy*, Vol. 157/1477, September 2016, pp.66-68.

Standards of Innovation in Auditing by Emer Curtis and Christopher Humphrey. *Auditing: A Journal of Practice and Theory*, Vol.35/3, August 2016, pp.75-98.

3 Economics

Curbing the Black Economy: Good Intentions will not Suffice by Arun Kumar. *Economic and Political Weekly*, Vol. 51/36, September 3rd, 2016, pp.25-27.

FDI Guidelines for E-Commerce Cobweb of the E-Marketplace Model by Sudipto Banerjee. *Economic and Political Weekly*, Vol. 51/36, September 3rd, 2016, pp.21-25.

Financial Sector in India: Competition Law Perspective by Susmitha P. Mallaya. *Company Law Journal*, September 2016, pp.81-88.

4 Investment

Private Corporate Investment: Growth in 2015-16 and Prospects for 2016-17. *Reserve Bank of India Bulletin*, September 2016, pp. 43-54.

5 Law

New IPR Policy 2016: Not Based on Evidence by Sunil Mani. *Economic and Political Weekly*, September 17th, 2016, pp. 28-38.

6 Taxation and Finance

International Taxation: Growing Significance of Prevention of Money Laundering Act, 2002 by Mayur B. Nayak and Tarun Kumar G. Singhal. *The Bombay Chartered Accountant Journal*, September 2016, pp.53-61.

Model GST Act - Dicey Issues by Sanjiv M. Shah. *The Bombay Chartered Accountant Journal*, September 2016, pp.19-22. ■

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 011-30110419 and 011-30110420 or by e-mail at library@icai.in; kmray@icai.in.

Never limit yourself because of others' limited imagination; never limit others because of your own limited imagination. - Mae Jemison

FinMin to Issue Rules for Norms under BEPS

The Finance ministry will issue rules and guidance to address some concerns and ambiguity over mandatory reporting norms with respect to transfer pricing for multinational companies whose consolidated annual revenue is over ₹5,000 crore. The government is also stepping up administrative systems to plug possible data leakage, said a senior tax officer at a conference. These rules and guidance will aim at clarity on documentation required under Base Erosion and Profit Shifting (BEPS) measures unveiled by the Paris-based OECD grouping in October last year, to address tax avoidance by MNCs. The concerns are on confidentiality of the data shared by companies with the tax authorities of various jurisdictions, beside the difference in accounting years and rules in different countries. Akhilesh Ranjan, a senior income tax officer, said: "The concerns on accounting years, joint ventures and permanent establishment are genuine and a guidance note is under preparation. That and the rules will be issued in a couple of months."

*(**Source:** www.economictimes.com)*

Submit Monthly Data of Appeals Disposed Of: CBDT to Officers

To fast-track disposal of tax cases, CBDT has started reviewing performance of its officers and asked commissioners to submit data on number of appeals they have disposed of every month against the given target. To fast-track disposal of tax cases, CBDT has started reviewing performance of its officers and asked commissioners to submit data on number of appeals they have disposed of every month against the given target. There are a total of nearly 2.59 lakh cases pending adjudication before commissioners income tax (appeal) and it is estimated that each would have some 400 cases pending before them. The Central Board of Direct Taxes has also asked CITs (A) to upload the data of all the appeals pending before them as on February 29, 2016, on its data collection portal. In a communication to all commissioners (appeal), CBDT has asked them to send details of the number of cases disposed of to the statistics (R&S) wing of the office of director general of income tax by 7th of every month.

*(**Source:** The Businessline)*

Direct Tax Mop-Up Jumps 9% in H1, Indirect Tax Up 26%

In 2016-17, the Centre has pegged the direct taxes collection at ₹8.47 lakh crore and ₹7.79 lakh crore from indirect taxes, including customs, excise and service tax. Net direct tax collections in April-September 2016 recorded a growth of 8.95 per cent, rising to ₹3.27 lakh crore, accounting for 38.65 per cent of the Budget estimates of direct taxes for 2016-17 (April-March). Net indirect tax mop-up during the first six months of the current financial year grew 25.9 per cent to ₹4.08 lakh crore mainly on account of 46 per cent jump in excise duty collections, finance ministry data showed. Refunds for direct taxes sharply increased by 26.99 per cent during April-September to ₹86,491 crore. The increase in refunds was reflected in corresponding decrease in net growth of corporate tax.

*(**Source:** Press Information Bureau)*

Redress TDS Mismatch Grievance of Taxpayers: CBDT

CBDT has instructed the Income Tax department to expedite cases of TDS mismatch and reduce taxpayers grievances in this regard. The instructions have been issued after a review of the Tax Deducted at Source (TDS) subject by Central Board of Direct Taxes Chairperson Atulesh Jindal sometime back. "The taxpayers are facing problems due to mismatch of TDS/other taxes. These problems may be due to the non-reporting of TDS and uploading the TDS details improperly by their deductors. As a result, demand notices are being sent to the taxpayers due to non-availability of the tax credits for claim in Income Tax Returns," a recent CBDT communication to the taxman said. A senior official said the Central Processing Centre (CPC) in Bengaluru is not able to process some refunds of taxpayers because of the pending mis-match entries.

*(**Source:** www.profit.ndtv.com)*

Government Doubles Limit of Excise Duty Evasion for Arrest and Prosecution

The government has doubled the limit of excise duty evasion for arrest and prosecution of accused to ₹2 crore and also asked officials not to resort to penal provision in cases of technical nature. "It has been decided to revise the monetary limit for arrest and prosecution in Central Excise to maintain uniformity of practice in central excise and service tax," the Central Board of Excise and Customs (CBEC) said in an order. Arrest and prosecution of a person henceforth can be resorted only if the offence relating to evasion of central excise duty or misuse of CENVAT credit is equal to or more than ₹2 crore, CBEC said. In October 2015, the monetary limit for excise related offences was set at ₹1 crore. "It is again reiterated that arrest and prosecution should not be resorted to in cases of technical nature i.e where the additional demand of duty/tax is based on a difference of opinion regarding interpretation of law," the order said.

*(**Source:** www.profit.ndtv.com)*

RBI Cuts its Lending Rate via Monetary Policy Review

In the tenure of RBI chief Urijit Patel, a new era has began for the Central Bank. A six member Panel called Monetary Policy Committee or MPC has been formed for the purpose of policy decisions. All six members voted for a rate cut in a unanimous decision. The RBI in its monetary policy reviewed recently has decided to cut its key lending rate or the repo rate by 25 basis points to a six-year low of 6.25 per cent, from 6.5 per cent. As per RBI statement the committee expects that there would be strong improvement in supply management measures and sowing which will help to improve the food inflation outlook. Government has announced several measures to cool down food inflation pressures especially pulses. On economic growth, the RBI expects momentum "to quicken with a normal monsoon raising agricultural growth and rural demand, as well as by the stimulus to the urban consumption spending from the pay commission's award". The RBI retained its GDP growth projection for this fiscal year at 7.6 per cent.

*(**Source:** www.financialexpress.com)*

Payment of Income Tax on Time Will Play an Important Role in Nation Building: Finance Minister

The Union Finance Minister Arun Jaitley recently said that revival of the practice of acknowledging the tax payers for paying taxes within the prescribed time and promptly filing their Income Tax Returns, will play an important role in nation building. Besides nation building, Jaitley said that this will also help in bringing about the necessary change in the people's attitude at large to pay their due taxes on time. The Finance Minister added that as the business will grow, there will also be change in attitudes with regards to payment of taxes. The Government acknowledges the contribution of individual tax payers in paying taxes within the prescribed time and prompt filing of Income Tax Returns. The Finance Minister, Arun Jaitley, who also handed over certificates of appreciation issued by Central Board of Taxes (CBDT) honouring select tax payers for such contribution, said that CBDT will be sending out more such certificates of appreciation to individual tax payers by e-mail in various categories on the basis of the level of taxes paid by them for the current Assessment Year 2016-17. The categories for individual taxpayers and the number of certificates being issued in the first round are Platinum: Tax contributed ₹1 crore and above. About 8.43 lakhs tax payers will be issued this Letter of Appreciation in different categories for paying their due taxes.

*(**Source:** http://www.business-standard.com/)*

India's Ranking in Global Competitiveness Index sharply Rises by 16 Places

The World Economic Forum (WEF) has recently published a Global Competitiveness Report 2016-17 according to which India has climbed, for the second year in a row, to 39th. Its 16-place improvement is the largest this year, thanks to improved monetary and fiscal policies as well as lower oil prices. It became possible due to improved monetary policy and recent reforms towards opening up the economy. The report describes the Indian economy has stabilised and now boasts of the highest growth among the G-20 countries. The report also highlighted that India happens to be the second-most competitive economy among the BRICS (Brazil, Russia, India, China and South Africa) countries, with China ahead at 28th spot. The report emphasised that updated business practices and investment in innovation are now as important as infrastructure, skills and efficient markets. Of the 15 segments assessed in the report, India has shown improvement in all categories except in health and primary education.

*(**Source:** Press Trust of India)*

For success, attitude is equally as important as ability. - Harry F. Banks

Largest Annual Global SMP Survey Is Now Open

The International Federation of Accountants (IFAC) is conducting the 2016 IFAC Global SMP Survey ain 23 languages. The survey is the largest annual global survey of accountants operating in small- and medium-sized practices (SMPs). It will remain open till November 30, 2016. The survey is expected to yield valuable insights into the global SMP community, which provides services to small- and medium-sized entities (SMEs), commonly known as the "engine rooms" of the global economy. The survey helps IFAC and its members gain an understanding of the specific challenges and opportunities faced by SMPs and SMEs globally, and as a result, help better serve this critical constituency. For more details you may visit IFAC website at www.ifac.org.

New IAESB Guidance Promotes Awareness and Application of IAE Entry Requirements

The International Accounting Education Standards Board (IAESB) has recently released new materials in support of its recently revised International Education Standard (IES) 1, *Entry Requirements to Professional Accounting Education Programs (2014)*. The support materials include, A Guidance paper, FAQs, Illustrative examples, perspectives on IES 1. In addition to an overview document, the following support materials are now available:

- **A guidance paper** addressing what needs to be considered in setting educational entry requirements to professional accounting education programs, and what information can assist individuals considering a career as a professional accountant;
- **Frequently Asked Questions** explaining terminology and concepts contained in IES 1;
- An illustrative example of factors that an organisation may consider when setting educational entry requirements to professional accounting education programs; and
- **Perspectives on IES 1** describing the range of factors that could influence an individual's successful completion of a professional accounting education program.

These materials are intended to help professional accountancy organisations and other accounting education providers, including universities, governments, and international donor agencies, understand and implement IES 1. This, in turn, supports improved accountancy education in the public interest. *"International Education Standard (IES) 1 sets out an inclusive approach to the accounting profession, such that entry requirements target admittance to those with a reasonable chance of successfully completing the professional accounting education program,"* said Chris Austin, Chair of the IAESB.

IFAC and ICAEW Release Joint Report—*From Crisis to Confidence: Good Regulation, Governance, and Culture*

The International Federation of Accountants (IFAC) and Institute of Chartered Accountants in England and Wales (ICAEW) have recently released a new joint report: *From Crisis to Confidence: Good Regulation, Governance, and Culture*. The report is the outcome of a roundtable discussion convened by IFAC and ICAEW in July 2016 that brought together 50 UK and EU chief and senior executives from business and regulatory bodies. The executives met to discuss and debate how the global regulatory environment can be enhanced—with an ultimate goal of improving confidence in the financial and capital markets, business, and government.

"The expertise of the roundtable's participants makes their clear and candid call for stronger organisational governance all the more important. At a time when we are seeing citizens express a deepening mistrust of government and institutions through the political process, reframing the thinking around how to develop smart and effective regulation is vital," said IFAC Chief Executive Officer, Fayez Choudhury. Michael Izza, ICAEW Chief Executive, said, *"Although regulation is only one piece of the puzzle, we cannot rebuild trust unless society has faith that those regulations protect the public interest. This trust is undermined when the rules are too complex, too fragmented, or their purpose is unclear"*. The full report, *From Crisis to Confidence: Good Regulation, Governance, and Culture*, is available on the IFAC website.

IESBA Releases Handbook on Code of Ethics for Professional Accountants, 2016

The International Ethics Standards Board for Accountants (IESBA) of the IFAC has recently released a handbook titled Code of Ethics for Professional Accountants 2016, which replaces the 2015 edition of the IESBA Handbook. It contains the entire Code of *Ethics for Professional Accountants* (the Code). This edition includes two new sections—225 and 360, and conforming amendments to other sections—addressing professional accountants' responsibilities when they become aware of non-compliance with laws and regulations (NOCLAR). Changes regarding

International Update

NOCLAR will be effective July 15, 2017. Early adoption of NOCLAR is permitted. See NOCLAR standard, supporting documents, and guidance on the IESBA site https://www.ethicsboard.org. Web based version of the handbook has also been launched on this site.

Significant Global Accountancy Profession Appointments Announced by IFAC

The International Federation of Accountants (IFAC) has recently announced the appointments of three members of the global accountancy profession to lead important committees supporting the profession: Monica Foerster as Chair of the Small and Medium Practices (SMP) Committee; Arjuna Herath as Chair of the Professional Accountancy Organisation (PAO) Development Committee; and Charles Tilley for a second term as Chair of the Professional Accountants in Business (PAIB) Committee. Their appointments for three-year terms have been approved by The IFAC Board, beginning from January 1, 2017.

IFAC Report Highlights *Role of SMPs in Providing Business Support to SMEs*

IFAC has recently come out with an informative report on Role of SMPs in Providing Business Support to SMEs. The report is based on IFAC-commissioned research from the Bucharest University of Economic Studies and the University of Dayton. Their is an important relationship between small- and medium-sized practices (SMPs) and their clients—primarily small- and medium-sized entities (SMEs). The report examines the key drivers of the advisor-client relationship, demand and supply of business advisory services, the growth implications for SMPs and how professional accountancy organisations (PAOs) around the world can support them. The report illustrates a number of factors that influence SME's demand for advice, such as competition and regulation, personal factors, size and nature of the entity etc. Due to the multitude of factors involved, client-advisor interactions between SMEs and SMPs are complex, but generally these relationships are long term and based on a solid foundation of trust and communication, says the report.

IFAC Dedicates Capacity Building Award to Professional Accountants in Emerging Economies

The International Federation of Accountants has received the Accountancy Capacity Building Champion of the Year Award at the 2016 The Accountant & International Accounting Bulletin awards. IFAC's Professional Accountancy Organisation (PAO) Capacity Building Program supports the profession's growth in the developing world, where the profession's skills are vital to embedding transparency, credibility, and good governance into national economies.

IFAC CEO Fayez Choudhury said IFAC is delighted to receive the award on behalf of PAOs and their members in emerging economies. "Their passion to grow and support their economies—and become sustainable, self-supporting PAOs—is an inspiration," he said. IFAC's capacity building award was collected by President Olivia Kirtley, who was separately honoured with the The Accountant and International Accounting Bulletin's Lifetime Achievement Award.

IAASB Amends Standards to Enhance Auditor Focus on Non-Compliance with Laws and Regulations

The International Auditing and Assurance Standards Board (IAASB) has recently released International Standard on Auditing (ISA) 250 (Revised), *Consideration of Laws and Regulations in an Audit of Financial Statements*, and conforming amendments to other International Standards, which respond to new requirements in the International Ethics Standards Board for Accountants (IESBA)'s *Code of Ethics for Professional Accountants* addressing non-compliance with laws and regulations (NOCLAR). The revisions enable the IAASB's International Standards to continue to be applied effectively alongside the IESBA Code, and clarify and emphasise key aspects of the IESBA Code in the IAASB's Standards. "The IESBA has established clear expectations for professional accountants in responding to non-compliance with laws and regulations, representing an important contribution to the public interest," said IAASB Chairman Prof. Arnold Schilder. "It is only fitting that the IAASB's International Standards acknowledge and reflect these important changes, and, thereby, reinforce the public interest role played by auditors and professional accountants who provide services covered by our Standards." ISA 250 (Revised) will be effective for audits of financial statements for periods beginning on or after December 15, 2017. Amendments to the IAASB's International Standards for other services have a similar effective date. "Among other enhancements, the changes to ISA 250 prompt the auditor to think about whether to report identified or suspected NOCLAR to an appropriate authority outside the entity, taking into consideration the provisions of laws, regulations, or relevant ethical requirements in their jurisdiction, and to consider the impact of NOCLAR on the audit," explained James Gunn, Managing Director, Professional Standards.

Success is how high you bounce when you hit bottom. - George S. Patton

The Institute of Chartered Accountants of India (ICAI)

ICAI Commerce Wizard-2016: A Talent Search Test

Organised By: **Career Counseling Committee, ICAI**

For Details and Registration please visit the Exclusive Website for ICAI Commerce Wizard, 2016: ***icaicommercewizard.com***

The Commerce Talent Search Test called as Commerce Wizard -2016 is a diagnostic test that measures the concept understanding ability of a student. Unlike regular tests which try only to find out how much a child knows, this test measures how well a student has understood the concepts.

Eligibility: Students appearing in class IX/X/XI/XII examination

Registration Fees : ₹100/- upto 25.11. 2016
There After : ₹150/- upto 05.12. 2016

The Commerce Wizard will be conducted in English language at two levels for Students studying in Class IX & X and XI & XII separately:

Class	Test Level	No. of Questions	Duration	Subjects	Mode	Negative Marking	Max. Marks	Pattern
IX & X	Level-1	100	1 hr, 15 min	Business Studies, Mathematics, Current Economic affair & Aptitude	Online	0.25	100	Objective - type (Multiple Choice) questions
	Level-2	100	1 ½ hour		Pen & Pencil	0.25	100	
XI & XII	Level-1	100	1 hr, 15 min	Business Mathematics, Economics, Fundamentals of Accounting & Aptitude	Online	0.25	100	
	Level-2	100	1 ½ hour		Pen & Pencil	0.25	100	

Important Dates for the aforesaid test:

Date & Timing of the Test (First Level)	**Date: 11th December, 2016 (Sunday)** **Timing:** I. 10.45 a.m. to 12.00 Noon for Class IX & X Students II. 4.15 p.m. to 5.30 p.m. for Class XI & XII Students
Date & Timing of the Test (Second Level)	**Date: 8th January, 2017 (Sunday)** **Timing:** 2.30 p.m. to 4.00 p.m.

Prizes for Participants

Level 1 Test

- Every candidate appeared for the First level test will get a participation certificate

Level 2 Test- for Class IX & X and Class XI & XII students separately

- **1st Rank holder will be awarded with ₹ 1, 00,000/-** , if multiple winners are there, the prize amount will be shared by them. If more than 20 joint rank holders for the same, the awardee will at least awarded with the cash prize of ₹ 5,000/- along with a certificate.
- **2nd Rank will be awarded with ₹ 50,000/-,** if multiple winners are there, the prize amount will be shared by them. If more than 20 joint rank holders for the same, the awardee will at least awarded with the cash prize of ₹ 2,500/- along with a certificate.
- Next Top 1000 will be awarded with consolation Award will be awarded worth Rs 500/- along with a certificate.
- Participation Certificate will be given to each participant appeared for the second level test.

Other Important Dates:

Award Ceremony: Award Ceremony will be held at Delhi NCR tentatively in the month of January/ February, 2017

ICAI/Test Management Committee reserves the right to change in any of the modalities cited above.

Chairman
Career Counseling Committee, ICAI

For any Query please contact:
Secretary, Career Counselling Committee, The Institute of Chartered Accountants of India
ICAI Bhawan, A-29, Sector 62, Noida (U.P.) - 201309, Mobile No. 09312085025, Telephone (O): 0120-3876871
Email: ccc.events@icai.in, ccc.secretary@icai.in

Request for improving of annual filing compliance by pursuing companies so as to help the Ministry of Corporate Affairs in achieving the targeted compliance

As the members are already aware that it is the time of peak filing of Balance Sheet & Annual Return under the Companies Act.

This is to mention here that to promote high standard of integrity and professionalism, it is an essential part of the Professional duty of the Chartered Accountants to ensure compliance of various statutory and other regulatory requirements with regard to the relevant provisions of the Acts which regulate the functioning of Companies and LLPs.

In line with this, members are requested to take immediate measures to pursue and ensure without fail, compliance filing by companies for the financial year 2015-16 as it is the duty of every member to ensure that the companies, they are associated with, do their filing within the stipulated time.

For this year, the Ministry of Corporate Affairs intends to achieve minimum target of atleast 80% Compliance rate w.r.t. Annual filings and our members may help the Ministry in achieving the targeted compliance.

Members concerned are earnestly requested to note and comply.

Chairman,
Corporate Laws & Corporate Governance
Committee

Amendment to AS 2, 4, 6, 10, 13, 14, 21 and 29 issued by the Institute of Chartered Accountants of India applicable to Non-corporate entities, pursuant to issuance of amendments to Accounting Standards by the MCA

1. The Council of the Institute of Chartered Accountants of India (ICAI) at its 359th meeting held on August 16-17, 2016 noted that the Ministry of Corporate Affairs (MCA) has notified Companies (Accounting Standards) Amendment Rules, 2016 (G.S.R. 364(E) dated 30.03.2016) and amended the following Accounting Standards and omitted AS 6, *Depreciation Accounting*, issued under Companies (Accounting Standards) Rules, 2006:

(i) AS 2, Valuation of Inventories
(ii) AS 4, Contingencies and Events Occurring After the Balance Sheet Date
(iii) AS 10, Property, Plant and Equipment
(iv) AS 13, Accounting for Investments
(v) AS 14, Accounting for Amalgamations
(vi) AS 21, Consolidated Financial Statements
(vii) AS 29, Provisions, Contingent Liabilities and Contingent Assets

2. With the view to harmonise **Accounting Standards issued by the ICAI for non-corporate entities** and the amendments to the Accounting Standards notified by the Central Government, the Council decided that the amendments notified by the Central Government after appropriate changes shall also be incorporated in the **Accounting Standards issued by the ICAI.**

3. In view of the above, following changes are made in Accounting Standards issued by the ICAI **for non-corporate entities:**

(i) AS 6, *Depreciation Accounting* stands withdrawn.
(ii) The following Accounting Standards are amended:
  (a) AS 2, *Valuation of Inventories*
  (b) AS 4, *Contingencies and Events Occurring After the Balance Sheet Date*
  (c) AS 10, *Property, Plant and Equipment*
  (d) AS 13, *Accounting for Investments*
  (e) AS 14, *Accounting for Amalgamations*
  (f) AS 21, *Consolidated Financial Statements*
  (g) AS 29, *Provisions, Contingent Liabilities and Contingent Assets*

The amendments can be accessed at below link:
http://resource.cdn.icai.org/43440asb33184a.pdf

4. Amendments as stated in point (3) above will come into effect prospectively in respect of accounting periods commencing on or after April 1, 2017. However, early application of the aforementioned amendments is permitted.

Certificate Course on Concurrent Audit of Banks

The concurrent audit system of banks has become very crucial and important for banks. The main objective of the system is to ensure compliance with the audit systems in banks as per the guidelines of the Reserve Bank of India and importantly, to ensure timely detection of lapses/ irregularities. In view of the core competence of the chartered accountants in the area of finance and accounting, risk management, understanding of the internal functioning and controls of banks, *etc.*, the banking sector has been relying extensively on them to comply with these requirements of the regulator. The Internal Audit Standards Board of ICAI conducts six days ***Certificate Course on Concurrent Audit of Banks***. The purpose of the Certificate Course on Concurrent Audit of Banks is to provide an opportunity to the members to understand the intricacies of concurrent audit of banks thereby improving the effectiveness of concurrent audit system in banks, and also the quality and coverage of concurrent audit reports.

The course is open for the members of the Institute of Chartered Accountants of India as well as the students who have cleared CA final examinations.

Please refer link for further details of the Course:http://www.icai.org/post.html?post_id=8236

Course Fees w.e.f July 1, 2016:*(Cheque/DD shall be drawn in favor of "Secretary, ICAI" Payable at Delhi and should be submitted to respective branch)*

For Members of ICAI (other than Young Members)		**For Young Members* of ICAI**	
Metro Cities	₹15,000 per participant	Metro Cities	₹12,000 per participant
Non-Metro Cities	₹12,500 per participant	Non-Metro Cities	₹10,000 per participant

** Chartered Accountant up to the age of 30 years on 1st January of every calendar year will be considered as Young Member i.e. Members born on or after 1.1.1986 will be considered as young member for calendar year 2016.*

The details of the forthcoming batches of the Certificate Course on Concurrent Audit of Banks, organized by the Internal Audit Standards Board in November, 2016 are as follows:

Location	Scheduled Dates	Registration and Course Details
Kolkata	November 5 & 6, 12 & 13 and 19 & 20, 2016	http://resource.cdn.icai.org/42985iasb-eirc-266.pdf
Lucknow	November 5 & 6, 12 & 13 and 19 & 20, 2016	http://resource.cdn.icai.org/43445iasb-lucknow-272.pdf
Thane	November 12 & 13, 19 & 20 and 26 & 27, 2016	http://resource.cdn.icai.org/42986iasb-thane-268.pdf
Meerut	November 12 & 13, 19 & 20 and 26 & 27, 2016	http://resource.cdn.icai.org/43333iasb-meerut-270.pdf
Moradabad	November 12 & 13, 19 & 20 and 26 & 27, 2016	http://resource.cdn.icai.org/43334iasb-moradabad-271.pdf
Vasai	November 19 & 20, 26 & 27 and December 03 & 04, 2016	http://resource.cdn.icai.org/41862iasb-vasai-239.pdf
Ahmedabad	November 19 & 20, 26 & 27 and December 03 & 04, 2016	http://resource.cdn.icai.org/43516iasb-ahmedabad-273.pdf
Bangalore	November 26 & 27, December 3 & 4, and 10 & 11, 2016	http://resource.cdn.icai.org/42735iasb-bangalore-265.pdf
Aurangabad	November 26 & 27, December 3 & 4, and 10 & 11, 2016	http://resource.cdn.icai.org/42987iasb-aurangabad-267.pdf

Chairman
Internal Audit Standards Board, ICAI
E-mail: cia@icai.in; concurrentaudit@icai.in

The Institute of Chartered Accountants of India(ICAI)

World/National Commerce Education Day

Organised By: Career Counseling Committee, ICAI

10th November, 2016

Expanding Horizons of Commerce Education

National/World Commerce Education Day will be celebrated on 10th November, 2016 with the theme "Expanding Horizons of Commerce Education" will be conducted by the Career Counselling Committee of the Institute of Chartered Accountants of India in India as well as Abroad.

Objectives of Celebrating National/World Commerce Education Day

National/World Commerce Education Day will be celebrated every year with the following objectives

- To widely spread a message about the significance of Commerce Education in the daily life of the people.
- To display all the activities, efforts and achievements in the field of Commerce for human welfare.
- To discuss all the issues and implement innovative strategies for the development of the Commerce education.
- To give an opportunity to showcase the talents of Commerce students in the country. To encourage the people as well as popularize the Commerce education.

The Commerce Carnival is going to be an event with a series of activities and programs involving school and college students, eminent Educationists and faculties of the state, country & abroad. We want to provide a real platform for the budding students to make their career and profession in Commerce.

10th November - National/World Commerce Education Day-2016

Why

On November 10, 1494, a book titled Summa de Arithmetica, Geometria, Proportioni et Proportionalita (Everything About Arithmetic, Geometry and Proportion) was published in Venice. This was the first book that aimed to summarize the mathematical knowledge of those days. One of the tractatus of the Summa, entitled "Particularis de computis et scripturis" (About accounts and other writings) provides a detailed description of Venetian book-keeping. This was the first printed essay on double entry bookkeeping - called "Method of Venice" - and was direct base of some widespread works on mercantile accounting. The author of the book was Italian mathematician and Franciscan friar Luca Bartolomeo de Pacioli. Although double-entry bookkeeping had been around for centuries, Pacioli's 27-page treatise on the subject has earned him the title "The Father of Modern Accounting." The system he published included most of the accounting cycle as we know it today.

Commemoration of World/National Commerce Education Day

- The World/National Commerce Education Day will be expected to celebrate in capital cities of each state as well as in more than 125 other cities and in 28 abroad destinations
- Career Counselling/Mega Career Counselling Programme will be organized to promote the Commerce Education in in each Branch/ Regional Councils/Chapter Abroad.
- Mega Career Counselling Programme cum Exhibitions will be organized to promote the Commerce Education in Branch/ Regional Councils/Chapter Abroad.

Activities to be organized during the Commerce Education Day in the Branches/ Regional Councils/ Chapter Abroad on 10th Nov., 2016

- Career Counselling Programme /Mega Career Counselling Programme
- Press Conference
- Radio/TV talk shows
- Public speech
- Commerce exhibitions
- Debate Competition
- Quiz competitions
- Elocution Competition
- Essay Writing Competition
- Marathon race/ Human Chain
- Variety of other programmes

The aforesaid programmes will be organized to popularize the Commerce education in the country as well as abroad amongst the student community & other stakeholders.

Chairman

Career Counseling Committee, ICAI

For any Query please contact:
Secretary, Career Counselling Committee, The Institute of Chartered Accountants of India
ICAI Bhawan, A-29, Sector 62, Noida (U.P.) - 201309, Mobile No. 09312085025, Telephone (O): 0120-3876871
Email: ccc.events@icai.in, ccc.secretary@icai.in

Withdrawal of two Guidance Notes on Accounting

The Council, at its 359th meeting, held on September 16-17, 2016, has decided to withdraw the following two Guidance Notes on Accounting as the same are no longer relevant in the present day context:

1. **GN(A) 9 (Issued 1994) – Guidance Note on Availability of Revaluation Reserve for Issue of Bonus Shares**
2. **GN(A) 20 (Issued 2005) - Guidance Notes on Accounting for Fringe Benefits Tax**

The Institute of Chartered Accountants of India

(TO BE PUBLISHED IN PART III SECTION 4 OF GAZETTE OF INDIA)
NOTIFICATION
(Chartered Accountants)

No.1-CA (7)/ (179)/2016 **14th September, 2016**

In pursuance of the Regulation 159 (1A) of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of a Branch of Eastern India Regional Council at Jharsuguda District with effect from 10.08.2016.

The Branch shall be known as Jharsuguda Branch of Eastern India Regional Council.

The Jurisdiction of the Branch shall include all the places within Jharsuguda District.

As prescribed under sub-regulation (3) of Regulation 159, the Branch shall function subject to the control, supervision and directions of the Council through Eastern India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

V. Sagar
Secretary

(TO BE PUBLISHED IN PART III SECTION 4 OF GAZETTE OF INDIA)
NOTIFICATION
(Chartered Accountants)

No.1-CA (7)/ (180)/2016 **29th September, 2016**

In pursuance of the Regulation 159 (1A) of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of a Branch of Eastern India Regional Council in Ganjam District with effect from 17.09.2016.

The Branch shall be known as Ganjam Branch of Eastern India Regional Council and its Head Quarter shall be at Brahmapur. The Jurisdiction of the Branch shall cover whole District of Ganjam.

As prescribed under sub-regulation (3) of Regulation 159, the Branch shall function subject to the control, supervision and directions of the Council through Eastern India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

V. Sagar
Secretary

(TO BE PUBLISHED IN PART III SECTION 4 OF GAZETTE OF INDIA)
NOTIFICATION
(Chartered Accountants)

No.1-CA (7)/ (181)/2016 **19th October, 2016**

In pursuance of the Regulation 159 (1A) of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of a Branch of Western India Regional Council in Ratnagiri District with effect from 01.07.2016.

The Branch shall be known as Ratnagiri Branch of Western India Regional Council and its Head Quarter shall be at Ratnagiri. The Jurisdiction of the Branch shall cover whole District of Ratnagiri.

As prescribed under sub-regulation (3) of Regulation 159, the Branch shall function subject to the control, supervision and directions of the Council through Western India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

V. Sagar
Secretary

(TO BE PUBLISHED IN PART III SECTION 4 OF GAZETTE OF INDIA)
NOTIFICATION
(Chartered Accountants)

No.1-CA (7)/ (182)/2016 **19th October, 2016**

In pursuance of the provisions of sub-regulation (1) of Regulation 159 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India (ICAI) is pleased to notify the setting up a Branch of Western India Regional Council (WIRC) at Ichalkaranji (Maharastra) with effect from 01.07.2016.

The Branch shall be known as Ichalkaranji Branch of WIRC of ICAI. The jurisdiction of the Branch shall include all the places within a distance of 50 Kms. from city limit of Ichalkaranji.

As prescribed under sub-regulation (3) of Regulation 159, the Branch shall function subject to the control, supervision and directions of the Council through Western India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

V. Sagar
Secretary

(TO BE PUBLISHED IN PART III SECTION 4 OF GAZETTE OF INDIA)
NOTIFICATION
(Chartered Accountants)

No.1-CA (7)/ (183)/2016 **19th October, 2016**

In pursuance of the Regulation 159 (1A) of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of a Branch of Northern India Regional Council in Kurushetra District with effect from 01.07.2016.

The Branch shall be known as Kurushetra Branch of Northern India Regional Council and its Head Quarter shall be at Kurushetra. The Jurisdiction of the Branch shall cover whole District of Kurushetra.

As prescribed under sub-regulation (3) of Regulation 159, the Branch shall function subject to the control, supervision and directions of the Council through Northern India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

V. Sagar
Secretary

(TO BE PUBLISHED IN PART III SECTION 4 OF GAZETTE OF INDIA)
NOTIFICATION
(Chartered Accountants)

No.1-CA (7)/(184)/2016 **19th October, 2016**

In pursuance of the Regulation 159 (1A) of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of a Branch of Northern India Regional Council in Bhiwani District with effect from 01.07.2016.

The Branch shall be known as Bhiwani Branch of Northern India Regional Council and its Head Quarter shall be at Bhiwani. The Jurisdiction of the Branch shall cover whole District of Bhiwani.

As prescribed under sub-regulation (3) of Regulation 159, the Branch shall function subject to the control, supervision and directions of the Council through Northern India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

V. Sagar
Secretary

(TO BE PUBLISHED IN PART III SECTION 4 OF GAZETTE OF INDIA)
NOTIFICATION
(Chartered Accountants)

No.1-CA (7)/ (185)/2016 **19th October, 2016**

In pursuance of the Regulation 159 (1A) of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of a Branch of Northern India Regional Council in Kaithal District with effect from 01.07.2016.

The Branch shall be known as Kaithal Branch of Northern India Regional Council and its Head Quarter shall be at Kaithal. The Jurisdiction of the Branch shall cover whole District of Kaithal.

As prescribed under sub-regulation (3) of Regulation 159, the Branch shall function subject to the control, supervision and directions of the Council through Northern India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

V. Sagar
Secretary

ICAI News

(TO BE PUBLISHED IN PART III SECTION 4 OF GAZETTE OF INDIA)
NOTIFICATION
(Chartered Accountants)

No.1-CA (7)/ (187)/2016 **19th October, 2016**

In partial modification of the notification no. 1- CA.(7)/180/2016 dated 29.09.2016, it is hereby notified that name of the newly set up Branch of EIRC of the Institute of Chartered Accountants of India in Ganjam District which was named as "Ganjam Branch of EIRC of ICAI" has been changed and the same shall now be known as "Brahmapur Branch of EIRC of ICAI".

The Head Quarter of the Branch shall be at Brahmapur and the jurisdiction of the Branch shall cover the whole district of Ganjam.

As prescribed under sub-regulation (3) of Regulation 159, the Branch shall function subject to the control, supervision and directions of the Council through Eastern India Regional Council and shall carry out such directions as may, from time to time, be issued by the Council.

V. Sagar
Secretary

Classifieds

5470 Proprietorship firms/Retired CAs/DISA holders from any city, interested in merging /joining with a 40 years old CA firm, please write with details to cahelpline40@gmail.com

5471 South Delhi based experienced CA Firm wishes to undertake Audit/Tax/Sub-Contract/ Assignment/Retainership work. Contact 9711470807, email : info@losstoprofit.com

5472 Mumbai based CA with 20 years industry experience in the areas of Accounts, consolidation, IFRS, Lisitng agreement compliances, Fund raising (Debt, Private Equity, IPO), Taxation, M&A, Due Diligence, Risk Management, Legal matters, Corporate laws and Secretarial Practice is looking for professional work on partnership/ retainership/consultant basis Contact email - cajainmum@gmail.com or call +91 7738176547

5473 CA with exposure in India and abroad over 25 years in International Accounting, Finance, SAP Consulting, Forex , Project management , is seeking professional opportunity to work on partnership basis in Chennai. Contact: 94458 20585.

5474 Required freshly qualified/(0-5 year) experience Chartered Accountants in Aurangabad/ Pune (Full time employment only), Contact 9561700000 e-mail: sameer@apa.org.in

5475 Wanted qualified/semi-qualified CA, CMA, CS, CISA/DISA qualified professionals to represent and work for our CA firm at their district level all over India. Energetic & retired professionals would be more preferable, Contact no-9837064956, 7830379783.

5476 Mumbai based CA having 31 years of industry experience in handling income tax, service tax and audit. Seeking work on assignment/ contract basis. Willing to join as partner /consultant / open branch in Mumbai. Contact: shahkk60@gmail.com

5477 CA firm seeks merger offer from Proprietorship/ Partnership firms and invite proposals for branches all over India. CA invited for Job. E-mail: cabank2022@gmail.com

5478 Bhubaneswar based Audit Firm seeks to open branch offices in west, south and central part of India. Only ISA or CISA Qualified Young C.A'S/Retired C.A's/sole proprietory C.A Firms interested for joining or merging with the Firm are invited. Contact: brk88370@gmail.com, 9178199610

5479 South Delhi based experienced CA Firm wishes to undertake Audit/Tax/Sub-Contract/ Assignment/Retainership work. Contact 9711470807, e-mail : info@losstoprofit.com

No road is long with good company. - Turkish Proverb

Forthcoming Events[1]

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
Committee on Financial Markets and Investors' Protection **Course Chairman:** CA. G. Sekar				
1.	Certificate course on Forex and Treasury Management	26th Nov to 18th Dec, 2016 (organised on weekends)- 8 classes	Kolkata	30 hours
2.		3rd Dec, 2016 to 8th Jan,2017 (organised on weekends)- 8 classes	Sivakasi branch of SIRC of ICAI	30 hours
Topics	**The Certificate course covers the following topics:** **Module – I** Chapter– 1 Treasury – Organisational Structure Chapter– 2 Treasury – Process Chapter– 3 Treasury – Domestic Chapter– 4 Treasury – Forex Chapter– 5 Treasury – Mathematics Chapter– 6 Treasury – Technology **Module – II** Chapter – 7 Treasury – Accounting Chapter – 8 Treasury – Taxation Chapter – 9 Treasury – Types Chapter – 10 Treasury – Risk Management Chapter – 11 Treasury – Regulation, Supervision And Compliance Chapter – 12 Treasury – Auditing			
Fees	₹17,500			
Contact Person	**Course Co-ordinator:** Committee Secretariat For Course details, Registration and making online payment, please visit: http://icai.org/post.html?post_id=3552&c_id=266 The minimum batch size required for the course is 30-35 participants. For any other queries, contact at: 0120-3045945 or email at: fxtm@icai.in			
Continuing Professional Education **Programme Chairman:** CA. Vijay Kumar Gupta, Chairman, CPE Committee, ICAI				
3.	CPE National Conference - Hosted by the Belgaum Branch of SIRC of ICAI	19th-20th November, 2016	KLE Centenary Hall, Belgaum	12
Topics	• Practical Issues in Search, Seizure and Survey U/S 132 & 133A • Income Computation and Disclosure Standards and Its impact on Computation • Bankruptcy, Insolvency Code, 2016 • Audit Reports under Companies Act • Road map for GST • Impact of GST on Manufacturing and Service			
Fees	To be decided			
Contact Person	**Programme Co-ordinator:** CA. Praveen Ghali, Chairman, Belgaum Branch of SIRC (Mobile : 94487 65797) **For Registration & Further Details:** Belgaum Branch of SIRC, ICAI Bhawan, Swaroop Plaza, IInd Floor, Sukrawar Peth, Tilakwadi, Belgaum– 590 006; Contact No.: 0831-2425018; E-mail: belgaum@icai.org			
4.	CPE National Conference - "Professional Opportunities for CAs in Transforming India" - Hosted by the Agra Branch of CIRC of ICAI	20th-21st November, 2016	Hotel Double Tree by Hilton, Taj Nagri Phase-II, Agra	12
Topics	• Overall Analysis of Goods & Service Tax (GST) Act • Discussion on NRI & FEMA Regulations • Professional Opportunities for CAs in Capital Market • Professional Opportunities in various schemes of Government of India • Taxation Issues relating to Capital Market Transactions • Transitional provisions under the new Goods & Service Tax (GST)			
Fees	FCA – ₹2,500/- ACA – ₹2,000/- (Non Residential basis)			
Contact Person	**Programme Co-ordinators:** CA. Amit Bansal, Chairman, Agra Branch of CIRC (Mobile: 93191 03915, 98970 13915) CA. Mohan Lal Kukreja, Secretary, Agra Branch of CIRC (Mobile : 9837337035) **For Registration & Further Details:** Agra Branch of CIRC, Block No. 77/8, 1st Floor, MK Tower, Sanjay Place, Agra – 282 002; Contact No.: 0562-4040598; E-mail: icaiagra@gmail.com, agra@icai.org			
5.	CPE National Conference- "IndraDhanush – Prism of Opportunities"-Hosted by the Rajkot Branch of WIRC of ICAI	26th-27th November, 2016	ICAI Bhawan, Rajkot	12
Topics	• Transitional Provisions under GST • Funding through Bonds, Masala Bonds and Green Masala Bonds • Provisions of Direct Taxes • International Taxation • Supply Concept under GST • FEMA Provisions			
Fees	For Members: upto 18th November 2016 – ₹2400/- 19th to 24th November 2016 – ₹2750/- 25th November 2016 onwards – ₹3000/- For Non-Members: ₹3500/-			
Contact Person	**Programme Co-ordinators:** CA. Chandresh Dholakia, Chairman, Rajkot Branch of WIRC (Mobile: 98242 99724) CA. Kalpesh Parekh, Vice-Chairman, Rajkot Branch of WIRC (Mobile: 98984 64348) **For Registration & Further Details:** Rajkot Branch of WIRC, ICAI Bhawan, Giriraj Nagar Main Road, Near Raiya Circle, Near 150 ft. Ring Road, Rajkot, Gujarat; Contact No.: 0281-2582411-13; E-mail: rajkot@icai.org			

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

Events

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
6.	CPE Residential Refresher Course- "IT & GST– Changing Dynamics of Profession" - Hosted by the Siliguri Branch of EIRC of ICAI	17th-19th December, 2016	Namchi, Sikkim	12
Topics	• Pertinent Issues In Income Tax • GST - The Challenge • Stress Management & Fitness			
Fees	Early Bird: Twin Sharing Couple: ₹15,000/-, Single: ₹8,000/- Child (5 To 12 Yr): Rs. 3,000/-, Child (12 To 18 Yr): ₹5,000/- [Fee includes visit to Chaar Dham (Namchi) and Buddha Park (Ravangla), Pick up and drop from Siliguri, Stay and Meals at Resort]			
Contact Person	**Programme Director:** CA. Ranjeet Kumar Agarwal, Vice-Chairman, CPE Committee, ICAI, Mobile : 98301 40211, E-mail: ranjeet.airan@gmail.com **Programme Co-ordinator:** CA. Pankaj Kumar Maskara, Chairman, Siliguri Branch of EIRC (Mobile : 96351 31111) **For Registration & Further Details:** Siliguri Branch of EIRC, ICAI Bhawan, Near Overbridge, Teenbatti More, Siliguri – 734 005; Contact No.: 353-2560445; E-mail: siliguri@icai.org			
7.	CPE National Conference Hosted by the Indore Branch of CIRC of ICAI	8th-9th December, 2016	Indore (venue under finalisation)	12
Topics	• Business Transformation with Digitization • Startups – Journey from Idea to Realization • Common Discrepancies in Annual Reports (incl. Audit Report & CARO) • Statutory Compliances for Private Limited and Small Companies • Input Tax Rebate under GST • Supply, time and Value determination under GST • Succession Planning and Family Business Planning under Income tax Act • Penalties & Prosecution under Income tax			
Fees	₹1800/- upto 15.11.2016, after that ₹2000/-			
Contact Person	**Programme Director:** CA. Kemisha Soni, Central Council Member and Member, CPE Committee, ICAI Mobile:9826049594,9302166885;E-mail: kemisha288@yahoo.com, kemishasoni288@gmail.com **Programme Co-ordinator:** CA. Garjana Rathore, Chairperson, Indore Branch of CIRC (Contact No.: 0731-4036632) **For Registration & Further Details:** Indore Branch of CIRC of the ICAI, Plot No. 19-B Scheme No. 78, Part-II, Indore (M.P.); Contact No.: 0731-2570052-53, 4298198; Mobile : 093038 13511; E-mail: indore@icai.org			
Committee on Information Technology **Programme/Course Chairman:** CA. Atul Kumar Gupta				
8.	Annual Conference on Fraud and Forensics	12th & 13th January, 2017	Hotel The Ashok, New Delhi	12
Topics	1. Financial fraud under Banking and Insurance Sector 2. Corporate Frauds 3. Cyber Frauds			
Fees	Practicing Chartered Accountants : ₹4000/- per Participant Non Members : ₹5000/- per Participant FAFD/FAFP qualified members : ₹3000/- per Participant			
Contact Person	**Programme/Course Co-ordinator:** CA. Amit Gupta, Secretary, IT Committee **For Registration & Further Details:** Committee On Information Technology, The Institute of Chartered Accountants of India, Phone (+91) 120 3045 963/992/961, E-mail: cit@icai.in;fafp@icai.in			
Committee on Information Technology **Programme/Course Chairman:** CA. Atul Kumar Gupta				
9.	Certificate Course on Forensic Accounting & Fraud Detection	4/11/16 to 14/11/16	Siliguri	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** Mr. Raja Ghosh **For Registration & Further Details:** 9126085585, siliguriicai@gmail.com			
10.	Certificate Course on Forensic Accounting & Fraud Detection	5/11/16 to 26/11/16	Amritsar	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** Mrs. Anisha Chawla **For Registration & Further Details:** 9465482548, amritsar@icai.org			
11.	Certificate Course on Forensic Accounting & Fraud Detection	1/11/16 to 7/11/16	Cuttack	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** Mr. Rakesh Kumar Sahoo **For Registration & Further Details:** 7205131215, cuttack@icai.org			
12.	Certificate Course on Forensic Accounting & Fraud Detection	5/11/16 to 27/11/16	Patiala	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** Mr. Rajiv Jari **For Registration & Further Details:** 0175-5004970, patiala@gmail.com			

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
13.	Certificate Course on Forensic Accounting & Fraud Detection	26/11/16 to 17/12/16	Ghaziabad	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** CA. Sachinder Garg **For Registration & Further Details:** 9999777495, cagargsachin@gmail.com			
14.	Certificate Course on Forensic Accounting & Fraud Detection	11/11/16 to 20/11/16	Patna	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** Mr. Satish Prasad **For Registration & Further Details:** 9386443124, Prasad.satish846@gmail.com			
15.	Certificate Course on Forensic Accounting & Fraud Detection	12/11/16 to 03/12/16	Noida	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** Mrs. Meera Kishore **For Registration & Further Details:** 9810900418, infoicainoida@gmail.com			
16.	Certificate Course on Forensic Accounting & Fraud Detection	19/11/16 to 10/12/16	Vapi	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** CA. Chhaya Kothari **For Registration & Further Details:** 9428159135, Vapi@icai.org			
17.	Certificate Course on Forensic Accounting & Fraud Detection	4/11/16 to 20/11/16	Kota	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** CA. Dinesh Kr. Jain **For Registration & Further Details:** 9414182822, kota@icai.org			
18.	Certificate Course on Forensic Accounting & Fraud Detection	8/11/16 to 14/11/16	Pune	20
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** CA. Ruta Chitale **For Registration & Further Details:** 020-24212251, rutachitale@redifmail.com			
19.	Post Qualification Course on Information System Audit	5/11/16 to 4/12/16	Muzaffarnagar	30
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** CA. Rajeev singhal **For Registration & Further Details:** 9568000525, singhalrk2012@gmail.com			
20.	Post Qualification Course on Information System Audit	5/11/16 to 4/12/16	Ernakulam	30
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** CA. Lukose Joseph **For Registration & Further Details:** 9846013643, ernakulam@icai.org			
21.	Post Qualification Course on Information System Audit	12/11/16 to 11/12/16	Ahmedabad	30
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** Mr. Piyush Patel **For Registration & Further Details:** 7939893989, ahmedabad@icai.org			
22.	Post Qualification Course on Information System Audit	19/11/16 to 18/12/16	Pimpri	30
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** CA. Suhas Dashrath Gardi **For Registration & Further Details:** 9423527085, pimpri.chinchwad@icai.org			
23.	Post Qualification Course on Information System Audit	5/11/16 to 4/12/16	Bellary	30
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** CA. Siddarameshwara Gowda **For Registration & Further Details:** 9480569117, bellary@icai.org			
24.	Post Qualification Course on Information System Audit	19/11/16 to 18/12/16	Mumbai	30
Fees	₹20,000/-			
Contact Person	**Programme/Course Co-ordinator:** Mrs. Srabani Kapoor **For Registration & Further Details:** 022-33671578, kapoor@icai.in			
Indirect Taxes Committee **Programme Chairman:** CA. Madhukar N. Hiregange, Chairman, Indirect Taxes Committee				
25.	One Day National Seminar on GST	4th November, 2016	Kolkata	6
Contact Person	**Programme Director:** CA. Sushil Kr. Goyal, Vice-Chairman, Indirect Taxes Committee **For Information contact:** 033-30211136/38, eirc@icai.in/eircevents@icai.in, **Visit website of the Committee:** www.idtc.icai.org			

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours
26.	Two Day National Conference on GST	4th & 5th November, 2016	Ernakulam	12
Contact Person	**For Information contact:** 484-2396238/2372953/2396258, ernakulam@icai.org, CA. Suresh T. N., 9447000804 **Visit website of the Committee:** www.idtc.icai.org			
27.	Programme on GST	5th, 6th, 12th, 13th, 19th & 20th November, 2016 (3 Hrs Session each day)	Ambala	18
Contact Person	**For Information contact:** 0171-2631250,4020251, ambala@icai.org, CA. Lalit Garg, 9996021870 **Visit website of the Committee:** www.idtc.icai.org			
28.	Three Days Residential Programme on GST	11th, 12th & 13th November, 2016	Puri, Odisha	18
Contact Person	**For Information contact:** 0651-2206471/ 9304861373, ranchi@icai.org, CA. Manish Jain, 9431192776 **Visit website of the Committee:** www.idtc.icai.org			
29.	Two Day National Conference on GST	25th & 26th November, 2016	Pimpri Chinchwad, Pune	12
Contact Person	**For Information contact:** 9503111836, pimpri.chinchwad@icai.org, CA. Gardi Suhas Dasharath, 9423527085 **Visit website of the Committee:** www.idtc.icai.org			
30.	Two Day National Conference on GST	2nd & 3rd December, 2016	Mangalore	12
Contact Person	**For Information contact:** 824-2495722/4279104, mangalore@icai.org, CA. Keshava Ballakuraya N, 94484 59922 **Visit website of the Committee:** www.idtc.icai.org			
31.	National Conference on GST	15th, 16th & 17th December, 2016 (3 Hrs Session each day)	Surat	9
Contact Person	**For Information contact:** 0261- 2472932, 2464413, surat@icai.org, CA. Hardik Vikrambhai Patel N., 94484 59922 **Visit website of the Committee:** www.idtc.icai.org			

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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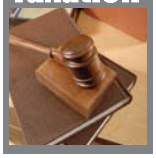
I like to listen. I have learned a great deal from listening carefully. Most people never listen. - Ernest Hemingway

Legal Decisions

(... continued from page 651)

International Taxation



Transfer Pricing

LD/65/58

Vishnu Eatables (India) Limited vs. DCIT, Karnal

3rd October, 2016

AO is required to provide opportunity of being heard to the assessee regarding whether a transaction is an international transaction or not, and serve a reasoned order upon the assessee; HC rejected assessee's contention that TPO-reference is void ab initio on account of AO's failure to furnish the satisfaction note to assessee before making a reference to TPO; Failure to supply satisfaction is 'at the highest a mere irregularity and does not prejudice the assessee in any manner whatsoever'.

The Assessee sought a writ of *certiorari* to quash the reference made by AO to TPO and to quash the satisfaction recorded by AO for making such reference, on the ground that Chapter X [Transfer pricing provisions] provisions were not applicable to the transactions undertaken by the assessee since they were not with its 'associated enterprises'. The assessee argued that the entire proceedings, including the reference to the TPO, for AY 11-12 were without jurisdiction and void.

By notice dated 19.03.2016, the AO called upon the assessee to show cause why its cases for AYs 2011-12 to 2014-15 not be transferred to the TPO, and granted the assessee a hearing. During the course of survey on assessee's premises, various incriminating documents were found. The show cause notice stated that assessee had made sales to its group companies M/s Haryana Trading Company, Dubai managed by one Kushal Mittal and M/s Indian Treat Pvt. Ltd. Singapore managed by one Sunny Mittal; that the sales to the sister concern were under-invoiced with a view to evading tax and that profits from India were diverted to tax havens which were remitted back to India for investing in properties by said Kushal Mittal and his family members. Further, the Accountant's report u/s. 92E in Form No. 3CEB was also not furnished by the assessee.

The assessee, by submission dated 21.30.2016 filed its objections stating that there were no international transaction or specified domestic transaction undertaken by it during the AYs 2008-09 to 2014-15 with an associate enterprise and accordingly it was not required to submit Form No.3CEB. The assessee also requested for a copy of the reference by AO to TPO and a personal hearing.

The AO stated that the provisions of Section 92A were applicable to the case and the case required a reference to the TPO for ALP determination. Even the Pr. CIT approved the reference made by AO to TPO. Aggrieved, assessee filed the present writ petition before Punjab & Haryana HC.

Before HC, the assessee made two submissions

I) In terms of the instructions given by the CBDT circular dated 10.03.2016, the requirement of passing a reasoned order on the objections regarding whether a transaction is an international transaction or not and the service of the order upon the assessee is a condition precedent to the Assessing Officer making a reference to the Transfer Pricing Officer.

II) Non-compliance with either or both the above mandatory conditions render the reference to the Transfer Pricing Officer void.

HC remarked that the first submission was well founded but the second was not.

<u>W.r.t. passing of a 'reasoned order' by AO before making reference to TPO</u>

HC observed that it is necessary for the Assessing Officer to decide the objections, if any, to the applicability of Chapter-X before referring the transactions to the TPO as also before determining the arm's length price himself. HC referred to Bombay HC decision in Vodafone India Service wherein it was held that where a reference is made under section 92CA(1), TPO must determine ALP of the transaction and in doing so he would not be entitled to consider the question as to whether the transaction referred to him is an international transaction or not. Thus where AO himself determines ALP, the assessee would be entitled to question whether the transactions are international transactions or not, and would also be entitled to challenge the same before CIT(A) & then ITAT. However, in a case where AO refers ALP determination to the TPO without affording the assessee an opportunity of being heard and without deciding the objections as to whether the transaction is an international transaction or not, then the assessee would be severely prejudiced since he would then not have had an opportunity of having this objection even considered. This is because once the reference is made u/s. 92A(1), the TPO cannot for reasons stated in the second Vodafone's judgment [2013] 359 ITR 133 (*supra*)] consider the question as to whether the transaction referred to him is an international transaction or not.

This in turn would affect the assessment proceedings itself for the Assessing Officer would also be deprived the opportunity of arriving at a informed decision as to whether the transaction that he *prima-facie* considered to be an international transaction is or is not in fact an international transaction. The first opportunity that the assessee would in such a case have to raise a contention that the transaction is not an international transaction would be before the Disputes Resolution Panel (DRP) or the CIT(A) as the case may be. These are in effect appellate proceedings where the appellate or the higher authority CIT(A)/DRP would have to consider the issue with the benefit of the case of the department as well as of the assessee for the first time. Indeed, even the Revenue would come to know of the assessee's objections and the material in support thereof for the first time. This may in a given case result in the CIT(A) or the ITAT remanding the matter resulting in multiplicity of proceedings.

Legal Update

HC observed that in respect of international transactions, an assessee must maintain certain information as per Section 92D and rule 10D, and report the same as per Section 92E and Rule 10E. Failure to follow these sections results in far reaching consequences upon the assessee. Therefore the assessee is substantially affected by the finding as to whether or not a transaction entered into by it is an international transaction. It is only fair then that an assessee is given an opportunity of being heard on the question as to whether a transaction entered into by it is an international transaction or not.

The HC therefore stated that the opportunity of raising objections and being heard on this issue ought to be granted by the Pr.CIT since it is the Pr. CIT who ultimately grants or refuses the approval to refer the transaction to TPO for ALP determination. However, if an assessee is given such an opportunity before the Assessing Officer, that would be sufficient, since AO would undoubtedly have to forward the same alongwith the objections, if any, to the Pr.CIT while seeking his approval.

HC observed that the assessee's case fell within paragraph 3.3 (c) and the first subparagraph after the opening part of paragraph 3.4 CBDT circular dated 10.03.2016 containing guidelines for implementation of TP provisions, which relate to search and seizure operation at the assessee's premises and non-filing of accountant's report u/s 92E respectively. HC rejected Revenue's contention that in cases relating to search and seizure operations, it was not necessary for AO to pass a speaking/reasoned order.

HC stated that Para 3.3(c) cannot be read in isolation and must read with Para 4. HC observed that it was clear that satisfaction is to be in writing and AO must furnish reasons for the same, which requirements had been complied with by AO. In the instant case, the satisfaction recorded by AO contained sufficient reasons, as he had indicated the relationship between the assessee and the other parties and made a comparative chart and alleged that the sales were under-invoiced, which was sufficient to refer the matter to TPO. HC remarked that "Whether the allegations are true or not must be tested before the authorities under the Act and not in a Writ Petition under Article 226. The challenge on this ground is, therefore, unsustainable."

<u>W.r.t. serving of order recording satisfaction upon the assessee?</u>

HC observed that the order recording satisfaction upon which the Pr.CIT grants his permission must be served upon the assessee. The purpose of this exercise of granting the assessee an opportunity of raising objections and being heard and the requirement of the Assessing Officer to furnish reasons for the satisfaction for the reference of the transaction to the TPO for determination of the arm's length price is *inter-alia* to enable the assessee firstly to meet the case and represent against it to the TPO before the Assessing Officer on the ground that there is no international transaction and secondly in the event of his objections being overruled, an opportunity of challenging the same before the Disputes Resolution Panel or the CIT(A) as the case may be, and thereafter before the ITAT.

Assessee contended that the satisfaction that was recorded by AO was not served upon the assessee, and therefore the reference was void and consequently all the proceedings before TPO were void. HC rejected this submission. HC observed that if assessee's objections are overruled, it is open for him to challenge the same before CIT(A) / DRP, and the assessee is not entitled as a matter of right to invoke the writ jurisdiction at the stage of reference by the AO to TPO.

The Assessee's grievances can be raised in a challenge to the draft assessment order before the Disputes Resolution Panel or the final assessment order before to the Commissioner of Income Tax (Appeals). The requirements of the rules of natural justice and of the said circular dated 10.03.2016 would have been met, even if the satisfaction note is furnished subsequently. In any event, the assessee cannot raise the question as to whether or not the referred transaction is an international transaction before the Transfer Pricing Officer. It is, therefore, sufficient if he is served with the order subsequently even alongwith the draft assessment order or the assessment order as the case may be. However, if satisfaction note is not furnished at all, then the assessee can always apply for the same either before the authorities and failing which by filing a writ petition.

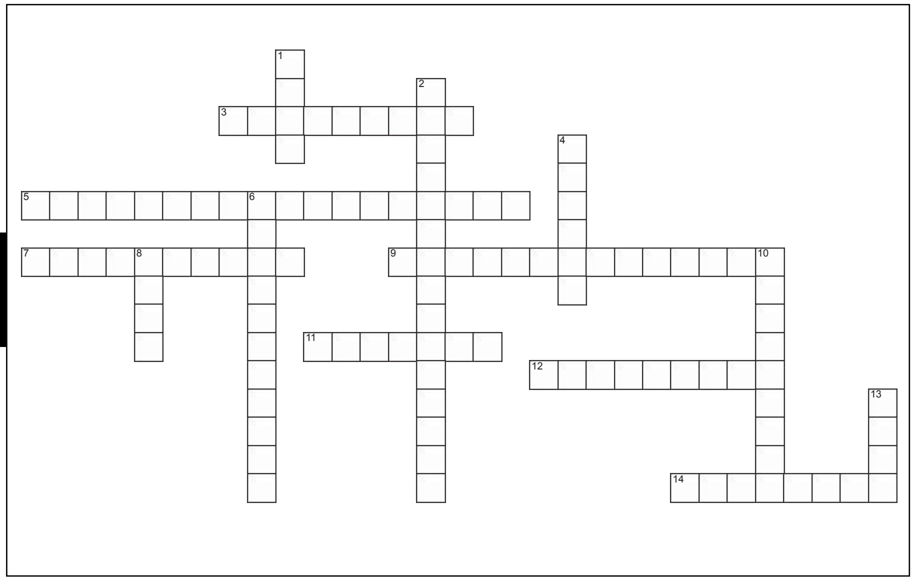
HC observed that *"The failure to supply the satisfaction note before the reference to the TPO is at the highest a mere irregularity and does not prejudice the assessee in any manner whatsoever."* HC stated that if this contention was accepted, it would lead to the startling result of the entire assessment proceedings being annulled on account thereof, and there was nothing in the Act or in the circular that warrants such an interpretation.

Accordingly, HC dismissed the writ petition, and stated that as reference to the TPO had already been made after obtaining the approval of the Pr. CIT, the assessee's objection may be taken before the DRP/ CIT(A). HC added that *"it is only fair that if the petitioner chooses the DRP route or the CIT(A) route, the DRP or the CIT(A) as the case may be ought to first adjudicate the question as to whether the said transactions are international transactions or not. If they come to the conclusion that they are not international transactions, certain consequences may follow which we keep open for the petitioner to take before the DRP or the CIT(A) as the case may be".* HC clarified that in the event of CIT(A)/ DRP coming to the conclusion that they are international transactions, it would not be necessary for them to stall the proceedings and they may proceed to decide them finally.

Observing that penalty proceedings u/s 271(G) were initiated for violation of provisions of Chapter-X, HC stated that since the assessee did not have an opportunity of representing its case to the effect that these transactions were not international transactions, it was only fair then that while the penalty proceedings may continue the order imposing penalty, if any, shall not be implemented till the decision of the DRP or the CIT(A) as the case may be, on the preliminary issue as to whether it is an international transaction or not. ■

True friendship comes when the silence between two people is comfortable. - David Tyson Gentry

CROSS WORD 125



ACROSS

3. _________Coverage Ratio is a measure that indicates the extent to which the bank has provided against the troubled part of its loan portfolio.
5. The 21st century internet alternative to traditional banks, that includes peer to peer (P2P) lending and crowd funding.
7. Corporate ___________is the system of rules, practices and processes by which a company is directed and controlled.
9. In an attempt to shore up its non-tariff revenue and make up for losses in passenger earnings, Indian Railways allows _________ on Rajdhani, Shatabdi trains with an aim to earn over ₹ 8 crore in a year.
11. _________ management is a style of management associated with mutual and exchange-traded funds (ETF) where a fund's portfolio mirrors a market index.
12. Name of the newly set up Branch of EIRC at Ganjam district.
14. World's first free linguistic email service that supports eight India languages.

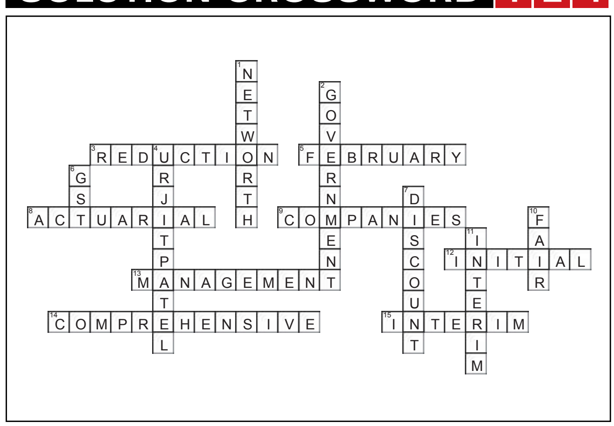
DOWN

1. An acronym for Strengths, Weaknesses, Opportunities and Threats.
2. A tool used by a central bank to exercise its power in monetary policy in order to influence, with their own forecasts, market expectations of future levels of interest rates.
4. In financial terminology ________annuity means that payment is made in a fixed amount for a considerable period and then in a variable amount in the remaining period.
6. In macroeconomic management the __________Capital Output Ratio indicate the additional unit of capital or investment needed to produce an additional unit of output.
8. ____ rate is used by monetary authorities to control inflation.
10. The___________ Programme is the Union Government's flagship strategic, customeroriented initiative to achieve the broad objective of promoting portled economic development in India.
13. The Government approved the merger of the _______and general budgets from the year 2017, ending a 92 year old practice of a separate budget for the country's largest transporter.

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.

It's hard to explain puns to kleptomaniacs because they always take things literally.

SOLUTION CROSSWORD 124



Rule number one is, don't sweat the small stuff. Rule number two is, it's all small stuff. - Robert Eliot

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