₹ Trail

- A Journal of Revenue Audit

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Revenue Audit

Income Tax

Central Excise

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Editorial

It gives us immense pleasure in presenting the third issue of ₹Trail'. This e journal is a useful and effective medium for sharing knowledge about Revenue Audit and related issues. In this issue we have presented a detailed report on National Seminar on Direct Tax Code, organized by the office of C&AG of India in the month of May 2011. Other articles include Audit of Stamp Duty, Real Estate Sector and related tax provisions and Administration of Minimum Alternate Tax.

IT Audit forms an integral part of Revenue Audit especially in view of the fact that the revenue departments both at the level of Union Government and the State Governments are leveraging technology in a big way to modernize the tax administration. Our first article of this issue is therefore, 'An approach to auditing Information Systems'. In the international corner we have an article on SAI Denmark.

It has indeed been a very fulfilling experience in receiving the feedback of our valued readers. Their comments have helped us to constantly improve on our efforts. We are extremely thankful to all our readers. Needless to mention, like our previous issues, this issue is also being sustained on the basis of the original contributions received from our colleagues. We are extremely grateful to all our valued contributors. We look forward to the continuous support and patronage of our contributors and readers.

Chief Editor

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An Approach to Auditing Information Systems

- Anupam Kulshreshtha

This article seeks to introduce the concept of IT Governance. The same is linked to the broad areas of IT Audit which the Auditor needs to examine to ensure the success of IT Projects.

Audit does not function in isolation. It serves a definite purpose. Whereas at the level of details, the purpose of audit would differ depending on the specific areas being audited, at the macro level audit serves a single purpose – i.e. to assist improve the process of governance. This forms the basis of fixing objectives for the conduct of audit.

Auditing Information System has to be seen in this context. As Information systems are an inseparable part of the organization being audited, the IS audit has to become a part of the overall audit process. The audit process is one of the facilitators for good governance. To that extent IS audit must also contribute towards improved IT governance. IS Audit has been defined in many ways making it difficult to arrive at a single universal definition. One of the earliest to work in this area, Ron Weber defined EDP auditing (as it was previously called) as "*the process of collecting and evaluating evidence to determine whether a computer system (information system) safeguards assets, maintains data integrity, achieves organizational goals effectively and consumes resources efficiently*." A comprehensive definition indeed, it can be expanded in a full article.

Attempting a definition of IS audit and determining the steps involved in the process of IS audit has to begin with a discussion on the importance of IT Governance in the overall framework of corporate governance. The executive summary of the IT governance process as published by the IT Governance Institute states in the beginning, "*Enterprises rely on IT for their competitive advantage and cannot afford to apply to IT anything less than the same level of commitment they devote to financial supervision and overall enterprise governance*". IT involves large investments. Not only IT must contribute to the overall effectiveness and productivity of the organization, it must also give

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adequate returns on the investment made. This has to be an underlying objective for the IS auditor.

IT Governance

The World Bank defines Governance as "the *use of institutions, structures of authority and even collaboration to allocate resources and coordinate or control activity in society or the economy*". The Corporate governance in this context would refer to the process and structure for overseeing the direction and management of an organization so that it carries out its mandate and objectives effectively. What then is IT Governance and where does it fit in the overall process of governance within an organization? The IT Governance Institute attempted a definition as "*IT governance is the responsibility of the board of directors and executive management. It is an integral part of enterprise governance and consists of the leadership and organizational structures and processes that ensure that the organization's IT sustains and extends the organization's strategies and objectives. - IT Governance Institute, 2003*".

Information Technology has over the years become a major enabler to almost all business transformation initiatives. How IT is being used has an important impact on the organization achieving its vision, mission or strategic goals. The IT has certain specific characteristics; it is an expensive commodity, it costs significant investment both in terms of finances as well as human resources. There are high risks associated with the use of IT as many organizations have become nearly completely reliant on IT and towards this the overall strategy of the organization is very much dependent upon the IT strategy. Introducing use of IT in an organization requires a top driven approach and that is where the IT governance has to fit in the overall concept of the corporate governance. Two distinct yet related to each other objectives emerge for the IT governance. First, the use of IT in an organization must synchronise itself with the overall objectives of the organization and secondly use of IT must add value to the organization.

Why IT Projects fail

IT governance consists of macro level management as well as micro level details. An IS auditor would do well to make himself aware of the risk areas which might contribute to malfunctioning of information systems. This would require a detailed study of the auditee organization, its structure, the IT governance structure and the IT framework within the organization, its IT policy and the available documentation etc. An illustrative listing of reasons for failures of IT projects is attempted below.

Lack of an IT strategy or IT Policy affects the overall implementation of an IT project. IT projects have to be designed with proper linkages and data redundancy is to be avoided. For this purpose, the organization has to follow certain well defined IT Standards. This has to be followed by a suitable project strategy. The project must have well defined objectives and milestones against which the implementation of the project could be monitored or evaluated. The objectives of the IT project are to be in full alignment of the business process.

An IT project must start with "felt needs' of the organization rather than with a wish to go for digitisation. An important issue in planning or even before that in conceiving a project is to consult the stakeholders. These would include the users of the system, the clients of the organization and the management and other related stakeholders. A properly created and maintained documentation is a must for success of an IT project. This documentation would include the User Requirement Survey, the System requirements, the System design and the user manual. Documentation of change management is also required for smooth running of the project.

The issue of re-engineering as well as of reverse engineering is important as digitising a system with its inadequacies and obsolescence would serve no good purpose. In most cases, this is a neglected aspect (including our own VLC) and takes away from the usefulness of the system.

Inadequate Risk Management, lack of proper planning, lack of involvement of the top management add to failure of IT projects. The IS auditor must remember that the bottleneck is always at the top of bottle. There are many projects in the government, which are vendor Driven. Such vendor driven e-Governance may not always be in alignment of the objectives of the organization and as such may not add value to the business process. In such cases, it is seen that the focus of e-governance shifts to the "e" aspect rather than the "governance" aspect of the project.

Many organizations outsource not only the implementation of the IT projects, but also their maintenance aspects are outsourced. Most Electricity companies have outsourced their billing process. This creates problem of ownership of data and related privacy issues, unless the contract specifies clearly to this effect.

Conducting an IS Audit

Put in a rather simple manner, there are four major areas, where an audit scrutiny should be concentrated.

- Accuracy and completeness of data
- Safety and security of data
- Correct mapping of the business rules and procedures

- Re-engineering

However, the areas would be more if the auditor is looking into more than one system as inter linkages between various systems or even between sub-components of a system would need to be evaluated for weaknesses. Auditing an Information system has to be based on identifying vulnerable areas in the flow of data and then substantiating the same through a systematically carried out data analysis. Being a system based audit, the emphasis has to be on identifying potential risk areas which may lead the system in not delivering the desired results. The IS auditor must concentrate on ensuring whether necessary controls are in place and whether these controls are being employed effectively. The system is to be seen as a whole including the manual procedures built around the computer system.

The "Value for Money" aspect of this IS audit will have to look into whether the information system has assisted the organization in improving its overall effectiveness and to what extent the system has resulted into cost savings. A well planned and efficiently executed information system must release manpower from the monotonous works which should be utilized for more productive areas.

The IT manager has to look into the reasons "why IT projects fail" so that he can ensure a successful implementation of the IT project. For the same reason an IT auditor must look into these issues, as it would lead the auditor to discover areas where management did not exercise due diligence and should be held accountable for whatever has gone wrong.

The term GIGO (Garbage in garbage out) is as relevant today, as it was when it was invented more than 50 years back. Inaccurate or incomplete data makes the system not only of no use, it can result in wrong decisions.

The System and its usefulness

The IS auditor must give an opinion whether the system serves the purpose for which it was developed and whether the system has added value to the various processes of the organization. Before a system is developed, the IT developers have to get the user requirements. If these requirements are not captured properly, the resultant system can never provide enough user satisfaction. Also, a documented system is easy to understand and follow. Audit should aim at assessing user's involvement in system development, availability and usability of the system related documentation and the extent of user satisfaction. The IS audit must ask a question to begin with whether a proper and effective documentation exist and if not, whether these were prepared at all. Next inquiry should be to ascertain whether all items (functions/processes) which had been provided for in these documents (SDD, SRS and the URS) have been implemented or not. Preparing a list of all available documentation and studying the extent of reliance of the auditee on the available documentation would assist in such inquiries. A good system documentation includes a data flow diagram or/and flow chart. This should be seen to evaluate whether the flow chart or the data flow diagram represent the system correctly.

Unfulfilled user requirements, a large extent of customer dissatisfaction, frequent changes in the system and continued reliance on the manual system etc. are some of the indicators of the usefulness of the system. The system should be capable of producing all its output without any manual intervention. The outputs should actually be of use to the auditee, these should be reliable and the auditee's dependence on the manually prepared reports should not exist. If there are reports/output, which are needed by the auditee but the system is unable to produce them, the IS auditor should be able to distinguish between whether the system is not capable of producing the desired report, or the system is capable, but the report is not being produced. In determining the capability of the system in producing such reports, it should be seen that the data required for producing such report is being captured and is available within the system.

Data - reliability

Data must be reliable, authentic, correct and complete. It must have proper authorization. IS auditor must observe the flow of data through the entire system and it must begin with the process of data input. Observing and understanding the entire process may also reveal control weakness, if any? The "Test data technique" could be used to determine points within the system, which needs to be investigated further through data analysis. Input in a system starts with the preparation of an input document, which may take place anywhere. e.g., in e-TDS or e-filing, the documents are prepared and uploaded in the system by individuals outside the control of the auditee department.

An input control is to be differentiated from a Validation check. A validation check, at best, can assist an input control; by itself it does not guarantee correctness of input. Validation is part of system design. It has to be conceived and implemented within the system. Input control can be a part of the computerized system or it can be a manual procedure like supervision etc. Properly designed validation checks assists input controls in ensuring accuracy of data. IT auditor may make an attempt to list fields available in the input document and indicate whether a validation check was provided for in the SDD and/or it exists in the system for this field or not. The effectiveness of a validation check may have to be assessed.

It is desirable to list all inputs that go in the system and examine each of these from compliance audit view point to ensure whether adequate input controls have been provided for and are being enforced properly. IS auditor must always keep in mind that if correctness of input cannot be guaranteed, the entire system is useless.

The IS audit process must aim such enquiries for each input. For each input, try getting the following information. Who prepares the input document? Can the accuracy of this input document be certified/ assured? Is there duplicity of input? Accuracy of the input document has to be certified before the input is made. Proper documentation must be available to verify at a later date that the input document was prepared accurately. If there are instances when an input document has undergone changes after it has been input in the system, the IS auditor must investigate whether a proper procedure exists to ensure that such corrections have been made in the information system. There must exist a prescribed procedure to modify input, if required.

The IS auditor should also look if there are some relevant and available input documents or sources or information which are not being captured as this would affect completeness of the input. Unreliable reports provide macro level indicators for data inaccuracy.

Supervision as an input control is to be carried out in an effective manner by the auditee. There must be a prescribed percentage of input documents to be supervised by a senior officer. A procedure to document and ensure at a later stage that such supervisory checks were carried out would assist the IS auditor in evaluating such a control and must be insisted upon. This procedure should include steps required to ensure that error correction procedures based on the result of supervisory checks are carried out. Results of supervision and the resultant corrections must be documented so that these can be verified at a later date. Additionally, analysis of input mistakes and a resultant attempt by the auditee to generate awareness among the staff responsible for input of data through a customised training process can act as an effective management tool for ensuring data accuracy.

Data Safety and Security

Data must be safe and secure at all times, all changes / modifications to data (including master data) must be documented and properly authorized. In a good system, it should be possible to link a particular entry (initial or modification) to the person who made that entry. This requires keeping of proper logs and existence of a system of review of these logs. These provide a good and effective audit trail. The physical access and logical access controls, authorizations to use the system (complete or partial) or lack of it, hardware security (ports, access to ports to outsiders etc.), net security, LAN security etc. could be some of the concern areas. Security becomes more important in a distributed system. Many times, back-end security is compromised, thus making the system totally unreliable.

There must be a stated IT Security policy of the organization and a designated officer for IT Security. The users have to be made aware of the IS Security requirements on a frequent basis. A system of recording and reporting security incidents acts as an effective control on data security. If back-end adjustments are possible, the IS auditor must see as to how many persons are authorized to carry out back-end adjustments and is the process of back-end adjustments fully documented and the logs are available. Classifying data based on its criticality is a prime requirement.

Adequate change control procedure should be in place to ensure that the software is not modified in an unauthorized manner and in case of modifications, these should be recorded and properly approved by a designated authority. The documentation should also indicate how the need for such modifications was assessed.

Proper Storage Controls would ensure the integrity of data stored. The IS auditor should enquire as to how many persons are authorized to modify the stored data at a later date, and is there a log kept and is available to assess the extent and frequency of changes carried out in the recorded data.

Data safety depends on backup procedures. Frequency of backups, the storage of backup (offsite or onsite), periodical testing of the backups its consistency are some of the required steps. In the IAAD, a policy exists to send all backups of VLC data to iCISA for safe custody.

Other areas of concern

IS audit has a much larger scope. This article looks at a few concerns only and that too not in an exhaustive manner. Before an audit assignment is taken up, its scope must be defined in clear terms. This would help in a identification of areas where the audit investigation needs to be directed.

An IS audit can be taken at any of the stages of implementation of an IT Project. It could be taken up when the project is conceived and is in the initial stages of planning. The IS auditor can assist the development process by identifying areas where audit trails should be provided and where controls need to be provided for. If an IS audit is taken up during the development of the system, the auditor may concentrate on areas like project need definition and ask questions like was the problem clearly defined or were alternative solutions considered etc. It may give an opinion on how the feasibility study was carried out, were alternatives considered and evaluated, or look at the system analysis or system design. During this phase, the IS auditor will also be looking at the entire systems development process. The third stage of undertaking an IS audit is post-implementation stage. Most IS audits (nearly all) in IAAD have been taken up in the post-implementation stage. At this stage the important question would be to see whether the IT has added value to the organization or not.

National Seminar on Direct Taxes Code – A Report

By Arun Kumar, R.K. Ghosh and Seema Pandey

A one day National Seminar on Direct Taxes Code was organized by the office of the Comptroller and Auditor General of India on 4 May 2011 with a view to sensitize the officers of the Department to the prospective change in the auditee environment as well as to flag the issues relating to concepts and implementation of DTC. The Seminar was inaugurated by Dr. C. Rangarajan, Chairman, Economic Advisory Council of the Prime Minister. Shri Sunil Mitra, Revenue Secretary to Govt. of India was the Guest of Honour.

Distinguished guests included Members of the Central Board of Direct Taxes, officers of the CBDT, representatives of FICCI, ASSOCHAM, CII and ICAI. The Seminar was attended by the officers of the Office of the Comptroller and Auditor General of India.

Inaugural Session

In his welcome address, Shri Anupam Kulshreshtha, Deputy Comptroller and Auditor General (RA) introduced the Chief Guest Dr. C. Rangarajan, Chairman, Economic Advisory Council to the Prime Minister, noted economist known for his contribution towards financial and monetary sector reforms and fiscal consolidation. Shri Sunil Mitra, Revenue Secretary to the Government of India was introduced as the key person responsible for implementation of this landmark legislation. He commended the Government's initiative to unfold a new tax regime.

Shri Arun Kumar is Sr. Administrative Officer (Direct Taxes Wing) and Shri R. K. Ghosh and Ms Seema Pandey are Asstt. Administrative Officers (Direct Taxes Wing) in the Office of Comptroller and Auditor General of India, New Delhi.

Shri Sunil Mitra described the Direct Taxes Code as a pioneering exercise in participative legislation. He elucidated the primary policy objectives of the Direct Tax Reforms namely, widening of the tax base, rationalization of tax rates and increased voluntary compliance and stated that the compliance and transaction costs are proposed to be reduced by leveraging technology. He appreciated the efforts made by the officers of the CBDT in drafting the Direct Taxes Code in record time after taking into account the 1600 groups of comments received from various stakeholders. He emphasized upon the salient features of the proposed Bill including unified concept of Financial Year, introduction of GAAR, switching over to investment linked deductions from the existing profit linked exemptions which are distortionary in nature. He concluded by highlighting the challenges which include addressing the issues raised by various stakeholders, putting some 200 subordinate legislations in place and submission of information to the Standing Committee on Finance of the Parliament.

Shri Vinod Rai, Comptroller and Auditor General of India, marked the occasion as significant as the institution of C&AG has completed 150 years of its existence and 50 years of audit of Income Tax. He stated that the Seminar would enable seamless interaction with the policymakers and the auditors within the Department who would be looking into the tax issues which emerge after introduction of the DTC. While discussing the role of Revenue Audit in the fast changing scenario, he emphasized that audit should be perceived as an ally and not an adversary. Although, the growth of direct taxes has been phenomenal there were issues in tax administration that needed to be addressed e.g. tax avoidance, tax evasion and ambiguity in law etc.

Key Note Address by Dr. C. Rangarajan

In his key note address, Dr. C. Rangarajan emphasized upon the features of a sound tax system namely, reasonableness, clarity, simplicity and predictability particularly for income and capital taxes whose bases are highly mobile. He welcomed Government's initiative to rationalise the plethora of exemptions and minimise other complexities through DTC. He hailed it as a movement towards the philosophy of widening of tax base and reduction of rates based on sound rationale as is evident from the replacement of "EET" by EEE and modification of "MAT" in the journey of DTC from first draft to second draft and then to Bill. He raised concern over the high administrative and compliance costs and distortions in resource allocation underlying the exemptions and tax preferences. He referred to difficulties in achieving fiscal consolidation owing to huge demands of public expenditure on account of food security, universalisation of education, health programs etc. He cited the importance of raising revenues for meeting public expenditures. He hoped that the tax reform process would further simplify the tax laws.

Shri Narendra Singh, Deputy Comptroller and Auditor General proposed the vote of thanks.

Technical Sessions

The Inaugural Session was followed by three Technical Sessions.

Technical Session I	DTC-An overview
Chaired by	Shri M.C. Joshi, Member CBDT (T&PL)
Panel Discussion by:	
Shri Ashutosh Dikshit, Joint Secretary (TPL-I), CBDT	
Dr. Indira Rajaraman, Ex-Member, 13th Finance Commission	
Shri Sanjay Agarwal, Central Council Member, ICAI	
Shri Prasant Khatore, FICCI	

Shri M.C. Joshi, Member CBDT (T&PL) Chairman of the first session explained the rationale behind the legal transition which included simplification of tax laws, reduction in the cost of tax collection, widening of tax base and rationalization of tax rates.

Panel Discussion on "DTC- An Overview"

Shri Ashutosh Dikshit reiterated the three pronged strategy of the direct taxation reforms process over the last decade, viz. to widen the tax base, to levy moderate rates of tax and to use information technology to provide better taxpayer service and ensure reporting of transactions for tax purposes. He stated that the process of tax filing will be simplified as a result of unifying Income Tax Act and Wealth Tax Act.

He stated that the tax reforms have had a positive impact on tax collection, Direct Tax-GDP ratio has increased from 2.97 *per cent* to 6.45 *per cent* over the decade (1999-2010) and the direct tax collections overtook indirect tax collections for the first time in 2007-08 signifying structural changes in our tax systems. He discussed major structural changes proposed in the DTC namely computation of rental incomes on actual and accruals and not on notional basis, rationalization of tax incentives by making them investment linked from the present system of profit linked, unified concept of 'financial year', carry forward of unabsorbed losses for indefinite period as against the limited period of eight years in the current Act, introduction of GAAR to curb aggressive tax avoidance and possibility of removal of surcharge.

Dr. Indira Rajaraman discussed basic approach of the DTC, tax avoidance and tax evasion pre and post DTC. She evaluated DTC for its impact on revenue avoidance and evasion, efficiency and growth and equity versus regressive tax administration. She clarified that avoidance is the use of legally permissible exemptions in the Direct Taxation structure to reduce the taxable base and can be estimated from reported income before deductions. Evasion relates to unreported income which has to be estimated independently of reported income.

She recommended that the Income tax Department should have an analytical cell for monitoring evasion based on other reliable data sources. She based her estimates of tax avoidance measured by the ratio of revenue foregone over sum of revenue collected and revenue foregone. She estimated tax avoidance of 23 *per cent* for corporates, 23.5 *per cent* for firms and 25.61 *per cent* for individuals and the revenue loss by avoidance was 1.12 *per cent* of GDP for corporates, 0.07 *per cent* for firms and 0.6 *per cent* on account of individuals. She stated that the advantage of avoidance enabling provisions is taken more by individuals than by the corporates. She analysed the reduction in corporate tax avoidance with the DTC stating that 44 per cent of revenue loss would remain with the DTC on account of accelerated depreciation, renamed as investment linked incentive. The revenue loss from tax avoidance by corporates would reduce by 0.6 *per cent* of the GDP. However, avoidance in respect of individuals will not be substantially reduced.

Industry's Perspective

Shri Sanjay Agarwal, Central Council Member, ICAI expressed concern on issues relating to maintenance of separate books of accounts for each business, definition of term 'effective management' for test of residency. He stated that although DTC Bill allows carry forward of credit for tax paid for 15 years as against 10 years under the present Law, it is silent on set off of MAT credit against book profits. He suggested that although the concept of assessment year and financial year have been done away with, either of the two should be considered in the final draft. He welcomed the provision with respect to limitation for filing of appeals before the CIT(Appeals) and ITAT stating that if the litigant does not file petition within one year he is not likely to be heard.

Shri Prasant Khatore, FICCI viewed that CFC provisions gets attracted if tax paid in overseas country is less than 50 per cent of tax paid in India. He argued whether we should look at tax paid or look at headline tax rate there in order to avoid computational anomalies. Also, CFC provisions get attracted in case of a foreign company where the collective resident shareholders are greater than 50 *per cent*. There could be a situation where these shareholders are independent and not acting in concert. As per the current draft this may be covered as CFC. He requested to revise the draft so that provisions in respect of CFCs apply only in the case of shareholders acting in concert.

He expressed Industry's hopes that with the reduction of incentives tax rates could have been brought down to 25 *per cent*. He felt that the present rate of 10 *per cent* of withholding tax on payments of royalties and fees for technical services to non-residents, should be continued in line with various tax treaties that India has entered. He argued for the continuation of area based exemptions and suggested that MAT should not be levied on this even though MAT is creditable and is an advance tax it does impact the cash flow in formative years. He recommended that General Anti Avoidance Rules (GAAR) should apply only to transactions entered on or after commencement of DTC. He stated that Permanent Establishment (PE) is a trigger for taxation of foreign companies. In the Code the time period is not specified as in the treaties. He requested the Board to make it more definitive. He recommended that Branch Profit Tax may be levied only in situation of remittance of profits outside India. He viewed that there were no transition provisions in the DTC regime with respect to carry forward of losses incurred in the 1961 tax Act regime, MAT credit in the 1961 tax Act regime and 43B deductions. He expressed hope that these would find a place in the final draft.

Q & A Session

The technical session was followed by Q & A Session wherein the speakers responded to all the queries raised by the participants.

In response to a query on exclusion of presumptive taxation on rental income the panel stated that this decision was taken to reduce litigation and discretion in computing such income. It was stated that Department had lost in almost all cases where additions had been made on presumptive basis.

Prof. Rajaraman was requested to discuss the impact of DTC on efficiency and growth and equity versus regressivity. She explained that higher tax rate for high income individuals would bring equity. She emphasized on having more progressivity by recommending 40 per cent rate of tax for high net worth individuals. In response to this, Shri Ashutosh Dixit stated that sovereign has to factor in the mobility of capital while deciding on higher income tax rates. He stated that one could reap the benefits of higher tax rates only with greater ability to enforce compliance. Shri Joshi added that there are several factors besides inequality while formulating policy.

Technical Session II	DTC—General Anti Avoidance Rule and International Taxation
Chaired by	Dr. P. Mukherjee PAG (C&RA), Gujarat
Panel Discussion by:	
Shri Sunil Gupta, Joint Secretary (TPL-II), CBDT	
Shri M.P. Sarda, Central Council Member, ICAI	
Shri Pallav Gupta, CII	
Shri C.P. Bahri, Addl. GM (Taxation), BHEL	

The Chairperson Dr P. Mukherjee, Principal Accountant General (C&RA), Gujarat opened the discussion stating that the extensive globalization of Indian economy and operation of foreign companies in India necessitated mechanisms to deal with this changing scenario. He referred to the countries where the GAAR provisions are prevalent namely Australia, South Africa, Canada & Germany and to other countries such as US, UK, Mexico and Denmark that have specific anti abuse rules built into their respective tax provisions instead of GAAR. He felt that although the intent behind introduction of such provisions being prevention of tax avoidance would be welcome to all one could not ignore the difficulty in administering such provisions. He welcomed the clarification in the revised discussion paper with respect to the freedom to opt for either the provisions of the DTAA or the Indian Income tax Act whichever was more beneficial to the assessee. This would play a vital role in attracting more Foreign Direct Investment.

Thereafter, the nominated speakers were invited to share their views on international taxation with reference to existing provisions and provisions proposed in the DTC.

Departmental Perspective on "DTC- GAAR & International Taxation"

Shri Sunil Gupta, Joint Secretary (TPL-II), CBDT in his presentation referred to the sweeping changes in the socio economic conditions of the country from the time when the Income tax Act 1961 was enacted. The budget outlay has increased manifold to around 12 lakh crore and now the Government had enough resources for providing direct budgetary allocation instead of tax benefits. He cited the case of NREGA where direct benefit was being given to the people who needed it. He opined that with phasing out of profit linked deductions, the revenue foregone and revenue expenditure would come down making more resources available for useful purposes. He stated that India's tax collections are still quite low and India's Tax-GDP ratio at only 17.6 *per cent* in 2009-10 was much lower in comparison to other developed countries where it was around 48-50 *per cent*.

He referred to the changing nature of cross border trade/ business. Earlier it was mere import and export of raw materials and finished goods whereas the new forms of business/ trade included, *inter alia*, global financial instruments like Credit Swaps, Global Depository receipts, Bonds etc., cross border inter firm trade of MNEs, payments for use of patents, copyrights, commercial rights, non compete fees etc., international telecasting, advertising etc. He stated that treaty shopping is not allowable under GAAR whereas it is legal under the existing provisions of DTAA. Comparing the GAAR with SAAR (Specific Anti Avoidance Rule) he mentioned that GAAR provides for more certainty than SAAR. GAAR is general in nature and there is no need for retrospective amendments. He clarified that the rules for applicability of GAAR would provide for circumstances in which GAAR may or may not be invoked. While discussing the Advance Pricing Agreements (APAs) he stated that an APA would be valid up to five years and may be unilateral or bilateral. In case of significant changes an APA could be revised.

Industry's Perspective

Shri Mahesh P. Sarda, Central Council Member, ICAI expressed concerns over the arbitrary or discretionary nature of GAAR provisions which could be misused. He emphasized the auditor's role to check individual transactions so that GAAR is not misutilised. He felt that the target of GAAR was to control tax evasion. He termed the one line order on Dispute Resolution Panel (DRP) as unsatisfactory.

Shri Pallav Gupta, Head-Taxation, ITC Limited, Kolkata suggested that audit should concentrate on subjective areas as ambiguity would be there right across the provisions. He added that in India CFC regulations have been neatly drafted with *bonafide* attempt to provide clarity for capturing capital gains earned by overseas subsidiaries. However the indirect transfers are difficult to capture. He appreciated the introduction of CFC regulations, akin to 25 other countries, for capturing passive income earned globally which is not derived from genuine business or economic activities. He stated that CFC regulations were introduced for the first time in USA followed by Germany, Brazil and China in 1972, 2001 and 2009 respectively. He felt that China would be a good model to emulate. He felt that 'Tax Residency' was a risk area prone to massive deviations. The overseas subsidiaries of Indian companies could be impacted if place of effective management (POEM) of such subsidiaries were in India. He requested the CBDT for clarification on expressions such as 'at any time' , 'one meeting could result in tax residency', 'board meetings in multiple jurisdictions' and terms like 'officers', 'routinely', 'commercial' and 'strategic decisions' etc. He referred to limited treaty overrides in cases where GAAR is invoked or CFC is triggered or BPT is levied.

Shri C. P. Bahri, Additional GM (Taxation), BHEL discussed the two kinds of double taxation namely 'Juridical' where same person is taxed on the same income in different jurisdictions and 'Economical' where different persons are taxed on the same income in different jurisdictions. He stated that different DTAAs generally provide for relief only from juridical double taxation. He highlighted various methods of avoiding double taxation by availing unilateral relief, bilateral relief, multilateral relief or non tax treaties. He also referred to clause 207 of DTC which provides for taxation of certain percentage of profits in other contracting countries. He also discussed granting of relief where no DTAA existed between India and the country in which the income accrued. He stated that in such cases the allowable credit would be limited to the amount of Indian income tax which becomes due or is payable in respect of the double taxed income.

Technical Session III	DTC and Corporate Assessees
Chaired by	Dr. Poonam Kishore Saxena, Member (A&J), CBDT
Panel Discussion by:	
	Shri Ashish Kumar, Director (TPL-I), CBDT
	Shri Jayant Gokhale, Central Council Member, ICAI
	Shri Rahul Garg, Co-Chairman, Direct Tax Committee and International Tax Committee, ASSOCHAM
	Shri M. Venugopal, DGM (Finance-Taxation), BPCL

Dr. Poonam Kishore Saxena, Member(A&J), CBDT touched upon the salient features of the Bill namely liberalization of MAT provisions with regard to availing of MAT Credit for extended period of 15 years, permission to carry forward losses for unlimited period from the present limit of 8 years, removal of cascading effect of Dividend Distribution Tax, change in residency clause which is defined as place of effective management at any time in India in the DTC, introduction of concept of Controlled Foreign Company to bring into tax net the income of multinational companies earned in India or earned from the resources in India and introduction of the Branch Profit Tax leviable on income attributable to the Permanent Establishment of Foreign Companies.

Panel Discussion on “DTC and Corporate Assessees”

Shri Ashish Kumar, Director (TPL-I), CBDT, referred to the structural changes relating to taxation of income of corporate assessees in the DTC viz., determination of income of each business separately in respect of businesses deemed to be distinct and separate, change in method of computation of Total Income in the DTC in that the difference between Gross Earnings and Gross Expenditure would be treated as total income instead of starting with the profit, broad classification of Business Income into ‘income from specified Business’ and ‘income from other than specified business’, introduction of definition of ‘Deferred Revenue Expenditure’ and treatment of remission or cessation of any liability and transfer of carbon credit as a part of Gross Earnings.

Industry’s Perspective

Shri Jayant Gokhale, Central Council Member, ICAI, expressed concern over practical problems the businesses may face due to the requirement for maintenance of separate Books of Accounts for each business and requested the Ministry/CBDT to relook into the issue in view of increased level of discretion resting with the Assessing Officer. He stated that enumerative form of Operating Expenditure would result in lot of litigation as it would be difficult for certain types of expenditure to be included in the operating expenditure e.g. payment of interest (finance charges) as interest paid may have to be adjusted from the interest earned (because interest earned is now being included in the ‘Residuary sources of income’). He felt that there were certain misgivings with regard to ‘Residual Sources of Income’. He termed the inclusion of amortization concept in the DTC as contradictory with relation to the International Financial Reporting Standards (IFRS) which would also become mandatory in the near future. He discussed the concept of Business Capital Asset and Investment Capital Asset with reference to income from Capital Gains in the Act in that the sale of Business Capital Asset would be considered as business income and doing away of the concept of ‘Long term Capital Gains or Short term Capital Gains’.

Shri Rahul Garg, Co-Chairman, Direct Tax Committee and International Tax Committee, ASSOCHAM, emphasized on role of revenue audit in seeking assurance with respect to uniform tax treatment for all corporates, use of electronic database of audit findings raised by the CAG as a tool to ascertain the issues where the corporate assessees and the Assessing Officers err. He raised concern over the transition issues due to rewriting of law in that the jurisprudence of the last 50 years would become anachronistic. He stated that the scope of demerger had been restricted to residents only. He further opined that the rise in withholding tax would increase cost of doing business in all cases where payment is made on grossed up basis.

Shri M. Venugopal, DGM (Finance-Taxation), BPCL spoke with circumspection about the practical problems involved in maintenance of separate books of account for separate businesses by the big public sector companies like Bharat Petroleum Corporation Limited (BPCL) as its operations were carried out through Zonal Offices, Divisional offices, Depots etc. He also voiced his concern over the adverse impact of removal of deductions available to highly capital intensive companies like BPCL, increase in the Withholding Tax from 10 per cent to 20 per cent and closure of appeal avenues to High Court and Supreme Court. He requested the Ministry to consider creating a separate cell for assessing the cases of PSUs.

Q & A Session

The technical session was followed by Q & A Session. In response to a query regarding DTC not being in sync with developments in the accounting arena with the advent of the IFRS, Shri Jayant Gokhale stated that certain mismatch would always remain as with changes in the tax legislations, the tax strategies and assessees’ strategies also change and litigation could not be avoided totally. Dr. Poonam Saxena added that CBDT was in the process of finalising the National Judicial Reference System module which would be available to all the Assessing Officers across India by the end of December 2011 whereby possibility of same issue being decided in two different manners would be minimized.

In response to a query regarding practical problems of linking the legacy data of losses allowed to be carry forward for indefinite period in the DTC, Shri Ashish Kumar stated that the concept of yearly loss has been rendered redundant in the DTC. The individual yearwise identity of losses as under the Income tax Act would get subsumed and at any time only the previous year's loss would count. Due to this structural change data is not required to be maintained for indefinite duration and data pertaining to only two years would be required. With this the discussion of the concluding session ended.

Ms. Meenakshi Gupta, Director General (Direct Taxes) in her concluding remarks thanked all the distinguished Speakers and the participants for their valuable contributions in making the Seminar an insightful and interactive event.

Audit of Stamp Duty- Some Issues

- Sangita Choure

This article is an attempt to highlight the important issues related to audit of stamp duty by focusing on the areas in which the stamp duty leakages occur. It highlights the systems and procedures in place for accountal and distribution of the physical stamp paper and working of e-Stamping.

Introduction

Stamp Duties are taxes on transactions in the shape of stamps on instruments evidencing them. The Indian Stamp Act, 1899 provides for levy and adjudication of stamp duty, enumerates the Instruments chargeable to stamp duty, allowances for stamps in certain cases, revisions, levy of penalties and prosecution in the case of instruments not duly stamped. The levy of stamp duty on various types of the instruments namely conveyance, exchange, mortgage and lease etc., is governed by the Indian Stamp Act, 1899 (Stamp Act) and the Rules framed there under.

The revenue derived from stamp duties forms a considerable part of the State's revenues. Under the Constitution of India, the entire proceeds of duties are assigned to the State in which they are levied. For the sake of uniformity of rates on instruments which are commercial in character, the power to prescribe rates of duties on them is vested in the Union Legislature (Entry 91 of the Union List), whereas the power to prescribe rates on all other Instruments is vested in the State Legislatures (Entry 63). Both the Union and State Government have power to reduce or remit such duties.

Registration of the documents attracts levy of stamp duty and registration fee. The duty is paid by the executors of instruments either by using impressed stamps or by affixing stamps (non-judicial) of proper denomination. The levy of registration fee on the instruments presented for registration is regulated by the Indian Registration Act, 1908 (Registration Act) and the Rules framed there under. The Indian Registration Act, 1908 provides for the compulsory or optional registration of documents and prescribes the time and place for presenting such documents, fee for registration, searches, penalties and prosecutions for offences.

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The State Government Rules for tax administration in the State govern:

a) the supply and keeping of stamps;

b) licensing of vendors and sale and stock of stamps and

c) Inspection of vendor records and control.

e-Stamping has been introduced now in most of the States which has reduced the need for physical stamp paper.

Undervaluation of properties, non-presentation of documents in the offices of the registering authority, misclassification of documents and non/short payment of SD by the executants on the documents submitted before the registering authorities' results in evasion of Stamp Duty and Registration Fee.

The areas, in which Stamp Duty leakages occur as seen by the audit, are discussed below:

Transfers on Power of Attorneys

The Indian Stamp Act provides that a Power of Attorney **when given for consideration** and **authorizing the attorney holder to sell any immovable property; will be stamped as it were a Conveyance Deed on the consideration mentioned -(Article 48 (f) to the Schedule I). Thus the important point is of consideration being passed between the parties and authority to the Attorney Holder to sell the property**

In State of Punjab it was seen by the audit that large scale transfer of Agriculture properties /immoveable properties were taking place on Power of Attorneys. As per Articles 48 (f) and (ff) of Schedule I-A (for Punjab) of the Indian Stamp Act, on instruments of Power of Attorney, wherein the power when given for consideration and authorizing the attorney to sell any immovable property or when given for consideration and/or for authorizing possession of the immovable property, the same duty is leviable as applicable to Deeds of Conveyance.

In large number of cases even after insertion of the above provisions, we saw that, though the power to sell and transfer the immovable properties and to hand over the possession thereof in favour of the third persons other than the blood related[i] had been granted, these instruments had not been registered by the Registering Authorities as Deeds of Conveyance since passing of consideration was not mentioned. Since the attorney holders were given the power to sell or transfer and hand over the possession of the properties to the third person, the audit contention was that stamp duty was leviable as a Conveyance.

Based on investigative audit done by the AG Punjab it was seen in one case, the audit found while scrutinizing the records of deed writers that one person had made an Agreement for Sale of land with a colonizer for a consideration of X crore and had received the full consideration. This instrument i.e. Agreement for Sale was not got registered with the registering authority though the same was required to be registered under Article 5 (cc) of Schedule 1A (for Punjab) of the Indian Stamp Act, 1899. The seller instead executed and got registered another instrument of power of attorney on the same day , authorizing the purchaser to develop the land for all purposes or sell to any other person for consideration and get the land (in full or part) registered as deeds of conveyance. The instrument of power of attorney was not stamped as required under Article 48(f) *ibid,* though it contained both the averments specified therein. Further, the instrument of Agreement to Sell, though evidencing the delivery of possession of the immovable property agreed to be sold and the receipt of full consideration and compulsorily Registerable under Article 5(cc) *ibid* was also not registered.

In the above mentioned instrument of power of attorney, the attorney holder was given absolute powers to do all acts as an owner can do. It was specifically stated by the owner in the instrument that no sale transaction with the attorney holder had been done nor any consideration had been received. When the audit cross linked these instruments, it was proved beyond doubt that not only there was suppression of facts but also provisions relating to the power of attorney had been misused . We further observed that the attorney holder subsequently sold this property to other persons by undervaluing the property i.e. the value of the property mentioned in the Sale Agreement was higher than the value disclosed in the subsequent sale deeds. **Therefore there was loss of revenue to the Government on three counts-one, on the Agreement for Sale which was not registered, the power of attorney not being stamped as Conveyance Deed and on undervaluation in subsequent sale documents.**

In the context of large scale misuse of the provisions of power of attorney through this *modus operandi*, where the consideration received or possession handed over or both are not being mentioned in the instruments of power of attorney, it is recommended that such Powers of Attorney where power of sale of the immovable property is given to an Attorney Holder, other than a blood relative, be treated as conveyance deeds for stamp duty purposes, by amendment to the Act/Rules governing stamp duty in the State. Such provisions have already been made in other States such as Rajasthan (Article 44 2 (ee) of Schedule of Rates to the Rajasthan Stamp Act). Further a nominal appropriate stamp duty may also be considered for such Powers of Attorney given to blood relatives.

Unregistered Sale Deeds

It is seen in development of properties through promoters/ builders that, though the owner of the property receives the entire sale consideration and also hands over possession, a Sale Deed may not be executed to avoid stamp duty. This comes to light in subsequent documents /Agreement for Sale between the builder and the third party buyer through the recitals in this Agreement that the promoter or builder had purchased that property form the owner. While registering the subsequent Agreements between the builder and third party, the Stamping authority had they enquired about the first document, the non-stamping/registration could have been detected. The Audit has brought to light the need to enquire about all such previous documents concerning the ownership of such properties before registering the subsequent Sale Agreements.

Misclassification of Instruments

Sale Agreements/Agreements with Developers of Properties

Under Section 2 (10) of the Indian Stamp Act, 1899, 'Conveyance' includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred is chargeable to duty as specified under Article 23 of the Schedule 1-A. The two essential ingredients of a conveyance are the transfer of property or interest therein, whether moveable or immoveable and consideration for the property sold/transferred. The transfer has to be inferred from the language of the documents which may be in the form and guise of Agreement or Memorandum of agreement and the substance of the transaction. The use of any particular words like release, relinquish, assign or transfer in an Instrument does not conclusively prove the nature of the Instrument.

The Audit noticed that in instruments of Agreements registered as such, the owners of the land entered into Agreements with the Developers to develop and construct residential/commercial buildings on the owner's land. In return, the owners were to receive sale proceeds of developed property as agreed. The developers were given the possession of the land through Irrevocable Power of Attorneys to develop and sell/lease/rent out the developed properties under the terms of agreements. The agreements contained all the ingredients of conveyance and thus were required to be stamped as per *Article 23 of the Schedule 1-A of the Indian Stamp Act as a Conveyance*. But the registering authorities classified these instruments as Memorandum of Agreements instead of the Deeds of Conveyance, resulting in non-levy of stamp duty and registration fee.

Agreements for Sale, partition deeds, release deeds etc. or power of attorneys where possession of the property had been handed over or title to the property are transferred for a consideration should be treated as Conveyance Deeds, but it is seen that very often ROs fail to do so.

Development Agreements with property developers

Several States like Maharashtra, Gujarat have brought such Agreements specifically under the State Stamp Acts (Schedules relating to Instruments chargeable to SD) and duties have been prescribed in relation to the market value of the properties which are the subject matter of the Agreement. A development Agreement has several terms and conditions which are binding on both the parties and the seller also agrees to part with possession of the property for development purposes. Till the property is developed and entire consideration is paid to the property owner, it is only an Agreement, whereas some audit teams are contending that such agreements should be treated as conveyance deeds. This would not be correct in view of the charging provisions mentioned above and where the RO has accepted it as a Development Agreement. The audit can however subsequently check after the Development Agreement is completed, whether the properties have been legally conveyed to the Developer or a housing Society as the case may be and bring it to the notice of the Stamp Authorities.

Agreements for Deposit of Title Deeds and Mortgage Deeds

A 'mortgage deed' includes every instrument whereby, for the purpose of securing money advanced by way of loan, or an existing or future debt, one person transfers or creates in favour of another a right over or in respect of specified property. The Indian Stamp Act under Article 40 of the Schedule I, have distinguished a Mortgage Deed with our without possession of the immoveable property which is the subject matter of the Mortgage. ***Where possession of the property is given or agreed to be given, the mortgage will be treated as a Conveyance and stamped accordingly and when the mortgage is without possession, the duty will be same as a Bond on the amount secured by such a Deed***.

The Indian Stamp Act itself under the above mentioned Article 40 has carved out exceptions for Deposit of Title Deeds, Pawn, Pledge or Hypothecation etc. Most State Stamp Duty Acts also have a specific entry for Agreements/Memoranda for Deposit of Title Deeds. Banks give loans and enter into such Agreements with the Loanees. The Stamp Duty structure could be less when compared to a regular mortgage.

The Audit contention from some field offices has been that these Agreements should be treated like a mortgage, because a charge has been created on the property. Some States like Maharashtra have brought such Agreements for Deposit of Title Deeds and Mortgages on par, for stamp duty purposes. Until the law is amended to bring it on par. it may not be correct for the audit to contend that an Agreement for Deposit of title deeds is tantamount to a mortgage, since no clear charge has been created nor possession of the property parted or agreed to be parted with by the loanee. Besides if the Legislature's intent is to tax /levy duty on the two instruments on different footing, then it would not be correct to contend that there has been misclassification.

Another new development in the context of mortgages is the **SARFESI Act,** which gives powers to financial institutions to take charge of the mortgaged property in event of a default by the loanee and auction the property for recovery of the loan dues. Under the Securitization of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFESI), it is provided that any Instrument, which creates 'Security Interest' is a 'Security Agreement' and such an Agreement includes a document by way of 'Mortgage by deposit of Title deeds'. Such Agreements create a security interest in favour of the banks that advance loans to the borrowers. The Audit contention is that in view of these developments such Agreements should be treated as Mortgages. The point may be valid, but it would have to be taken up with the State Government as a suggestion for amending the State Stamp Act to bring a Mortgage by way of Deposit of Title Deeds on the same footing as a Mortgage.

Undervaluation of Instruments

In all States there is defined mechanism for fixing the market value of properties locality wise. These may be called Circle Rates, Jantri, Reckoner rates etc. While registering property documents the Registering authorities keep these rates as a bench mark for valuation of the property. We are all aware that these rates are much lower than the market rates and to compound their unrealistic feature, they are not revised promptly. Property markets being a highly volatile market, these rates if they are ancient do not serve any purpose. So there is thinking in the audit fraternity that we should review the process of fixation of these rates itself. In this context, it would not be out of place to mention of the large scale undervaluation of properties for sale, when compared to the market value and the actual consideration which has been transacted between the parties with dual purpose of avoiding income tax and stamp duties.

It is for the Income Tax Department, to some extent, to plug this by investigating the actual sale value which has changed hands. However the larger reforms of Real Estate Regulator and GST on Real Estate Sector would really reduce the heat and malpractices in this sector to the benefit of the buyers.

Undervaluation may take place if properties which are residential or commercial in nature as per revenue records are classified as agricultural, for stamping purposes.

Undervaluation of property also takes place by suppressing the actual consideration for which the property was finally sold as per the Conveyance Deed, with reference to the earlier Agreement for Sale which may have been executed by the parties. Audit has located the original Agreements either from records of document writers or from the Deeds itself wherever there was a reference to the earlier Agreement for Sale and have done the **Cross verification with the Conveyance Deed.**

Delays in finalizing valuation of properties in cases referred to the Collectors

When the Registering authority is not satisfied with the value of the immoveable property declared for stamping purposes as per the provisions he is required to refer the Instrument to the Collector for valuation purposes. In some States the document may be provisionally registered also pending the valuation.

We found that there were considerable delays in the Collectors offices sometimes beyond ninety days in determining the value. This not only inconveniences the parties concerned but also blocks government revenue.

Non-registration of sale certificates

It is seen that there is absence of an effective mechanism in place in the Registration Department to ensure that all documents which are required to be registered under the law are indeed presented for registration.

As per proviso (3) to Section 33 (2) of the IS Act, the State may determine what offices shall be deemed to be public offices and who shall be deemed to be persons in charge of public offices. Further Section 73 also provides that every public officer having in his custody any records, documents and proceedings etc., the inspection whereof may tend to secure any duty or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person authorized by the Collector to inspect for such purpose the records, documents and proceedings etc. All Government offices and Government undertakings are generally public offices but the

Revenue Department had not inspected any offices so far. **We observed that the Revenue Department did not have any system to periodically collect information from various departments to ensure that the documents (agreements, contracts, leases, conveyance deeds etc.) are properly registered and realization of proper SD and RF.**

Due to failure in repayment of loans, the properties of loanees were attached and auctioned. However, the buyers did not register their sale certificates/sale deeds in the registering offices despite lapse of period ranging from 12 to 68 months after prescribed time limit of maximum eight months. List was sent by Debt Recovery Tribunal to registering offices about the sale. Action was not found to be taken by registering offices to issue notices nor effective procedures adopted for regular inspection of public offices.

Cross verification by the registering authorities with other Government Departments/PSUs/Municipal Bodies by regular systems of inspections, use of electronic databases, would go a long way in implementation of various Stamp Duty provisions and ensuring that there is no leakage of revenue to the Government.

Verification of transactions in the Capital Markets through collection of data from Stock exchanges and capital market intermediaries like brokers is one such potential area for collection of stamp duty on share transfers and trades.

Remission of Stamp Duty

As per the Indian Stamp Act, 1899 (Schedule 1-A), a mortgage deed in respect of a specified property for securing loan, when possession is neither given nor agreed to be given, is chargeable to stamp duty at the rate of two *per cent* of the amount secured.

Any remission of duty by the State Government has to be a way of a Notification

On instruments of conveyance executed in favour of a Corporation of the Central Government despite the fact that no specific notification of such remissions was notified by the State Government but remission was granted in one State.

Stamp Papers and Vendor Records - Internal Controls

Public memory is still afresh of the biggest scam of fake stamp papers-the Telgi Scam. Though the Central/State Governments took several measures thereafter to reduce physical stamp paper, there are concerns continuing over the internal controls governing the custody and accountal of physical stamp paper. Audit has also yet to study how e-Stamping is working.

Para 5 of the questionnaire for the guidance of officers inspecting the registers and accounts of licensed stamp vendors provides that officers inspecting the registers and accounts of the stamp vendors have to ascertain whether the vendor correctly and truly enters in his register the supply of stamp papers received from the local treasury or sub treasury and strike the monthly balance of stock in hand in the register.

It was seen in some cases that there were excess sale of stamp papers by the vendors to the public with reference to the stock available with them. The stamps thus sold by the stamp vendors could be fake stamp papers, which needs to be investigated. Further stamp papers valued purchased from the treasuries were neither found entered in the vend registers as stock in hand nor shown as sold to the public by some stamp vendors.

Thus the prescribed control mechanisms were not complied by the designated officials and the sale of stamps by the treasuries were not matched/ verified with the stamp vendor registers.

Government needs to enforce the prescribed control mechanisms of verification of the stamp papers received by the stamp vendors with the treasury records and reconciliation of stamp papers mentioned in the instruments with the details contained in the vendors' registers and strengthen internal inspections and internal audit.

Conclusion

Above was a modest attempt to capture some of the important issues which have come up in recent years in the audit of stamp duties from the field audit offices. As an auditor it is felt that there is a huge potential for further improving and enlarging the scope of audit of stamp duty. Cross verification of transactions with our various audit wings, cross verifications in various public offices, transactions in the capital markets/shares leviable to stamp duty, to detect instruments which do not come to the Government for registration though they are legally required to be registered, internal controls for accountal and distribution of the physical stamp paper and working of e stamping are some of the areas which require audit effort and directions from the audit managers, rather than sitting on judgment on the nature of the documents which have been stamped by the registering authorities. The audit of direct taxes would also get potential points by coordination with the audit of stamp duty, especially where undervaluation/instruments not stamped/ transfers on power of attorneys have been detected by stamp duty audit.

Real Estate Sector and its related Tax Provisions

- Radhey Shyam Sharma

This article throws light upon the provisions related to the Real Estate Sector in the Income tax Act and the applicability of indirect taxes and VAT. It emphasizes upon the need to continue with the concessions available to assessees engaged in infrastructural development.

Real estate is a very wide term which primarily covers the buildings right from a small house to high rise buildings which may be used for various purposes by the individuals, firms or corporate sector etc. depending upon their choices or for the purposes decided by the Government from time to time. Development of infrastructure facilities including roads and bridges also form part of real estate sector. Private as well as authorized builders, developers and contractors play an important role in development of this sector. Infrastructure facilities are also developed by the Government through public private partnership (PPP) on BOT (Build, operate and transfer) BOOT (Build, own, operate and transfer) or BOLT basis where PPP project means a project based on contract or concession agreement between a Government or a statutory entity on one side and a private sector company on the other side, for delivering an infrastructure facility or service on payment of user charges.

Administrative Framework

The matters pertaining to the housing and urban development have been assigned by the Constitution of India to the State Governments. The Ministry of Urban Development is the apex authority of Government of India at the national level to formulate policies, coordinate the activities of various Central Ministries, State Governments and other nodal authorities and monitor the programmes concerning all the issues of urban development and housing in the country. As such, the national policy issues are decided by the Government of India which also allocates resources to the State Governments through various centrally sponsored schemes, provides finances through national financial institutions and supports various external assistance programmes for housing and urban development in the country as a whole. Policies and programme contents are decided at the time of formulation of Five Year Plans.

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As regards infrastructure development, development of highways, railways, ports, airports, telecom and power sectors is taken care of by concerned Ministries on the recommendation of planning commission. For instance Ministry of surface transport undertakes the work relating to development of roads and high ways all over India.

Investment and Employment Opportunities

Real Estate sector is considered as a major employer and proved instrumental in growth of cement, steel and other connected industries. Simultaneously, construction industry in India is attracting huge investments in all of its segments including commercial, industrial, infrastructure, institutional and residential construction. This industry operates on the basis of contractual agreements. Over the years different types of construction contracts have been materialized mainly depending on the magnitude and nature of work, special design needs, annual requirement of funds and nature of job followed by a number of sub contracts. Consequently, subcontracting is a common phenomenon in the construction industry and also a source of employment for both skilled and non-skilled population in India.

The complexity of Indian construction projects offers considerable opportunities for international participants to bring their technologies and best practices to India. Foreign investors continued to invest in India's housing, real estate and construction sectors in the last two years, in spite of the ongoing global financial crisis.

Presently, FDI up to 100 *per cent* has been permitted[5] with prior approval of the Government for development of integrated townships, including housing, commercial premises, hotels, resorts, city and regional level urban infrastructure facilities such as roads and bridges, mass rapid transit systems; and manufacture of building materials. Development of land and providing allied infrastructure will form an integral part of township's development, for which necessary guidelines/norms relating to minimum capitalization, minimum land area, etc., are notified separately by the Government. *Repatriation of principal investment of foreign exchange is permitted. The repatriation of dividend on equity, interest on shares/convertible debentures subject to payment of applicable taxes without any lock-in-period is also permitted.*

The FDI in real estate sector is subject to the certain conditions as below, which in the deserving cases may be relaxed:

[5] Press Note 2 of 2005 released by Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion

- The minimum area of the proposed township to be 10 hectares whereas in the case of construction development project, a minimum built up area of 50,000 square metres.
- The minimum capitalization is $10 million for a wholly owned subsidiary and $5 million for joint ventures with Indian partners, with funds being brought upfront.
- A minimum lock-in period is three years from completion of the project. Minimum capitalization shall apply before repatriation of original investment is permitted.
- A minimum of 50 *per cent* of the integrated project must be completed within a period of five years from the date of possession of the first piece of land.
- If an investor intends to exit earlier due to reasons beyond his control, it shall be decided by the Foreign Investment Promotion Board (FIPB) on a case-to-case basis.
- Integrated development shall be in accordance with local byelaws, town planning norms, standards and master plans.
- Land for peripheral services such as police stations and milk booths shall be developed and handed over free of cost to the concerned departments.
- Land for social and community facilities shall be developed and made operational before the houses are occupied.
- Parks and playgrounds shall be handed over free of cost to the urban local body.

Construction in Export Processing Zones/ Special Economic Zones

With a view to augment the infrastructure facilities for export production, private/joint/state sector investments are utilized to develop additional infrastructure facilities including construction of Standard Design Factory (SDF) Buildings in the existing EPZs/SEZs. For this purpose, land already available in the EPZs/SEZs is leased or sub-leased to developers on the terms and conditions contained in the guidelines issued for this purpose. RBI guidelines for real estate ownership/development by NRI and Foreign/Indian companies also apply to the construction of SDF Buildings in EPZs/SEZs by private/joint/state sector.

Tax Provisions

Undertakings engaged in the developing and building housing projects are eligible for 100 *per cent* deduction under section 80IB(10) of the Income Tax Act, 1961 on the profits arrived from such business though such deduction is not admissible to any undertaking which executes the housing projects as a works contract awarded by any other person including Central or State Governments. Deduction under section 80IB(10) is subject to certain conditions[6] as below:

- The minimum size of plot should not exceed one acre and the project should have approval of a local authority before, 31 March 2008.
- The undertaking should have commenced development and construction of the housing project after 30 September,1998 and completed the construction
  - on or before 31 March 2009 where housing project has been approved by local authority before 1 April 2005 or within four years from the end of the financial year in which the housing project is approved by local authority during 2004-05;
  - within five years from the end of the financial year in which the housing project is approved by the local authority on or after April 2005.
- From assessment year 2010-11, the built up area[7] of the shops and other commercial establishment included in the housing project shall not exceed 3 *per cent* of the aggregate built-up area of the housing project or 5000 sq. ft whichever is more.
- The built-up area of each residential unit should be subject to the following maximum limit:
  - Within the cities of Delhi and Mumbai or within 25 Km from the local limits of Delhi and Mumbai, minimum size of the plot of land should be one acre and the maximum built-up area of each residential unit should be 1,000 sq. ft.
  - At any other place, minimum size of the plot of land should be one acre and the maximum built-up area of each residential unit should be 1,500 sq. ft.
- If the allottee is a person other than individual, not more than one residential unit will be allotted to the same allot tee. if the allottee is an individual, no other unit in the housing project

[6] The conditions above are not applicable in the case of a housing project , carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing building in areas declared as slum areas under any law and such scheme is notified by Board in this behalf.

[7] The expression 'built up area' has been defined to mean the inner measurements of the residential units at the floor level, including the projections and balconies, as increases by the thickness of the walls but not including the common area shared with other residential units

should be allotted to the same individual and/ or any of the following persons:

(a) spouse or minor children of such individual ;

(b) the Hindu undivided family in which such individual is the Karta ; and

(c) any person representing such individual, spouse or the minor children of such individual or the Hindu undivided family in which such individual is the Karta.

- Allowance of claim for this deduction is subject to filing of return of income on or before the due date of submission of return as provided in section 139 (1) of the Income Tax Act, 1961. The deduction is not available unless it is claimed in the return of income.
- The return of income claiming the deduction should accompany an audit report in Form 10CCB from a chartered accountant who has audited the accounts of the undertaking otherwise eligible for deduction.
- Where deduction is claimed and allowed under section 80IB(10), the profits to that extent shall not qualify for deduction under any other provisions of the Income Tax Act and in no case shall exceed the eligible profits of the undertaking.

As regards PPP projects, the party entered into an agreement with the Government to take up such a project or the concessionaire undertakes investments and operates the facility for a fixed period of time after which ownership reverts back to the public sector. In such type of arrangement, operating and investment risks can be substantially transferred to the concessionaire. In a BOT type of arrangement, Government has explicit and implicit contingent liabilities that may arise due to loan guarantees provided and default of a sub-sovereign Government and public or private entity or non-guaranteed loans. By retaining ultimate ownership, the government controls policy and can allocate risks to those parties best suited to bear them or remove them. For capturing the cases of tax avoidance, the assessing officer or the audit should go through the terms and conditions of the agreement entered into between the Government and the concessionaire and violation if any, dealt with strictly as per provisions of the Act.

The existing provisions of section 80IB(10) are proposed to be replaced by the Direct Tax Code vide provisions of section 32(2)(Sl. No.5 of the Table thereunder) read with those contained in The Thirteenth Schedule with effect from 1 April 2012.

Section 44AD[8] of the Income Tax Act, 1961, provides for presumptive taxation on the assessees engaged in the business of civil construction and whose gross receipts paid or payable to the assessee in the previous year on account of such business does not exceed forty lakh rupees, of a sum equal to eight percent of such gross receipts or, as the case may be, a sum higher than such eight percent of gross receipts as declared by the assessee in his return of income under the head "profits and gains of business or profession".

The existing provisions of section 44AD are proposed to be replaced by the Direct Tax Code vide provisions of section 32(2)(S No.6 of the Table thereunder) read with those contained in The Fourteenth Schedule with effect from 1 April 2012.

Minimum Alternate Tax (MAT) is applicable to a Indian as well as a Foreign company if the tax liability is lower than 18 per cent (raised to 18.5 per cent in budget proposals for assessment year 2011-12) of its book profits calculated in the specified manner together with surcharge if applicable. MAT provisions shall also apply on the developers of SEZs as well as units operating in SEZs. **These provisions are replaced by the provisions of sections 104 to 107 of the Direct Tax Code with effect from 1 April 2012.**

Other Concessions and Incentives

Following major incentives are also admissible for dealing in real estate/housing sector:

(i) Interest deductible under income tax up to Rs. 150,000 for construction or purchase of self-acquired house property is going on.

(ii) The existing scheme of interest subvention on housing loans has been extended to housing loan up to Rs. 15 lakh where cost of house does not exceed Rs. 25 lakh from the present limit of Rs. 10lakh and Rs. 20 lakh respectively.

(iii) Keeping in view increase in prices of residential properties in urban areas , existing housing loan limit of Rs. 20 lakh has been enhanced to Rs. 25 lakh for dwelling units under priority sector lending.

(iv) Housing finance to targeted groups in rural areas at competitive rates enhanced from existing provision of Rs. 2000 crore to Rs. 3000 crore under Rural Housing Fund.

[8] From assessment year 2011-12, scope of this section has been extended to any of the business other than the business of plying, hiring or leasing goods carriages which are governed by the provisions of section 44AE.

(v) Non-residents are permitted to repatriate earnings in India. TDS under sections 193 and 194I of Income Tax Act, 1961 from interest on securities and rent is required in the case of payments to residents only and not to non-residents.

(vi) Section 80IB(7) provides a deduction of 50 per cent of the profits for convention center and multiplex theatres for next five years to boost the entertainment industry in general, and integrated entertainment projects, particularly, in the non-metropolitan cities, where multiplex projects have been given the concession.

(vii) Urban Reform Incentive Fund (URIF), a City Challenge Fund (CCF) and a Pooled Finance Development Scheme are also operational as incentives in the urban sector.

(viii) The Mortgage Credit Guarantee Fund under Rajiv Avas Yojna has been created to guarantee housing loans to EWS and LIG households and enhance credit worthiness increasing access to housing credit in rural areas and fully protecting them against default.

(ix) With a view to preventing frauds in loan cases, the Government has facilitated setting up of Central Electronic Registry under SARFAESI Act, 2002 so as to make it operational by 31 March 2011.

(x) The additional equity expansion of HUDCO (Housing and Urban Development Corporation) is being done enabling it to take up large-scale housing and urban development activities throughout the country.

Judicial Rulings/ Clarifications

Sl. No.	Judgement/ Clarification	Citation
1.	If some of the units in housing complex exceeded the prescribed area limit, relief under section 80-IB(10) is admissible on pro-rata basis.	*CIT versus Sheth Developers (P) Ltd.*, [2009] 33 SOT 277 (Mumbai)
2.	If an assessee has developed a housing project wherein majority of residential units have a built-up area of less than the prescribed limit of 1,500 sq.ft. and only a few residential units are exceeding built up area of 1,500 sq.ft. there would be no justification to disallow entire deduction under section 80IB (10).	*ITO V. Air Developers* [2009] 123 TTJ 959 (Nagpur)
3.	This deduction is available to a housing project as a whole. It is not relevant to say as to what portion of profits is attributable to residential units (if the area used for shops and establishment does not exceed the limit prescribed in the Income Tax Act).	*Brahma Associates Versus CIT* [2009] 30 SOT 155 (Pune) (SB).

4.	There is no merit in the view that this deduction is not available to incomplete projects. A tax payer having housing project and fulfilling all other requirements of section 80-IB(10) can adopt project percentage method to arrive at eligible profits for claim of prescribed deduction subject to preliminary satisfaction of the Assessing officer about year of completion of project.	B.K. Pate Enterprises versus CIT [2009] 125 TTJ (Pune) 974.
5.	The CBDT clarified that the deduction can be claimed on a year to year basis where the assessee is showing profit from partial completion of the project in every year. In case the project is not completed within the specified time limit of 4 to 5 years as started above, the deduction granted to the assessee in the earlier years should be withdrawn.	CBDT Instruction No.4/2009, dated 30 June 2009.

Applicability of Indirect Taxes and Value Added Tax (VAT)

Construction contracts involves labour and material and hence liable to both Service tax and VAT for each transaction also. Service tax on construction contracts is leviable due to introduction of the taxing entry of “Works Contract Services” followed by the Custom, Excise & Service Tax Appellate Tribunal (CESTAT) decision[9] that a Works Contact on a turnkey basis can not be spilt up and part of it made liable to Service tax. VAT/Sales tax is levied on the “transfer of property in goods involved in the execution of a works contract. The levy of VAT/Sales tax is on the deemed sale of goods. Concept of deemed sale was introduced by making constitutional amendment by 46th Amendment Act, 1982 in Clause (29A) of Article 366 where, legal fiction, in the case of Composite Works Contract, the State would have the power to levy Sales tax on the basis that there has been a transfer of title in the goods.

Conclusion

With wide spectrum of changes taking place in the real estate sector in the country coupled with proposed reforms such as computerization of land records, removal of tenancy laws, correction in taxation structure etc., India has emerged as a preferred and lucrative destination for real estate developers/investors. However, there is no sectoral data bank of the assessees engaged in the business of civil construction. In order to exercise effective control, the assessees engaged in the business of civil construction specifically the main players viz; contractors, builders and developers etc need to be brought

[9] Daelim Industrial Company versus Commissioner of Central Excise [2003(155) ELT 457]

to tax by the Income Tax Department so that possibilities of revenue leakage from real estate/construction sector are minimized. Infrastructure development is the need of hour. Appropriate incentives in the Income Tax Act would certainly provide a boost to the sector.

Administration of Minimum Alternate Tax

By Prem Prakash

This article seeks to highlight some issues regarding the Administration of the provisions of Minimum Alternate Tax (MAT) by the Central Board of Direct Taxes (CBDT).

Introduction

Normally, a company is liable to pay tax on the income computed in accordance with the provisions of the Income Tax Act. But the profit and loss account of the company is prepared as per provisions of the Companies Act. There were large number of companies who had book profits as per their profit and loss account but were not paying any tax because income computed as per provisions of the Income Tax Act was either nil or negative or insignificant. This is mainly attributed to the different types of deductions or exemptions that are admissible to such Companies as per the Income Tax Act on account of either their nature of operations or the location of their manufacturing units.

In such cases, although the companies were showing book profits and declaring dividends to the shareholders, they were not paying any income tax. These companies are popularly known as Zero Tax companies. The levy of a minimum tax on companies making large profits and declaring substantial dividends to the shareholders but not paying income-tax on such profits due to the various exemptions and incentives provided in the Income-tax Act, was first introduced through section 80VVA by the Finance Act, 1983 w.e.f. A.Y. 1984-85. The method adopted by this section was to place a ceiling on the aggregate quantum of incentives available under various provisions of the Act. However, the unabsorbed incentives were allowed to be carried forward and set off against taxable income in future years. Section 80VVA was dropped from the statute book by the Finance Act, 1987 w.e.f. A.Y. 1988-89.

Thereafter, the concept of tax on book profits was introduced originally under section 115J by the Finance Act, 1987 with effect from A.Y. 1988-89 but it was withdrawn with effect from A.Y. 1991-92. Subsequently the concept was reintroduced with a few changes,

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imposing Minimum Alternate Tax (MAT) under section 115JA with effect from A.Y. 1997-98. section 115JA was introduced with effect from assessment year 1997-98. According to this section, if the taxable income of a company computed under this Act, in respect of previous year 1996-97 and onwards is less than 30 % of its book profits, the total income of such company that is chargeable to tax for the relevant year shall be deemed to be an amount equal to 30% of such book profits. The tax payable under this provision was known as Minimum Alternate Tax(MAT).This provision was valid till 31 March 2001. Thereafter an analogous provision is operational as Section 115JB of the Income Tax Act.

As of now, this section states that in the case of an assessee, being a company, if the income-tax, payable on the total income as computed under other provisions of the in respect of any year is less than eighteen per cent of its book profit, then the book profit shall be deemed to be the total income of the assessee. The tax payable by the assessee on such total income shall be at the rate of eighteen per cent.

Alongwith the introduction of the MAT provisions, a new tax credit scheme was also introduced under section 115 JAA of the Income Tax Act which MAT paid can be carried forward for set-off against regular tax payable during the subsequent five year period subject to certain conditions, as under:-

- When a company pays tax under MAT, the tax credit earned by it shall be an amount which is the difference between the amount payable under MAT and the regular tax. Regular tax in this case means the tax payable on the basis of normal computation of total income of the company.
- MAT credit will be allowed carry forward facility for a period of five assessment years immediately succeeding the assessment year in which MAT is paid. Unabsorbed MAT credit will be allowed to be accumulated subject to the five year carry forward limit.
- In the assessment year when regular tax becomes payable, the difference between the regular tax and the tax computed under MAT for that year will be set off against the MAT credit available.
- The credit allowed will not bear any interest.

Evolution of Rates of MAT

Over the years the rates governing MAT has undergone changes which are given in the following table:

Sl.No.	Section	Assessment Year	% Rate of MAT
1	115JA	1997-98 to 2000-01	30 % of Book Profit
2	115JB	2001-2002 to 2006-07	7.5 % of Book Profit
3	115JB	2007-08 to 2009-10	10% of the book profit.
4	115JB	2010-11	15% of the book profit.
5	115JB	2011-12	18% of the book profit.
6	115JB	2012-13	18.5% of the book profit

Issues regarding administration of MAT

The Book Profit of the different Companies is the basis for administration of MAT. However, the Income Tax Act provides for certain adjustments to the book profit before it is to be considered as the taxable income. These adjustments imply that the net profit as shown in the profit and loss account is to be increased by:

(a) the amount of income-tax paid or payable, and the provision therefor; or

(b) the amounts carried to any reserves, by whatever name called, other than a reserve specified under section 33AC; or

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; or

(d) the amount by way of provision for losses of subsidiary companies; or

(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 [other than the provisions contained in clause (38) thereof] or section 11 or section 12 apply; or

(g) the amount of depreciation,

(h) the amount of deferred tax and the provision therefor,

(i) the amount or amounts set aside as provision for diminution in the value of any asset,

and as reduced by,—

(i) the amount withdrawn from any reserve or provision

(ii) the amount of income to which specified the provisions of section 10 or section 12 apply, if any such amount is credited to the profit and loss account; or (iia) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets); or

(iib) the amount withdrawn from revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia); or

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

(iv) the amount of profits eligible for deduction under section 80HHC,

(v) the amount of profits eligible for deduction under section 80HHE

(vi) the amount of profits eligible for deduction under section 80HHF

(vii) the amount of profits of sick industrial company

(viii) the amount of deferred tax, if any such amount is credited to the profit and loss account.

Even though these adjustments have been specified, there are some grey areas which affect the administration of the MAT provisions. These issues are:

A. Whether deduction under section 80HHC can be reduced from MAT

Section 80 HHC of the Income Tax Act provides for the deduction of the profits from the export of goods or merchandise by an assessee. Prior to Assessment Year 2005-06, the profits of an assessee eligible for deduction under section 80HHC were deductible from the 'Book Profit' calculated for MAT purpose. With effect from AY 2005-06 section 80HHC has been deleted but no alteration has been made to section 115JB and the assesses continue to claim the deduction at 100% of what would have been admissible under the previously existing section 80HHC.

Judicial Pronouncements:

i. JCIT (ITAT Mum) ITA No. 2747/2006 dated 16.07.10: It was held that where the gross total income is nil, deduction under section 80HHC is not allowable and the book profit has to be determined without considering the deduction.

ii. Ajanta Pharma ltd. Vs CIT (SC) civil appeal No. 7518 of 2010: It was held that for determining the "book profits", the net profits as shown in the P&L Account have to be reduced by the amount of profits eligible for deduction or by the amount of deduction under Section 80HHC.

iii. Glenmark laboratories Vs DCIT (ITAT ITA No 415/07 dated 9.11.09: It was held that that Assessee's claim of deduction u/s 80HHC while computing the book profit u/s 115JB is allowable.

iv. Above judgements hold that the deduction u/s 80HHC can be reduced while computing book profit for MAT even if normal deduction u/s 80HHC is not available since AY 2005-06.

v. CIT Vs Packworth Udyog (Kerala HC full bench) ITA No. 930 of 2009 dated 30.11.10 and CIT Vs Al-Kabeer Exports 233 CTR 433: It was held that deduction is allowable as per the normal provisions and not on the basis of profit as per profit and loss account.

B. Whether capital gains is to be routed through Profit & Loss Account for computing book profit.

Exempt capital gains are directly taken to balance sheet without routing through profit and loss account in order to escape MAT.

Judicial Pronouncements:

i. Apollo Tyres vs CIT (SC): It was held that assessing officer has no power to alter the accounts prepared as per Company's Act.

ii. Kinetic Motor Co. Ltd. v. DCIT [2002] 262 ITR 330 (Bom HC): It was held that the AO cannot make any adjustments to the book profits of the taxpayer once it was certified by the auditors.

iii. Bombay Diamond Co. ltd. Vs CIT (ITAT Mum) ITA No 7488/07 dated 30.11.09: It was held that if the books of accounts are not prepared in accordance with part II and part III of schedule VI to the Companies Act, 1956, the Assessing Officer can make adjustment in the book profits under section 115JB even if the books of accounts are audited or certified by the auditors and accepted by the shareholders.

iv. Growth Avenues Securities Vs DCIT (ITAT Delhi) dated 16.12.09: It was held that even exempt capital gains are includible in "book profits."

v. Rain commodities Vs DCIT (ITAT Hyd. Special Bench) dated 9.07.10: It was held that even exempt income is taxable under MAT.

The first three judgements pertain to the powers of the Assessing Officer to make adjustments to the accounts in the interest of revenue. In the first two instances, the AO has been debarred from making any adjustments. In the third case the AO has been authorized to make the adjustments. The fourth and the fifth judgements are more specific to the issue under examination and authorize the AO to add back the exempt capital gains to the book profits.

C. Whether interest u/s 234B and 234 C is leviable on MAT?

Judicial Pronouncements:

- Snowcem India ltd. Vs DCIT (Bom HC) appeal 238/2006 dated 5.01.09: It was held that interest is not leviable for MAT.
- Rolta India Ltd. Vs JCIT (SC) dated 8.01.11: It was held that even MAT companies are liable for advance tax and interest u/s 234B and u/s 234C is leviable.

D. Whether MAT applicable on Banks?

Judicial Pronouncements:

Banks claim that they are guided by Banking Regulation Act and under section 211(2) of the IT Act they are exempt to prepare books of accounts as per schedule VI of Company Act 1956 and hence MAT is not applicable to them. The view has been upheld in the decision of Krung Thai Bank PCL Vs JDIT (ITAT Mum) No. 3390/09 dated 30.09.10.

E. Whether MAT credit is to be reduced before surcharge and education cess while computation of tax?

i. M/s Tulsiyan NEC Ltd Vs CIT (Supreme Court) on 17.12.10: It was held that MAT credit is to be given before computing advance tax shortfall for interest u/s 234B.

ii. M/s Classic Shares and Stock Broking services Vs ACIT vide ITA No. 5869 of 2007: It was held that MAT credit is to be reduced from the tax computed after surcharge and education cess.

The above two judicial pronouncements hold differently. However, the first case settles the issue as the ruling has come from the Supreme Court. However, even after the settlement, the ITD system (Computerised Assessment Processing System of the Income Tax Deprtment) gives MAT credit prior to levying surcharge and education cess. This is vindicated from Part B TTI of ITR 7 applicable for companies wherein MAT credit and 88E rebate is given prior to levying surcharge and education cess.

Conclusion

The MAT provisions are a balancing feature of the IT Act which takes care of the so called' Zero Tax Companies'. Over the years these provisions have been successful in supplementing the revenue. However, some clarity is essential in respect of the issues mentioned above. As The Direct Taxes Code is by and large sticking to the existing principles of administration of MAT, it would be beneficial if such issues are clarified in the final draft.

Supreme Audit Institution - Denmark

This international corner features information about structure, roles and practices being followed by other SAI's particularly in the field of revenue audit. SAI Denmark is being presented as third in the series.

The National Audit Office - Denmark

Rigsrevisionen – Audit Institution headed by Auditor General

Rigsrevisionen, the Supreme Audit Institution of Denmark, is an independent institution under the authority of the Folketing-Danish Parliament. The Auditor General is appointed by the President of the Folketing upon the recommendation of the PAC, as per Section 1 of the Auditor General's Act.

Rigsrevisionen was established on 1 January 1976 through a merger of the 2 audit departments, after the passing of the Auditor General's Act of 1975. In 1991, Rigsrevisionen was transferred from the Ministry of Economic Affairs to the Folketing. The bill on the amendments of the Auditor General's Act was drafted by the PAC, introduced by the Presidency of Parliament and carried unanimously by the Folketing.

Rigsrevisionen employs about 270 people, working within a wide range of disciplines reflecting the many tasks that the institution is performing. Rigsrevisionen publishes the results of its examinations.

Independence

There is no prescribed qualification for appointment of the Head of SAI. He is appointed without a fixed tenure but up to a compulsory retirement age of 70 years.

The National Audit Office of Denmark is an independent institution organizationally placed under the Parliament. The Public Accounts Committee is the only body that may request an examination to be carried out. The Public Accounts Committee makes use of the

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This is based on information compiled from the official website of the National Audit Office of Denmark by Shri R. K. Sharma, Senior Administrative Officer in the Office of Comptroller and Auditor General of India, New Delhi.

Auditor General's reports etc. as the basis for its work. The Committee submits the reports to the Parliament. The Auditor General recommends the budget to the Public Accounts Committee, who recommends it to the Chairman of the Parliament.

Accountability

There are mechanisms to secure accountability of the SAI, such as:

1. The Auditor General's Act includes rules for the Auditor General on authority, independence, content of audit and procedures.
2. The Instruction for the Auditor General outlines the Auditor General's relations with the public.
3. All reports, and any comments the Public Accounts Committee may have, are made public.

Jurisdiction

The SAI has jurisdiction over

- Public utilities/agencies providing public services even if they are privately funded and managed
- Regulatory bodies (e.g. Privatization, Environment, Pollution Control, Telecom etc.)

Audit Procedures and Functions

The SAI prescribes Financial, Compliance, Performance & EDP audit in its scope of audit. The power to perform these audits is mandated by the law governing the SAI.

The report (findings) is presented to the Parliament's Public Accounts Committee, which forwards it, with any comments, to the Parliament and Minister concerned.

The SAI does not require following any specific standards, practices and guidelines in conducting audit and reporting. The National Audit Office of Denmark audits on the basis of internal guidelines in order to ensure quality and a homogeneously performed audit.

The SAI also has an advisory role. The Auditor General's Act requires the Auditor General to assist the ministries in the organizing of accounting and internal accounting control.

Organization

SAI is constituted as an audit office with monocratic status i.e. with an Auditor General or equivalent as head. It is stipulated in the

Auditor General's Act that the Auditor General is independent in the performance of his duties. The Auditor General is responsible for the SAI's day-to-day functioning. The SAI is empowered to engage external auditors/agencies/consultants as required.

Taxation in Denmark

Taxation in Denmark is governed by Tax ministry of Denmark, which is headed by Tax Minister, who is a member of the Cabinet. The Danish Tax minister is responsible for areas concerning taxes and tariff, as well as labour marked funds. The tax authorities are organized into four different functions: Legislation, Administration, Assessments and Appeals.

Legislation

The Department in the Ministry of Taxation functions as a secretariat for the Minister of Taxation. The Department draws up legislation proposals for the Minister on behalf of the Government. It has no influence on specific individual cases and therefore has no authority regarding specific tax assessments.

Administration

The administrative function comes under SKAT and the municipal service centre. SKAT comprises one main centre, 30 tax centres, a Customer centre and a Payment centre. The various municipalities deal with citizens' tax queries alongside the municipality s general service functions for citizens. Each citizen can decide individually which tax centre or municipal service department to contact.

Property Assessment

The property assessment function comes under SKAT. Every other year, a property value and plot value is assessed for all propereties and this forms the basis of property tax . In the years when a property assessment is not carried out, an annual adjustment takes place.

Preliminary income assessment forms, income tax returns and annual tax statements

SKAT sends out the preliminary income assessment forms, income tax returns and the annual tax statements. The preliminary income assessment form is sent out in November for the following calendar year. This form is the basis for calculating preliminary tax, tax at source, which has to be paid in a tax year. Regular wage earners receive a tax card with the preliminary income assessment form, which informs the employer of the amount that must be deducted in tax before the wage is paid.

The Income tax return is sent out in March-April in the year following the tax year. Most citizens receive the normal income tax return, which the tax authorities have completed in advance with figures received from employers, financial institutions etc. If there are corrections to be made or extra information to be added to the income tax return, the tax centre or the municipal service centre must be told about this either in writing, by telephone or via the internet in the same way as for changes to the preliminary income assessment form. Any changes must be made by 1st May at the latest.

The Annual tax statement is a statement showing how much a person has already paid in provisional tax and how much tax actually needs to be paid based on the income tax return. The annual tax statement shows whether a person will receive a tax refund or needs to pay residual tax.

Appeals

The appeal function covers the local tax appeals tribunal, the National Tax Tribunal and the courts. Citizens can choose to either appeal to the local tax appeals tribunal or directly to the National Tax Tribunal against decisions made by the local tax appeals tribunals, SKAT and the Assessment Committee.

Performance Audits/ Studies by Rigsrevisionen in Revenue Audit

Major studies conducted by Rigsrevisionen relating to Tax administration during the recent past are as under:

The merger of debt collection into SKAT (Danish Tax and Customs Administration)-June-2010

This report is about the merger of the national and the municipal tax administration collection authorities into the Danish Tax and Customs Administration (SKAT). The results of the examinations/main findings and conclusions are as under:

- Overall, Rigsrevisionen’s report shows that at the beginning of 2010, i.e. four and a half years after the merger, several of the objectives and prerequisites of the merger of debt collection had not been met by SKAT.
- The tax regions (part of SKAT) are not complying in full with the strategies and plans laid down by SKAT

- The framework for the management of debt collection was not established till 2009,
- The mapping of staff's competencies, to form part of the work going forward, was not implemented till 2009 either
- An IT project "One Common System for Enforced Collection" (EFI) to underpin the debt collection effort, is currently four and a half years overdue.
- SKAT is unable to provide evidence of amounts collected annually, nor can SKAT document the effectiveness of the various methods of recovering debts, or the scope of its activities. It is Rigsrevisionen's assessment that SKAT is missing basic management information in this area and information that could support effective execution of its tasks.
- Total debts have increased in the period following the merger. The increase in tax arrears can be ascribed partly to the financial recession that occurred in 2008. Furthermore, SKAT has pointed to the fact that the enhancement of procedural justice has also increased the level of debt.
- However, according to Rigsrevisionen's audit there are indications that SKAT's debt collection activities have been inadequate. SKAT's level of activity in the debt recovery areas where data are available has declined in the years following the merger, and the quality of the effort made to collect outstanding payments has in several cases been inadequate.

SKAT's (Danish tax authorities) compliance strategy-December 2008

This report is about SKAT's (Danish tax authority) objectives, strategy, and planning of the activities directed at citizens and companies that are not paying the taxes required by law. The examination was initiated in February 2008 at Rigservisionen's initiative and the results of the examination/findings and conclusions are as under:

- SKAT's objectives for the compliance strategy should be developed further to enable the establishment of a coherent performance management concept covering all taxes and taxpayers.
- The compliance strategy which is based on international good practice recommendations regarding the preventive activities should be made clear as to how SKAT decides whether to use control or preventive measures.
- SKAT's planning of the activities and the system used by SKAT to segment the companies into partners and adversaries should be developed further.

Transparency of Tax Expenditures (tax exemptions, allowances, etc.)- October-2007

This report deals with Rigsrevisionen's examination of the transparency of Danish tax expenditures. Results of the examination/main findings and conclusions are as under:

- Though in recent years, the quality of preparatory legislative work has improved and it generally creates transparency around tax expenditures. Still, transparency can be even further improved if the impact of tax expenditures on tax revenue is included in the budget process.
- Rigsrevisionen is of the opinion that the Ministry of Taxation should make a definition of tax expenditures on the basis of international guide-lines and practice in comparable countries.
- The transparency of tax expenditures will be enhanced if explanatory notes to bills on tax expenditures inform of significant uncertainties related to the estimation of revenue loss. Transparency will also improve if administrative costs resulting from tax expenditures are estimated more accurately.
- Rigsrevisionen finds that the transparency of tax expenditures can be considerably improved if revenue losses, administrative costs and the impact of the tax expenditure programs are being reported.

The official website of the National Audit Office-Denmark is www.rigsrevisionen.dk

From the Archives

The second separate Revenue Audit report of the Central Government was brought out in 1964. This series provides a glimpse of the second Revenue Audit Report (Civil), 1962-63 sourced from our organizational archives.

AUDIT REPORT, 1964

ON

Revenue Receipts

CHAPTER I

REVENUE POSITION AND MAIN HEADS OF REVENUE

The total revenue receipts of the Government of India for the year 1962-63 amounted to Rs. 1585·30 crores against an anticipated revenue of Rs. 1380·93 crores, showing an excess of Rs. 204·37 crores over the Budget Estimates. The total revenue realisation this year is more than double of the total revenue receipts in 1957-58 when the amount realised was Rs. 728·12 crores. The revenue receipts rose sharply from 1960-61. The total receipts for 1962-63 have registered an increase of Rs. 613·53 crores over that in 1960-61, *i.e.*, about 63 per cent.

2. Of the total receipts of Rs. 1585·30 crores for 1962-63, Rs. 1180·89 crores represent tax revenues—receipts under Customs, Union Excise, Corporation tax, Income tax, Estate Duty, Wealth tax, Expenditure Tax, Gift Tax, Land Revenue, State Excise Duties, Taxes on Vehicles, Sales Tax and other taxes and duties—and the balance represents receipts from non-tax heads. The bulk of the variation of Rs. 204·37 crores between the Actuals and Budget Estimates in 1962-63 occurred under the four major sources of tax revenue, *viz.*, Customs, Union Excise, Corporation and Income taxes. The receipts under these heads exceeded the Estimates by Rs. 176·99 crores. The figures showing the Budget Estimates and the Actuals under both tax and non-tax revenue heads for the past three years are indicated below:—

(A) *Tax Revenues:*

(Rupees in crores)

Year	Budget	Actuals	Variation	Percentage
1960-61	747·53	801·55	54·02	7·23
1961-62	835·05	951·97	116·92	14·00
962-63	998·75	1180·89	182·14	18·24

The variation of Actuals from Budget figure during the year 1962-63 is the highest ever recorded over the past 10 years.

Important Circulars issued by the CBDT during April 2011 to June 2011

Sl. No.	Circular / Instruction No.	Subject/ (Letter reference vide which Instruction was issued)
1.	1/2011	Explanatory notes on the provisions of the Finance Act, 2010 *(F. No. 142/1/2011-SO(TPL) dated 6-4-2011)*
2.	3/2011	In order to avoid the differences between the TDS certificates in Form No. 16A and Form No. 26 AS, which contains TDS details of the deductee based on the TDS statement (e-TDS statement) filed electronically by the deductor, it has been decided that the deductors may issue TDS certificate in Form No. 16A generated through Tax Information Network Central System and which is downloaded from the TIN website with a unique TDS certificate number. The authentication shall be made by digital signature or manual signature depending on the nature of the deductor. *(F. No. 275/34/2011-(IT-B) dated 13-5-2011)*

Important Instructions issued by the CBDT during March 2011 to June 2011

Sl. No.	Instruction No.	Subject/ (Letter reference vide which Instruction was issued)
1.	4/2011	This instruction has been issued by CBDT as per advice received from the Ld. Attorney General of India to work towards a 'zero delay regime' in the matter of filing of appeals/ SLPs. This has been issued in supersession of all instructions on the subject of filing of appeals/ special leave petitions by the Income tax Department in the Supreme Court. New timelines have been fixed and revised proforma has been introduced. Institutional mechanism for processing proposals for appeals/SLPs to Supreme Court has been explained. *(F. No. 279/Misc/M-20/2011-ITJ dated 9-3-2011)*
	5/2011	This instruction has been issued with reference to the observation made by the Honorable Supreme Court in an order dated 12-8-2010 in the case of CIT Delhi Vs Bharti Cellular Ltd & etc.

		In all cases that are taken up for scrutiny, the Assessing Officers/ Transfer Pricing Officers should frame assessments only after bringing on record appropriate technical evidence that may be required in a case. The process of identification of such cases and initiation of the proceedings to obtain the technical evidence should be taken up well in advance before the date of limitation, under intimation to the CCIT/DGIT concerned. The CCIT/DGIT will look into the complexities of the technical issues and monitor the progress of the case and if required, assist in obtaining the opinion of the technical experts in the relevant field of expertise. Cases where references are made to the expert, intimation should be sent to the Board through Member (IT) in the prescribed proforma. *(F. No. 225/61/2011-ITA-II dated 30-3-2011)*
	6/2011	The revised monetary limits of cases to be assessed by DCsIT/ ACsIT in Metro and mofussil areas were laid down in Instruction No. 1/2011. In this Instruction, it has been decided that if the application of the limits prescribed in Instruction No 1 in any CIT charge leads to a substantially uneven distribution of workload between DCsIT and ACsIT and ITOs, the DCIT / ACIT may adjust the above limits by an amount upto Rs. 5 lakh. *(F. No. 187/12/2010-ITA-I dated 8-4-2011)*
	7/2011	In order to achieve a 'zero delay regime', in the matter of appeals to High Courts, this instruction has been issued. The following are the main points: The jurisdictional CCIT shall be the authority to decide whether to contest an order of the ITAT in the light of the facts and circumstances of a particular case and the statutory provisions. Once the CCIT communicates his decision, it shall be the responsibility of the CIT to ensure timely and proper filing of appeal in High Court and consequential follow up actions. Timelines for filing appeals before High Court u/s 260 A has been fixed. As per Annexure I to the Instruction, the appeal has to be filed within a period of 115 days from the date of receipt of ITAT order in the office of the CIT. A register shall be maintained in the office of the CIT (Annexure IV) Quarterly Report of appeals filed in High Court shall be furnished by the CIT to the CCIT by the 15th of the month following the quarter which shall be compiled and sent to the DGIT(L&R) in digital form by e-mail before the end of the month by the CCIT. The DGIT(L&R) shall put up the analysis of such reports to the Member(A&J) with his comments. *(F No. 279/Misc./M-42/2011-ITJ dated 24-5-2011)*

Judgements on Assessees Engaged in Information Technology sector-I

Income Tax Judicial Rulings			
Sl No	**Citation**	**Case**	**Brief of judgement**
1	*Delhi High Court; 323 ITR 373; Decision dated 19/4/2010*	Kas Movie Makers (P) Limited. vs Commissioner Of Income-Tax	Assessee claimed that he was engaged in the business of manufacture of television film software, for which professional services were provided by it to the foreign clients for shooting cinematograph films in India. For the assessment years in question, the appellant claimed deduction under section 80HHF on the ground that it was engaged in the business of transfer, by any means, out of India, of film software, television software, music software, television news software, including telecast rights. Assessing Officer, found that the assessee was providing services such as arrangement of raw material, engaging technicians, hiring equipment, etc., the film was shot by foreigners who brought their own equipment such as camera, motion picture stock and took the same back while leaving India and, therefore, deduction under section 80HHF was not available as assessee was not the producer of software. Commissioner of Income-tax (Appeals) ruled in favour of the assessee-company. On further appeal by Revenue the ITAT whilst restoring the order of the assessing officer held that it was neither a case of export nor of transfer by any means, out of India, of any film software. Delhi High Court upheld the ruling of the ITAT.
2	*Karnataka High Court; 232 CTR 20 / 192 TAXMANN 80; Decision dated 25/9/2009*	Commissioner Of Income-tax (International Taxation) And Another. vs Sonata Information Technology Ltd.	The respondents in the present appeals, who are the resident payers of the amount, had, deducted tax and remitted the amount, but later disputed their liability for making such payment and for such purpose had preferred appeals under s. 248 of the Act. The questions framed in front of the High Court were: a. Whether the Tribunal was correct in the in holding that the assessee is, not liable to

			deduct TDS in respect of payments made for purchase of software as the same cannot be treated as income liable to tax in India as royally or scientific work under s. 9 of the Act read with DTAA and treaties. *Not correct, against the assessee and in favour of the Revenue* b. Whether the Tribunal was correct in holding that since the assessee had purchased only a light to use the copyright i.e., the software and not the entire copyright itself, the payment cannot be treated as royalty as per the DTAA and treaties which is beneficial to the assessee and consequently s. 9 of the Act should not take into consideration. *The question did not arise for examination as indicated in our judgment dt. 24th Sept., 2009 in IT Appeal No. 2808 of2005 and connected matters and therefore answered in the negative, against the assessee and in favour of the Revenue* c. Whether the Tribunal was correct in holding that the payment partakes the character of purchase and sale of goods and therefore cannot be treated as royalty payment liable to income tax *The Tribunal was not correct in opining so. Answered in the negative, against the assessee and in favour of the Revenue* The scope of the provisions of section 195, is not a procedure for assessment of the tax liability of a non-resident recipient. It is a provision contemplated for ensuring a resident payer deducts certain amount at the threshold at the time of the payment and remits it to the account of the Revenue for covering a possible income-tax liability of the non-resident recipient.
3	*Kerala High Court; 227 CTR 486 / 186 TAXMANN 328 Decision dated 16/10/2009*	Infoparks. vs Deputy Commissioner Of Income-Tax	Whether the refusal on the part of the respondents/Departmental authorities to issue exemption certificate under s. 197 of the IT Act to the petioners, in view of the amendment brought about by incorporating a 'proviso' to s. 2(15) w.e.f. 1st April, 2009 is justified; forms the common issue. The petitioners are State Government

			owned societies registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act (Act XII of 1955), with the main object of setting up of Information Technology Parks in Kerala, among other goals. Pursuant to the said objective, the petitioners acquired lands and constructed buildings which have been let out to various information technology companies for rent. Petitioners' institutions were got registered as a charitable trust under s. 12A of the Act and exemption was obtained under s. 11 of the IT Act in respect of the income derived by them on letting out the premises. As there was no tax liability in respect of the income derived on letting out the premises, having been assigned the status as a charitable purpose, the petitioners submitted application before the Departmental authorities for issuance of a certificate under s. 197(1) of the Act for non-deduction of tax at source. After considering the matter, the respondents/Departmental authorities rejected the applications for issuance of the certificate under s. 197(1), which is under challenge in these writ petitions. The fact that such activities being pursued are on behalf of the Government or on the orders of the Government is of no significance. As a whole, since the operation is in a business oriented manner, it will definitely come within the fourth limb of the amended s. 2(15), where the prohibition of activity in the nature of trade, commerce or business is specified and hence not entitled to any exemption. Whether the petitioners are entitled to get the benefit of exemption in view of the activity being pursued by them, in respect of the period after the amendment of s. 2(15) w.e.f. 1st April, 2009, is a matter to be looked into and decided by the Departmental authorities in the course of adjudication, at the time of assessment. For the very same reason, refusing to issue any certificate under s. 197(1) of the Act, are perfectly within the four walls of the law and not assailable under any circumstance. No interference is called for. Both the writ petitions fail and are dismissed accordingly.

4	*2010 AAR 1 / 321 ITR 411 Decision dated 29/1/2010*	Gmp International Gmbh. (In Re *Authority on Advance Rulings)*	*Issue: Whether the amount received by the applicant from the Government of Tamil Nadu under the contract is essentially in the nature of "FTS" within the meaning of Expln. 2 to s. 9(1)(vii) of the IT Act, 1961 r/w art. 12.4 of DTAA and cannot be regarded as consideration for the sale of designs and drawings?* The applicant is a company incorporated under the laws of Germany and is engaged in the business of architectural designs and drawings. In response to a tender invited by the Government of Tamil Nadu for preparation of designs and drawings for the construction of a huge complex for Tamil Nadu legislative assembly, the applicant submitted the tender and it was selected as "consultant for supply of the architectural designs and drawings". An agreement was entered into on 15th Feb., 2008 for the supply of designs and drawings for block A. The following questions have been formulated by the applicant for the purpose of seeking advance ruling: "1. Whether on the facts and circumstances of the case the amounts received by the applicant outside India from the Public Works Department, Government of Tamil Nadu, are in consideration for the sale of designs and drawings, being a capital asset transferred outside India, and whether such receipts would be liable to tax in India under the IT Act, 1961? 2. Whether on the facts and circumstances of the case the amounts received by the applicant from the Public Works Department, Government of Tamil Nadu is taxable as "FTS" under s. 9(1)(vii) of the IT Act, 1961 r/w art. 12-FTS under the DTAA entered into between India and Germany? 3. Whether on the facts and circumstances of the case there is a PE of the applicant in India under the provisions of the DTAA between India and Germany? 4. Whether on the facts and circumstances if the answer to question No. 3 is in the affirmative, whether the amounts received by the applicant are attributable to such PE? 5. If the answer to question No. 3 is in the affirmative, whether the income attributable

			to the PE would not be restricted to the amounts received by the applicant in India and does not include the amounts received by the sub-contractor from the Public Works Department, Government of Tamil Nadu? 6. If the answer to question No. 3 is in the affirmative and the answer to question No. 5 is negative, whether the consultancy charges paid to the sub-contractor on which the Public Works Department, Government of Tamil Nadu deducts tax at source, is a permissible deduction from the income of the applicant?" The crux of the applicant's case is that the consideration received by the applicant under the contract is not in the nature of fees for technical services (FTS), if the scope of work excluding the sub-contracted works is taken into account. At best, the consideration paid under the agreement is liable to be taxed as business profits in India. However, as the applicant does not have a PE in India, the receipts cannot be subjected to Indian income-tax by virtue of art. 7.1 of the DTAA between India and Federal Republic of Germany. 15. The answers to the questions are as follows: Q. Nos. (1) and (2): The amount received by the applicant from the Government of Tamil Nadu under the contract is essentially in the nature of "FTS" within the meaning of Expln. 2 to s. 9(1)(vii) of the IT Act, 1961 r/w art. 12.4 of DTAA and cannot be regarded as consideration for the sale of designs and drawings. Question Nos. (1) and (2) are answered accordingly. Q. No. (3): On the facts presented by the applicant, it must be held that the applicant has no PE in India. The question is answered in the negative. Q. Nos. (4), (5) and (6): In view of answer to the 3rd question, these questions need not be answered.
5	*Bombay High Court; 326 ITR 56 Decision dated*	Commissioner Of Income-Tax. vs Asian Star Company	The appeal by the Revenue under s. 260A of the IT Act, 1961 raises a question of law as regards the interpretation of the provisions of s. 80HHC. The question of law has been

	18/3/2010, 19/3/2010	Limited	formulated as follows in the memo of appeal: "Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was correct in holding that net interest on fixed deposits in banks received by the assessee should be considered for the purpose of working out the deduction u/s 80HHC and not the gross interest?" The contention of the Revenue is that for computing the profits and gains of the business for the purposes of s. 80HHC, *ninety per cent* or the receipts by way of interest has to be reduced from the profits and gains of business or profession and the receipts that have to be reduced are the gross receipts. Consequently, gross receipts by way of interest cannot be netted against expenditure which is laid out for the earning of those receipts. On the other hand, the contention of the assessee is that s. 80HHC must have a purposive interpretation and the reduction that is to be applied of *ninety per cent* of the receipts, must relate to the inclusion of receipts in the profits and gains of business or profession which is comprised both of receipts and the expenditure which is incurred directly for the purpose of earning the receipts. High Court held that the Tribunal was not justified in coming to the conclusion that the net interest on fixed deposits in the bank received by the assessee should be considered for the purposes of working out the deduction under s. 80HHC and not the gross interest. The question of law would accordingly stand answered in favour of the Revenue and against the assessee.

Judgements on assessees engaged in Information Technology sector-II

Central Excise and Service Tax related Judicial Rulings

Sl No	Citation	Case	Brief of judgement
1	2011 (22) STR 129(Mad.)	Kasturi & Sons Ltd. Vs. Union of India	Maintenance of Software is covered under 'Information Technology Service' which became taxable from 16.05.2008 and such services were not taxable prior to 16.05.2008 under 'Business Auxiliary Service'.
2	2011(22) STR 185 (Tri.-Mumbai)	EBZ Online Pvt. Ltd. Vs. Comm. of C.Ex., Pune	Services rendered in relation to application software licensed to client-banks under Annual Maintenance Contract are classifiable under 'Information Technology Service' and the same are not taxable prior to 16.05.2008 under 'Management, Maintenance or Repair Service'
3	2011(21) STR 614 (Tri.-Bang.)	Diksha Technologies Pvt. Ltd. Vs. Comm. of C.Ex., Bangalore	Deployment of Software Personnel to clients for software development and maintenance is taxable under 'Manpower Recruitment or Supply Agency service'.