VOLUME 62 | No. 2 | AUGUST 2013 | ₹ 100

THE CHARTERED ACCOUNTANT JOURNAL

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

SET UP BY AN ACT OF PARLIAMENT

- Interview with Kumar Mangalam Birla
- CA Day Celebrations
- Public Finance: Opportunities for CAs
- Social Audit - An Indian Experience

Values Virtues Vision

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₹ 100

Government Lays Out a Safety Net for the Rupee

The doomsayers have been having a field day ever since the rupee went into freefall. But their voices have been drowned out ever since the government got its act together and managed to stem the rapid plunge in our national currency. Reports all over the mainstream media confirm that the Finance Ministry has been taking a proactive role in tandem with the Planning Commission. Finance Minister P Chidambaram, has rightly told the markets not to overreact in panic, since currency fluctuations have been happening all over the globe. Indeed the rupee has depreciated by approximately 7.5% this year, but so have several currencies across continents. That includes Indonesian rupiah (4.5%), Brazilian real (4.7%), Philippine peso (5.5%), Turkish lira (6.1%), Korean won (6.2%), Russian ruble (6.9%) and South African rand (17.2%), say reports. As such, when compared to its peers, the Rupee has not performed badly.

Though the situation remains difficult, the worst seems to be over with clear signs of the Rupee bouncing back, slowly but surely after the RBI and Sebi took steps to curb volatility, while banks and exporters sold the US currency. Market regulator SEBI has also been working in close collaboration with the central bank, the RBI. The RBI has been selling dollars and buying excess rupees from the system, helping the currency stay afloat. The apex bank has also come out with clear guidelines to curb speculation in the falling rupee—and these diktats have commendably managed to curb the fall. According to RBI governor D Subbarao the global factors have contributed to the currency's fall. "It's difficult to say how long that effect (from worldwide factors) will persist because these factors (are) beyond our control," he said. This factor has also led to the apex bank withholding the option to cut interest rates to boost a sagging economy.

Ergo, the Indian regulators have their collective task cut out for them. Among the many pitfalls facing the government's carefully charted strategy is the precarious situation of our foreign exchange reserves. The forex kitty has dwindled to a mere $260 billion dollars—and reports have it that around $172 billion worth of debt will come in for repayment over the next 12 months. And this is just one of the many difficult situations that lie ahead. Inflation has also been difficult to tame.

SEBI has also clamped down hard on open position limits on members to eliminate rupee speculation. "In consultation with the RBI and in view of the recent turbulent phase of extreme volatility in dollar-rupee exchange rate, it has been decided to curtail position limits and increase margin requirements for currency derivatives," the capital market regulator said in a statement recently. It is welcome that the government is in active fire-fighting mode and Chief Economic Adviser Raghuram Rajan has indicated that Government might be considering India's first sovereign bonds issuance.

On the global front, at G-20 summit earlier this year, the world leaders had also declared to move towards more market determined exchange rate system and enhance exchange rate flexibility to reflect underlying economic fundamentals and refrain from competitive devaluation of currencies. It was agreed that advanced economies, including those with reserve currencies, will be vigilant against excess volatility and disorderly movement in exchange rates. India has also agreed to refrain from "competitive devaluation" and bring in exchange rate flexibility to ensure that no country gets undue advantage.

Amid the gloom and boom, a few export-oriented sectors are looking forward to some better days. Financial institutions are also targeting NRIs, who have seen their net worth in rupees rapidly climb. A few financial analysts are also predicting that India's macroeconomic indicators remain fundamentally robust over the long run. According to a leading financial analytics company, the Indian economy "will be able to weather currency risks and continue to grow" over the next few months.

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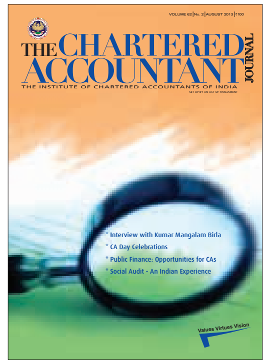

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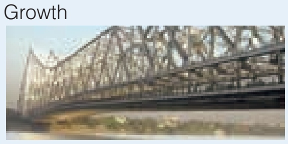


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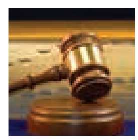


ICAI NEWS

EVENTS

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THE CHARTERED ACCOUNTANT JOURNAL
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
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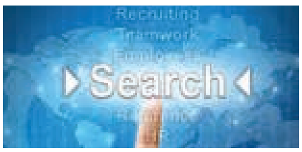
IN CONVERSATION

REPORT



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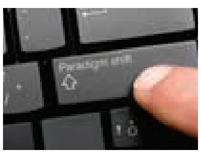

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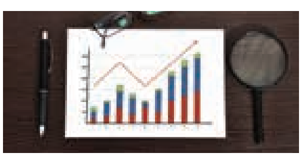

INTERNATIONAL TAXATION

BANKING AND FINANCE

INDUSTRY SPECIFIC

CAPITAL MARKET

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CA. Subodh Kumar Agrawal, President, ICAI

Dear Friends:

It is July and our celebrations that commenced on the first of this month, are still on. All Regional Councils, Branches and Chapters of the Institute have been celebrating the foundation day of accountancy profession since July 1. However, celebrations like this also call for a careful introspection in line with the ever-increasing expectations of our society. During the CA Day celebrations in New Delhi, Shri Sachin Pilot, Union Minister of State for Corporate Affairs (I/c) acknowledged that our Institute has set high standards since its inception, and desired that the ICAI needs *to intensify its efforts to upgrade the skills of accountancy professionals and be a centre of excellence in research*, and that it must scale up its capacities through appropriate academic and professional tie-ups. He has advised us to continue being inquisitive, skeptical and vigorous in our profession. He assured that the Ministry would be our partners in these efforts. Another acknowledgement from his side that *accountancy profession has come a long way with a distinguished history of guarding the integrity of financial statements of the companies*, was quite gratifying.

Growth must correspond to rising employment opportunity. Development should be inclusive and environment-friendly, with an aim to reduce poverty. In a thought-provoking address, Dr. C. Rangarajan, Chairman of Economic Advisory Council to Prime Minister of India, informed us about the measures taken by the Government of India including that to increase foreign institutional and direct investments in infrastructure sectors, etc. He had joined us too in our celebrations of the CA Day. While he was very happy to be a part of it, he praised us for playing a critical role in the effective functioning of the economy. From our side, I brought to the fore, various activities undertaken by the Institute and gave an assurance to our Guests that we will continue to extend our assistance and support in all endeavours of our Government.

Amidst the celebrations, I am always aware of our responsibility we have towards our society. I strongly agree with John F. Kennedy that *equality of opportunity does not mean equality of* *responsibility*, i.e. being better-placed in our society, we have to give back to our society in that proportion.

Uttarakhand Crisis: Rise in Our CSR Acts

Against my last month's appeal to donate towards the Uttrakhand crisis, we have collected so far about ₹48 lakh, in which about ₹4.50 lakh has been contributed by ICAI employees. It is encouraging to note that our Central Council members have also contributed. I commend our employees, members, and all other stakeholders for their humane generosity. However, I repeat my request to those, who have not yet contributed, to contribute for this emergent and noble cause. An appeal in this regard has been published in this issue of Journal under *ICAI News*. We want to communicate to our beloved nation that we understand our responsibility and we are not ignorant of that. Then, as part of our CA Day celebrations activities, we donated about 6,829 units of blood, we planted 10,487 tree saplings and we distributed food, clothes, books, etc., among our fellow citizens-in-need.

Let me update on some of the recent significant professional developments that took place in the past one month:

Meeting with President of India Shri Pranab Mukherjee: Recently, I had an opportunity to meet the Hon'ble President of India Shri Pranab Mukherjee and repeated our promise to serve the interests of our society and nation at large.

Sustained Depreciation of Indian Rupee: As you all are aware, the Indian rupee has depreciated by about 12 per cent since February 2013. Being an import based economy; the sustained depreciation of our rupee has affected our economy and, most of all, foreign investors have become wary to invest in India fearing loss in the value of their investments. FDIs, therefore, have been badly affected. Domestic producers have started increasing prices of their products. According to an estimate by ASSOCHAM, the middle class is among the worst sufferers, where this depreciation has caused an increase of 20 per cent in their monthly expenditure. Middle class in return is trying to cut down on its extravagant expenditure like travel, shopping, dining out, etc., to control the effect of inflated economy. Fortunately, inflation has moderated to less than 5% and good monsoon has given hopes of better position on supply side and better income prospects for our rural class. The good news is that the Government has taken many steps to check this rupee depreciation. It is exploring all possible and available measures, which may also check this rise in product prices. British economist Sir Roy Harrod says: *No economy ever stands still*. We will get back on track soon.

Non-Applicability of SA 700 on Tax-Audit Reports: As the members are aware that all audit reports in respect of audits of financial statements for period beginning on or after 1st April 2012 are to be issued in accordance with the requirements of SA 700 (Revised) - *Forming an Opinion and Reporting on Financial Statements*. We were receiving messages seeking clarification regarding applicability of SA 700 on tax-audit reports, i.e. Form No. 3CA/3CB. Since all tax audit reports are now mandatorily required to be filed online and that the format of tax-audit report is prescribed by the Central Government, the Council recently decided to defer the applicability of SA700 (Revised) on tax-audit report under Section 44AB of the Income-tax Act, 1961 by one year. We will further take up this matter with the Income-tax authorities to effect suitable changes in the forms relating to tax-audit.

Prototype of *Accountancy Museum of India* Installed: I am happy to inform our stakeholders that we have recently installed prototypes of Accountancy Museum of India at all Regional Council offices and Decentralised Offices of the Institute, except at one place where renovation work is in progress. We initiated this installation to spread words about the *Accountancy Museum of India* that is located in our office at Sector-62, Noida, NCR of India. This is our way to pay a befitting tribute to our forefathers who played a key role in shaping the accountancy profession, and to invite members, students and other stakeholders to understand the heritage of accountancy and visit the *Accountancy Museum of India*. My idea behind the installation was also to add an academic (and aesthetic) quotient to our infrastructure. The installation of prototype of the Museum is being extended to other Branches of the Institute as well, and I will keep you updated in this regard.

e-Journal in Indexed-Mode Launched: Recently, on the occasion of CA Day, Shri Sachin Pilot, our Union Corporate Affairs Minister launched our e-Journal, *The Chartered Accountant*, on the ICAI website in an indexed mode to facilitate systematic and convenient categorical search facility. Readers can find now the journals of last 10 years, i.e. June 2002 to June 2012, there. I would request all of you to visit the page, check this facility and avail yourself of the benefit.

International Conference in Kolkata in November 2013: We are organising a two-day International Conference on Accountancy Profession: Emerging Frontiers of Future Growth on November 22-23, 2013, at Science City Auditorium in Kolkata. The topics will cover financial reporting, corporate finance, leadership, IT and global trade development. I would request all our stakeholders to prepare themselves and block the relevant dates to participate in the Conference.

International Conference for CA Students in Kolkata in September 2013: On the lines of International Conference for members, this year, i.e. 2013-14, we have decided to organize an International Conference for CA Students too, which will be held in Kolkata on September 14-15, 2013. Union Minister for Minority Affairs CA. K. Rahman Khan has agreed to be the Chief Guest on the occasion. Students across the world participating in the Conference will create a platform to meet and interact on various issues of common interest. I request all our students to actively participate in the Conference to make this occasion effective and successful.

CPT/Final Examination Results Declared: I am really happy with the way the female students are bettering their results in the CA examinations. This will definitely lead to better female empowerment in our society in the times to come. Female empowerment will ultimately lead to a developed society. I wish to inform that 10.03 per cent, i.e. 2,764 out of 27,556, passed the Chartered Accountants Final Examination in Both-Group category, and 13.79 and 18.65 per cent students have passed the Final Examination in Group-I and Group-II category respectively. In the CPT Common Proficiency Test held in June 2013, a total of 37,489 students out of 138,746, i.e. 27.02 per cent, have passed. Here also, female students have fared better than their male counterparts, i.e. 29.60 per cent against 25.44. While I congratulate all the successful students, I sincerely ask others to identify and work on their weaknesses, reorient their approach to studies, and work harder for their goals.

We can justify our education if we find pleasure working as professionals. We should aim for education in that sense. Education must give us a relaxed attitude while facing the rigours of our profession.

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While I was interacting with Shri Kumar Mangalam Birla and having a tête-à-tête with him, he pointed out to the way institutions today are promoting their students to excel in individual capacity. Students thus inspired come out with flying colours with brilliant individual performances. When they join an organization, the same temperament, i.e. to create individual excellence, continues to guide them. Often, appraisers recognize individual brilliance, at the cost of the organizational effectiveness. They forget that organizations are run by teams. Even if one person becomes inactive, the production will suffer in terms of both quality and quantity. Therefore, promoting individual brilliance is fine, but doing so at the cost of team-culture is not a wise decision at all. All of us would agree that institutions across the field or discipline must take a serious note of this.

Need of the hour is to promote teamwork. However, instinctively, we all understand that this team-culture works like magic. Look at the structure of our family and observe how they function seamlessly when all members effectively play their respective roles. Core production rises when everyone contributes. This also promotes a sense of belonging, unity. We develop an attitude to respect each other.

Let us have respect for each other in our society. *Our Independence Day* (August 15) is also approaching. Let us celebrate independence with the desired sense of responsibility.

Best wishes

CA. Subodh Kumar Agrawal

President, ICAI

New Delhi, July 24, 2013

July 2013 of Journal: A Collector's Issue

I get a lot of pleasure in reading our Institute's magazine. The magazine has been covering latest topics in the national and international realm. The July 2013 special issue was indeed a collector's copy with a series of high quality and highly informative features included in it. All the articles were *par excellence* while the features like 'Excellence with a difference,' '64 Momentous Years,' and 'Social Responsibility' stole the show. The articles like 'Chartered Accountants and Social Responsibility' are the need of the hour. The accounting profession of India has travelled long years from 1949 to 2013 and every time it has successfully taken on the challenges of the ever-changing world. It has stood the test of changes and has been quite alive to its social responsibilities. The motto "Pride of Service in Preference to Personal Gain" is being lived by a majority of accounting professionals. We need to highlight the social responsibility contributions being made by Chartered Accountants.

-CA. Chakravarthy Srinivasan, Nagpur

The July 2013 special issue of the journal, as indicated in its excellent editorial, really proved to be a collector's copy, beautifully covering the past, present and future perspectives of the accountancy profession in India. All the articles authored by renowned authors of national and international fame under the feature titled 'Vision' were a must-read. The coverage of rare achievements in different walks of life by some chartered accountants under 'Excellence with a difference' feature was very interesting and informative reading, bring into the limelight a different face of the accounting fraternity in India. The feature '64 Momentous Years' summed up the highlights of the achievements of ICAI and CA fraternity over the years and was beautifully complemented by rare historic photographs of yesteryears of the profession. Keep up the good show.

-CA. S Jain

Special Issue on Companies Bill 2012 was Excellent

I am working in corporates for the last two years with non-COP status and I found the May, 2013 special issue on Companies Bill 2012 to be very informative and knowledge enhancing for all. And last but not the least, *The Chartered Accountant* e-journal on mobile is also very helpful and informative because it has been my monthly routine to read the CA Journal on on-line or off-line basis, which has been giving lot of information to the non-practicing CAs. The CA journal has now become *a ready-made capsule* in my pocket.

-CA.Rajesh Rathi, Distt. Palamau (Jharkhand)

Message 'From the President' Adds Value to Journal

I would like to express my sincere appreciation for the President's message to the CA fraternity through the Chartered Accountant journal. As a contributor to this journal, I regularly go through the message in the journal. An organiser par-excellence, the contents of the President's address not only enhances the value of the journal but also establishes a rich heritage. The President is like a locomotive, who puts the fraternity ahead. I particularly liked the address in the June 2013 issue and more particularly the thoughts on Smile.

-S.M. Jain

Facility of Mediclaim Cover for Members Very Helpful

I wish to thank ICAI for the wonderful alliance that they have got for all their members with The New India Assurance Company Ltd. with reference to Mediclaim. Recently, I got benefitted by it when my wife had a heart attack in Mumbai. After it was established that this was not a pre-existing disease, they cleared the full amount of my wife's medical expenses quite quickly. I very strongly suggest that all the members should enroll for this cover.

-CA. Arun Goenka, Mumbai

Event

A National Conference on 'Emerging Paradigm for Accounting: Special Thrust on Professional Service and Its Quality' is being organised by the Committee on Management Accounting and Committee on Public Finance, ICAI, and is being hosted by the Western India Regional Council of ICAI on 24th and 25th August 2013 at BKC Premises Hall, Mumbai. The programme offers 12 CPE hours Credit to members. Contact Details: WIRC, ICAI. Phone: 022-39802922/23, email: wirc@icai.in

Editor

For the Attention of Readers

Readers' attention is specifically invited to the fact that the views and opinions expressed or implied in The Chartered Accountant journal are those of the respective authors only, and not of the ICAI. The ICAI bears no responsibility of any sort whatsoever in case of any action taken by any reader based on any article published in the Journal.

Write to Editor

'Information is Power' and our ever-evolving profession needs more and more of that today than ever before. Do you have any relevant points to make, experiences to share, and views to spread among the CA fraternity? If yes, e-mail us at eboard@icai.org/nadeem@icai.org or write to:
The Editor, The Journal Section, ICAI, A-29, Sector 62, Noida (UP) - 201309

International Conference

On Accountancy Profession: Emerging Frontiers of Future Growth

On November 22-23, 2013
At Science City Auditorium, Kolkata

Accounting profession has been recognised worldwide as key facilitator in promoting investment, enhancing economic stability, improving management of scarce resources, facilitating public revenues and strengthening enterprises. The Accountancy profession has grown tremendously in terms of capability and capacity. It has met the challenges of a high growth economy, the opening up of the country and competition due to globalisation. The ICAI being amongst the largest accounting bodies in the world has always endeavoured to position brand Indian Chartered Accountancy globally.

The Institute of Chartered Accountants of India (ICAI) has been instrumental in providing quality education and continuous professional education to its members. As part of the continuous professional development of the members, ICAI is organising 2 days International Conference **on "Accountancy Profession: Emerging Frontiers of Future Growth"** on November 22-23, 2013 **at Science City Auditorium, Kolkata.**

Technical Sessions

- **Promoting Excellence – New Dimensions of Reporting**
- **Corporate Finance – Way Forward**
- **Beyond Accountancy – Management & Leadership**
- **Competency Mapping for the Capacity Development of Profession – Country Perspective**
- **Financial Sector – Navigating through Maze; Roadmap for Growth**
- **Information Technology – Rewriting the Rules of Business**
- **Global Competitiveness: Evolving Dimensions of Trade**
- **Confluence – Profession & Society**

Particulars	Delegate Fees
Members (ACA and FCA)	INR 2000
Non Members	INR 2500
Foreign Delegates	USD 100
SAFA Country members	INR 2000
CAPA Country members	INR 2000

Complete details regarding the Conference will be available on the website www.icai.org shortly.

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Sharing Positive Vibes with the Head of Our Nation

ICAI President CA. Subodh Kumar Agrawal shakes hands with Hon'ble President of India Shri Pranab Mukherjee, while ICAI Vice-President CA. K. Raghu and Union Minister for Minority Affairs CA. K. Rahman Khan look on (July 12, 2013)

Meeting with the President of India in New Delhi

ICAI President CA. Subodh Kumar Agrawal and Vice-President CA. K. Raghu with Hon'ble President of India Shri Pranab Mukherjee and Union Minister for Minority Affairs CA. K. Rahman Khan (July 12, 2013)

CA Day Celebrations at ICAI Headquarters in New Delhi

Flag of Accountancy Profession Hoisted

ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu and ICAI Secretary Shri T. Karthikeyan along with Central Council members among others after the flag was hoisted (July 1, 2013)

ICAI Employees Show Solidarity

Employees of the Institute gathered at the flag hoisting ceremony starting of the celebrations the CA Day (July 1, 2013)

CA Day Celebrations at *Vigyan Bhawan* in New Delhi

Inauguration of Programme

Chief Guest Union Minister for Corporate Affairs Shri Sachin Pilot lights the lamp, while ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu, ICAI Secretary Shri T. Karthikeyan, and NIRC Chairman CA. Vishal Garg share the gracious moments during the Inauguration (July 1, 2013)

Rising in Respect

ICAI past-Presidents, Central Council members, dignified guests and members, among other members of the audience during the anthem of accountancy profession (July 1, 2013)

Presenting a Memento to Chief Guest at the First Session

ICAI President CA. Subodh Kumar Agrawal presents a memento to the Chief Guest Union Minister for Corporate Affairs Shri Sachin Pilot at the dais, while ICAI Vice-President CA. K. Raghu share the happy moments (July 1, 2013)

Presenting a Memento to Chief Guest at the Second Session

ICAI President CA. Subodh Kumar Agrawal presents a memento to the Chief Guest Dr C. Rangarajan, Chairman of Economic Advisory Council to Prime Minister of India, while ICAI Vice-President CA. K. Raghu, ICAI Secretary Shri T. Karthikeyan and NIRC Chairman CA. Vishal Garg share the joy (July 1, 2013)

Professional Presence during CA Day Celebrations

Chief Guest Union Minister for Corporate Affairs Shri Sachin Pilot shares the dais with ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu, ICAI Secretary Shri T. Karthikeyan, and NIRC Chairman CA. Vishal Garg, while Central Council members join them to pose for a photograph

Professional Presence during CA Day Celebrations -2

Chief Guest of second session Dr C. Rangarajan, Chairman of Economic Advisory Council to Prime Minister of India, shares the dais with ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu, ICAI past-Presidents CA. T. Vishwanath, CA. Kamlesh Vikamsey, Central Council members and past-Central Council members join them for a photograph (July 1, 2013)

Meeting with Kumar Mangalam Birla in Mumbai

ICAI President CA. Subodh Kumar Agrawal and Vice-President CA. K. Raghu met the Aditya Birla Group head Shri Kumar Mangalam Birla (July 2, 2013)

CAPA Meet in Vancouver (Canada)

ICAI President CA. Subodh Kumar Agrawal and Vice-President CA. K. Raghu along with CAPA Deputy President Mr. Sujeewa Mudalige and CAPA President Mr. Keith Wedlock during the meeting (May 23-25, 2013)

Inauguration of National Convention for CA Students in Ahmedabad

ICAI President CA. Subodh Kumar Agrawal, Vice-President CA. K. Raghu, along with Gujarat Chief Minister Shri Narendra Modi and Central Council member CA. Vijay Garg, rising to the anthem of accountancy profession during the Convention (June 29, 2013)

Inauguration of Residential Refresher Course in Tirupati

ICAI Vice-President CA. K. Raghu lights the lamp in the august presence of Andhra Pradesh Minister for Endowments CA. C. Ramachandriah, Central Council members CA. Devaraja M. Reddy and CA. G. Sekar, and SIRC Chairman CA. D. Prasanna Kumar at the inauguration at Tirupati Branch of SIRC (July 8, 2013)

State-Level Conference *Jnanavarsha* Inaugurated in Bangalore

ICAI President CA. Subodh Kumar Agrawal and Vice-President CA. K. Raghu, among other members and office-bearers after lighting the lamp during the Conference organized by Bangalore Branch of SIRC of ICAI (June 29-30, 2013)

The rigour that the CA course demands is in itself a huge learning: Kumar Mangalam Birla

Kumar Mangalam Birla is one of the most dynamic businesspersons and industrialists of our nation. He is the Chairman of one of the biggest corporations, *Aditya Birla Group*, in India, which is one of the top three largest business houses of India. Through his Aditya Birla Nuvo, which controls the financial services business of *Aditya Birla Group,* he has applied for banking services recently. A fourth generation representative of the Birla family, Kumar Mangalam Birla spent his early life in Kolkata and Mumbai. A chartered accountant by training, he did his graduation in Commerce from the University of Bombay and, later, he earned his MBA from the University of London, UK. In a candid interview, he pours his heart out to the Editor of *The Chartered Accountant*, CA. Subodh Kumar Agrawal. Read on...

Editor: *You got at the helm of Aditya Birla Group at a tender age of 28 years. Were there any apprehensions in your mind as to how you will be able to handle illustrious dynasty? How were you able to manage initially?*

KM Birla: It was a very difficult time emotionally because my father had passed away almost unexpectedly, leaving behind a huge responsibility. At that time I was pretty much in a fish bowl. I was only 28, but I wasn't a rookie. Even though my experience was limited, I was fortunate to have had high-quality exposure to the world of business, under my father's tutelage. Having said that, at that point in time, my only thought was to carry forward his legacy. So I decided that I would bury my head in the business, hang in there and just keep going. In a sense, I believe, I was much better prepared. In the first instance, when you grow up in a business family subconsciously a lot of learning happens. It could be just conversations across the dinner table for example.

My apprenticeship during my college days with my father was a great learning. I spent several hours sitting with him, observing him and asking questions. My education instilled in me an enormous amount of confidence. I had also worked with my father for almost 8 years before his demise. He had given me independent charge of some of our businesses. When he learnt of his illness, he ensured that I sat with him for all his meetings. So for almost 3 to 4 years, I was shadowing him and he was mentoring me. In the process I learnt to deal with different and complex business situations.

I was very fortunate to have the emotional and intellectual equity of a solid team. My father had left me with a great business, a great team and an outstanding organisational legacy. And this made my task of carrying the *Group* forward, doable.

Editor: *You have so many jewels in your crown – Entrepreneur of the Year, 2012, Global Business Leader Award 2012, Indian Business Leader Award 2012, GQ business Leader of the Year Award 2011, All India Management Association Award (2010), Global Indian of the Year Award (2007), and so on. Having achieved so much, what other recognition do you look forward to?*

KM Birla: These accolades, which I am privileged to accept, are a recognition of our entrepreneurial DNA and the culture of excellence that most of our 136,000 employees, spanning 6 continents epitomise. Personally, I believe, one has to do one's best for our Group and its multiple stakeholders and constantly create value. While recognitions do give us a sense of elation and are a pointer that we are on the right track, we do not consciously pursue them. The best rewards – our *Group* being looked upon as an employer of choice, the preferred customer solutions provider, the investor's and shareholder's destination, and being admired and respected by society at large.

Editor: *Under your stewardship and leadership, your empire has grown by leaps and bounds. The US $40 billion Aditya Birla Group is in the League of Fortune 500. The Group has been ranked Number 4 in the Global `Top Companies for Leaders' survey and ranked Number 1 in Asia Pacific for 2011. How do you plan to carry forward this legacy? Over the years, your group has grown acquiring other businesses. How do you plan to take it further ahead? Are you satisfied with the present growth?*

KM Birla: Our objective is to build businesses for the long haul – say the next 30, 40, 50 years. Our vision is - `To be premium conglomerate with a clear focus on each business'. Simply put, this means that we have to be among the top three players in the sectors in which we operate. In most of our businesses, we have attained this stature. Our goal is to become a US $65 billion corporation by 2015. Quite audacious. I firmly believe that the quality of your future is entirely dependent on the quality of your imagination.

My apprenticeship during my college days with my father was a great learning. I spent several hours sitting with him, observing him and asking questions. My education instilled in me an enormous amount of confidence.

We will grow through the acquisitive route as well as organically. In the last 17 years, we have made 26 acquisitions globally and in India, which have helped leapfrog growth. Parallelly, we have embarked on aggressive Brownfield and Greenfield expansions. This focus will continue as we move ahead to consolidate and grow our leadership positions.

We have unique strengths, which we will leverage. Let me allude to a few. Firstly, our people. They give our Group its fortitude. They are values-driven and are truly the Group's backbone. We have earned a reputation as an employer of choice that offers a World of Opportunities. We are reckoned as a corporate that places big bets on its people. Most gratifying is the overall perception that we steadfastly follow the highest levels of corporate governance. This contributes substantially to our ability to attract and retain top notch talent. At the end of the day, it is your people who give you the edge. Second, and importantly, we have strong balance sheets, robust cash flows and gearing levels well within reasonable limits. Again, these are assets that are in acute short supply today. Third, is the global presence of our Group. We have the experience of operating in 36 countries. This incredible foundation of global experience gives us the strength to acquire assets or grow organically anywhere in the world, in different cultures and varied business environments.

And finally, our indomitable strength of running low cost, high-efficient and vastly productive operations, through our embedded culture of continuous improvement and innovation, will see us scale new peaks.

Editor: *You are the pride of the CA fraternity. How has the rigorous theoretical and practical training acquired during the course of Chartered Accountancy helped you in your business decisions?*

KM Birla: I believe, both my CA and MBA, which I earned from the London Business School, together

gave me a wholesome and holistic experience that has stood me in great stead. A thorough understanding of accounting, the criticality of figures, getting a perceptive on law and taxation, have enabled me delve into issues in an in-depth manner. The rigour that the CA course demands is in itself a huge learning. MBA helped me see the big picture. It honed my strategic thought processes and soft skills. I took away from my CA and MBA experiences that went far beyond the classroom. They enabled me develop robust mental frameworks that were extremely useful to find my way out of challenging and trying management situations.

Editor: *The world economy is slowly coming out of recession, while the Indian economy is in a much better position. What according to you is the cause behind the resilience of Indian economy?*

KM Birla: India's exposure to the global economy has increased significantly in recent years. So it has not been totally insulated from the economic slowdown in the developed countries. Even so, it was weathered the post-2008 shocks rather well. Undoubtedly, the liberalisation over the past two decades has imparted a degree of dynamism and resilience to the economy. India's corporate sector and entrepreneurs have taken advantage of the more competitive environment to refocus their strategies and become more efficient. Indian companies have become globally competitive in many sectors, among them IT, pharmaceuticals, and automotive components. In a downturn in the West, when demand dips and profit pressures become acute, companies there have even more reason to source from abroad in order to remain competitive. Further, India's large middle class has continued to drive consumption.

Government policies have largely been, on balance, supportive of a sound economy. The fiscal deficit has been contained and it is budgeted at 4.8% 2013-14. Monetary policy has been prudent, helping to bring down inflation. At a time when OECD economies have close to zero interest rates, Indian is at the other phase of the interest rate cycle, where there is considerable scope for monetary easing. Supported by sound regulation, India's banking system has developed inherent strengths. There has been no over-leveraging or imprudent lending of the kind that took place in many other banking systems. Another positive for the Indian economy has been the string of largely normal monsoons over the past few years, lending to an increase in agricultural output. The recent moves, aimed at paring subsidies in the oil sector, will add considerably to fiscal stability.

Editor: *The problems in Europe have raised concerns about the durability of global growth. How do you expect things to play out? What role India can play in this regard?*

KM Birla: Yes, Europe does have its unique set of issues, related to the economies of southern Europe, particularly Greece, Spain and Italy. Directly or indirectly, most of the problems of Europe trace back to the defects of the Euro. Broadly, the EU is attempting to bring about greater fiscal coordination between its member countries. Japan has also primed the monetary pump to break out of its two-decade slump. That said, the growth prospects for the EU and Japan are severely constrained by its demographics.

There are signs of an economic spring of sorts in the US, what with the revival of the housing sector. The US could well be on its way to achieving a higher degree of energy self-sufficiency, as exploitation of shale oil reserves accelerate. Other than the OECD

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countries, the outlook is for a healthy growth in China, South East Asia, Latin America and Africa. The revival of the global economy could be helped if commodity prices remain subdued. All in all, the world has enough hot spots of growth. Hopefully, governments, central banks and regulators are now better placed to cope with economic and financial turbulence. The past few years have shown that those in charge of the economy can cooperate across borders. The missing piece is a similar show of mature political wisdom.

On balance, I do believe that those who are holding their breath for the economic apocalypse to hit, will probably run out of breath. To the extent that India can play a role in the global economy, it must use its growing clout to urge developed economies to maintain a level paying field and not lapse into protectionism, by raising tariff and non-tariff barriers.

Editor: *Recent Companies Bill has brought the concept of corporate social responsibility at the forefront. Your group works to actively contribute to the social and economic development of the communities and raise the country's human development index. How do you think that a legal provision for CSR will help in the overall development?*

KM Birla: At our Group, we truly practice compassionate capitalism. Service to society is at the very heart of our value system. We attempt to reach out with a sense of purpose to those with distressed lives. We endeavour to find prosthetics for amputated souls, show them a future that they never believed existed for them. Under the umbrella of the *Aditya Birla Centre for Community Initiatives and Rural Development,* we reach out to 7 million people annually, in 3,000 villages.

I am sure many other corporations are also working to dignify the lives of the poor. That said, much more needs to be done to bring in inclusive growth. India's HDI – 134 on 182 countries is truly its low watermark. While the mandatory 2 per cent CSR spend, is almost a fait accompli, I am not very sure about its implementation. My view is that giving should come from the heart. We must find it within ourselves to look beyond ourselves. It is the responsibility of every generation to leave behind a safer, superior, more enlightened world than the one that they inherit. When future generations look back upon us, they must credit us for helping give the world a better tomorrow!

Editor: *Would you please like to share your mantra for a successful professional life with the CA Fraternity?*

KM Birla: One has to dare to dream. Drive the business with an overarching vision, courage, ingenuity,

We have unique strengths, which we will leverage. Let me allude to a few. Firstly, our people. They give our Group its fortitude. They are values-driven and are truly the Group's backbone. We have earned a reputation as an employer of choice that offers a world of opportunities.

foresight and dynamism. One must pay meticulous attention to details and have the ability to be adaptive. Understanding, confronting and mastering challenges is equally important. Surround yourself with people who are smarter than you. Keep learning afresh. Value creation, customer delight, team spiritedness, are all a given. Remember success is never final and reflects only a point in time. You have to keep working at it. There is no substitute to smart hard work.

And above all, sound values, such as integrity, respect, passion and 100 per cent commitment are a must. Great and lasting businesses are never built on the quick sands of opportunism. For us, at the *Aditya Birla Group*, if living by our values means, perhaps growing at a pace slower than we should otherwise have liked, so be it. For us, the key to enduring leadership lies in knowing what we stand for and in living by that. In essence our values provide us with a moral compass, they provide us with our roots and they provide us our wings.

And finally, what does success really mean? How do we measure it? Too many of us tend to define success in terms of designation, compensation, the perks, and whether we are working in a 'prestigious' organisation or not. I believe that such benchmarks are too narrow. They can't possibly inspire you too much. Success, I believe, is a much more holistic idea. It's more about things such as fulfillment, self realisation, happiness and above all, doing good.

Editor: *Apart from being a Chartered Accountant you are armed with a management degree. It is said that there are things that are not taught in B-School. Do you agree? What according to you are the things you learn only by experience and not in classroom?*

KM Birla: B-schools do not arm us with the skills necessary to be able to work in teams. We tend to be very individualistic. This is partly an outcome of our educational system, which necessitates cutthroat competition. It puts a premium on individual achievement and brilliance, at the cost of team or organisational effectiveness. Individual stars are fine but, by themselves, they cannot create the brilliance of a galaxy. In business, one constantly has to interact

with people, and work in teams. Most business situations cut across a swathe of products, geographic and functional areas - and a full range of competencies needs to be deployed to deal with the situation at hand. No one person has all the answers. Naturally, teams are predominant setting for work.

At different points in time, depending on the business needs, you may have to be engaged with multiple teams, move out of one team and connect with a new team. The challenge that confronts you in repeatedly emotionally switching on and off in such environs-and how to deal with it proactively has hitherto not been inked in textbooks. B-schools cannot tutor us on how to manage our emotional perspective. A management education encourages students to take the broad view, a top-down approach. This is fine, as far as it goes. But even the best perspective has to be backed up by action on the ground and this requires getting down to the nitty-gritty.

At B-schools, most of us develop a magnificent obsession with *strategy*. We romanticise it because it seems so cerebral. What we conveniently overlook is that one arrives at a *strategy* only after having paid meticulous attention to the minutest details. And this is required because without delving into details, a strategy can be fundamentally flawed. I do believe that learning to work across cultures, understand the nuances of how people in different countries and cultures behave, how they think and their value systems, comes with experience. Up until a decade ago, most businesses in India were, by and large, inward looking, and oriented predominantly towards the domestic market. But globalisation has changed all that. Now we have to look at global competition, global benchmarks and global markets. When business boundaries dissolve to this extent, people have to be able to bridge different cultures.

My view is that giving should come from the heart. We must find it within ourselves to look beyond ourselves. It is the responsibility of every generation to leave behind a safer, superior, more enlightened world than the one that they inherit. When future generations look back upon us, they must credit us for helping give the world a better tomorrow!

Again, our education system conditions us to downplay, if not neglect the use of intuition and gut feel, what we call the sixth sense. Actually, intuition is not as random as we make it out to be, nor can it be called unscientific; part of intuition is our knowledge and experiences, processed and distilled, and stored in our sub-conscious. Of course, intuition cannot be a substitute for facts, logic and sound analysis-but it can be a complement to our analytical and logical thought processes. I believe, if you look upon your workplace as a continuing MBA, you will easily plug in the gaps not learnt formally.

Editor: *As Chairman of the SEBI Committee on Corporate Governance, you have authored the report Report of Kumar Mangalam Committee on Corporate Governance. How do you rate the governance standards in the Indian industry? How much scope is there for improvements on that front?*

K. M. Birla: If one wishes to rate or even compare our governance standards globally, India is not far behind. This is evident from the fact that corporations with high standards of governance are well recognised by the stakeholders. This is also reflected in their brand image, market capitalisation, etc.

Having said so, certain issues do need a qualitative makeover such as laying a whistle blower framework to report unethical behaviour, fraud or violation of the company's code of conduct and ethics policy. To enhance investor confidence, a shift towards Corporate Governance Rating similar to credit rating for funding would be worthwhile. Needless to say, these will go a long way in boosting investor sentiments nationally and internationally.

Having said that, I believe that creating a culture of transparent corporate governance works much better than imposition of strict rules. This is possible through systematic reform, such as reorienting our education system, corporate culture and most importantly, instilling the correct core values.■

Ethical Issues in Question-Answer Form

Q. What is Code of Ethics?

A. Every profession has its own Code of Ethics.
The Chartered Accountants Act, 1949 has been enacted by the Parliament for the regulation of the profession of Chartered Accountants and for the purpose of carrying out the object of the Act, the Chartered Accountants Regulations, 1988 have been enacted.

The Act has two schedules i.e. First Schedule and Second Schedule.

The First Schedule has four parts:

Part I - Professional misconduct in relation to Chartered Accountants in Practice.
Part II- Professional misconduct in relation to Members of the Institute in Service.
Part III- Professional misconduct in relation to Members of the Institute generally.
Part IV- Other Misconduct in relation to the members of the Institute generally.

The Second Schedule has three parts:

Part I - Professional misconduct in relation to Chartered Accountants in Practice.
Part II - Professional misconduct in relation to Members of the Institute generally.
Part III - Other misconduct in relation to members of the Institute Generally.

These two schedules along with the decisions of the Courts on professional misconducts, decisions, directions, guidelines, statements, clarifications and also interpretations of the Council on the various clauses of these two schedules constitute the Code of Ethics for the accountancy profession.

Part-A of the Code of Ethics, 2009 has been introduced in line with the IFAC Code in compliance of membership obligation of the ICAI. This part of the Code establishes a conceptual framework for all members to ensure compliance with five fundamental principles of professional ethics, namely, integrity, objectivity, professional competency and due care, confidentiality and professional behavior. Under the framework, all Chartered Accountants are required to identify the threats to these fundamental principles and apply safeguards to ensure that the principles are not compromised. The framework applies to all Chartered Accountants, whether in practice or in service.

Q. What is the professional or other misconduct?

A. Section 22 of the Act defines professional or other misconduct as follows:-
For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances.
What constitutes `misconduct under any other circumstances' has to be determined on case to case basis keeping in view the facts of the circumstances of each case. Fraud, intention to deceive and committing an act which affects the public or society at large could be in the ambit of such misconduct. Following are few examples of `misconduct under any other circumstances' by a member:-

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

Q. What is the distinction between the two schedules?

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

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

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

* Contributed by the Ethical Standards Board of the ICAI

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

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

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

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

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

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

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

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

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

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

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

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

1. Such members/firm be allowed to open temporary offices in a city in the plains for a limited period not exceeding three months in a year.
2. The regular office need not be closed during this period and all correspondence can continue to be made at the regular office.
3. The name board of the firm in the temporary office should not be displayed at times other than the period such office is permitted to function as above.
4. The temporary office should not be mentioned in the letterheads, visiting cards or any other documents as a place of business of the member/firm.
5. Before commencement of every winter it shall be obligatory on the member/firm to inform the Institute that he/it is opening the temporary office from a particular date and after the office is closed at the expiry of the period of permission, an intimation to that effect should also be sent to the office of the Institute by registered post.

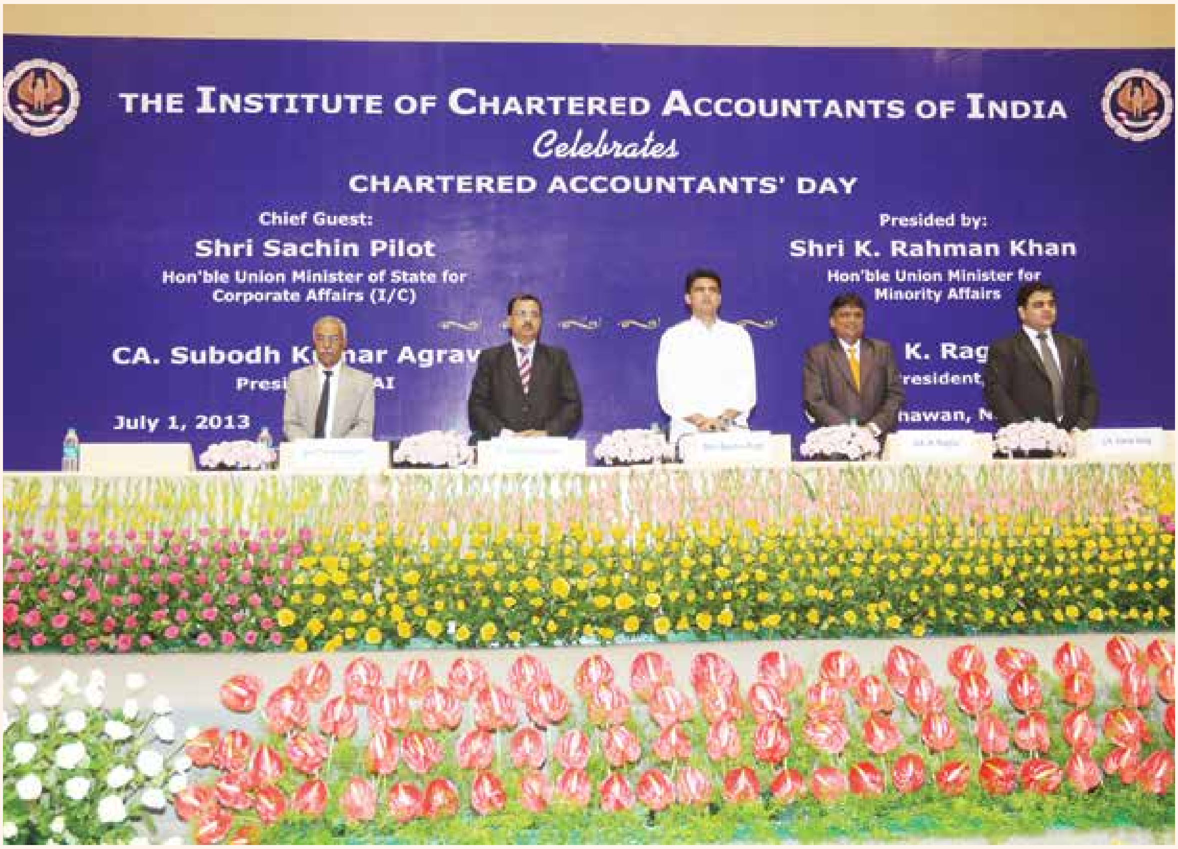
The above conditions apply to any additional office situated at a place beyond 50 km from the municipal limits in which any office is situated.

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

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

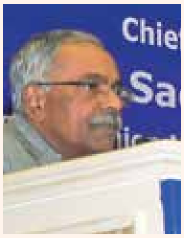
However, a member can be in charge of two offices if they are located in one and the same accommodation. ■

ICAI Celebrates its 65th Foundation Day



Rising to the Anthem of Profession

Dwelling on the refined professional excellence and a responsible existence of independence and integrity which the accountancy fraternity started with in 1949, The Institute of Chartered Accountants of India (ICAI) has grown tremendously in all possible tangents since then. Recently we celebrated the 65th Foundation Day of the accountancy profession on July 1, 2013 as "CA Day". Celebrations started with the flag-hoisting ceremony by the President of the Institute at the ICAI headquarters in New Delhi. After that the main function was organised at *Vigyan Bhawan* in Delhi, where the regulator of Accountancy profession in India took stock of its progress and its services to the nation in the presence of a large gathering of accountancy stakeholders and dignitaries from the Govt. of India, and this also included a dignified presence of eight of our past leaders of accountancy profession in India, i.e. past-Presidents of ICAI. Union MCA Minister Shri Sachin Pilot and Chairman of Economic Advisory Council to the Prime Minister Dr. C. Rangarajan, were the Chief Guests on the occasion in the first and second sessions respectively. ICAI President CA. Subodh Kumar Agrawal shared the initiatives taken up by the Institute with the accountancy stakeholders. ICAI Secretary Shri T. Karthikeyan delivered the welcome address. The Vote of Thanks of the first session was given by ICAI Vice-President CA. K. Raghu, while that for the second session was given by the ICAI President CA Subodh Kumar Agrawal. We present you a brief report on the CA Day programme held at *Vigyan Bhawan* in Delhi. Read on…



The function started with the *welcome address* by the **ICAI Secretary Shri T. Karthikeyan** who greeted the huge gathering of dignified guests that included the ICAI past-Presidents, Central Council members, office-bearers of Regional Councils and the members and students of accountancy profession. Union Minister of Corporate Affairs Shri Sachin Pilot was the *Chief Guest* on the occasion, who was accompanied by his senior MCA officials including the Additional Secretary Shri M. J. Joseph. Shri T. Karthikeyan welcomed them all and announced: *1st July is a historic day to the Institute and its members. This day of 2013 on this day, another milestone has been achieved by the Institute and again on this day, the Institute, having completed 64 years of its glorious existence, has entered into the 65th year of existence*. He credited all the stakeholders for the completion of this incredible journey of the accountancy profession. He also credited the forefathers: *It's all due to the sacrifices made by the elders and forefathers of the profession*.

The ICAI Secretary apprised the audience that the CA Day was being celebrated all over the country at all its Branches and Regional Councils by its stakeholders. The celebrations at the ICAI headquarters started with the hoisting of the CA flag by the President CA. Subodh Kumar Agrawal.

Lighting the Lamp - CA Day (July 1, 2013)

He went on to welcome the **Chief Guest** and called him a young, dynamic and inspirational leader who had been endeavouring to bring radical transformation in Corporate Affairs, and called him the *friend, philosopher and guide for all the three professional institutes under his charge*.

Then, it was the turn of the **ICAI President CA. Subodh Kumar Agrawal** to extend a warm welcome to all the dignitaries including the Chief Guest Shri Sachin Pilot, the institute's functionaries, press and media persons, members, and students. In his presidential address, the ICAI President recalled the importance and trust bestowed on the accountancy professionals by the dignitaries at the helm of the nation. He informed that Union Minister of Minority Affairs CA. K. Rahman Khan could not join the function since he was not well. He started by paying regards to the *Chief Guest*, Union Minister of State for Corporate Affairs Shri Sachin Pilot, and credited the dynamic Minister for steering the Companies Bill through the Lok Sabha successfully within a few weeks after he assumed his office.

The ICAI President acknowledged that he was feeling proud to address the entire nation from this platform, since that programme was being webcasted that could be watched across the world. He welcomed all on the *65th Chartered Accountants Day* for completing 64 glorious years of professional existence. But he refuses to accept that the profession had grown old despite that long journey. It means we have become matured. He sincerely wished: *May this profession and all its stakeholders grow and prosper!* He welcomed the eight past-Presidents and former Council members of the Institute and offered his sincere regards for their noble endeavours. He vowed: *Let us continue the tradition and keep on adding feathers to that heritage.* He mentioned various roles that the chartered accountants were essaying presently, and announced that we had moved on *from the backrooms to the board rooms*.

The ICAI President mentioned: *A very high standard of ethics is an integral part of our profession…Transparency, account-*

ability and responsibility, which are integral components of good governance, are also the hallmark of our profession. Ethics is all about becoming and feeling responsible about everything that is around us. He asked the membership fraternity to select the stricter interpretation forgoing the liberal one wherever required, and to present a *courageous display of moral conduct* and, thereby, to inspire professionals from *all walks of life*. He concluded with an appeal to the accountancy stakeholders to show solidarity for the people of Uttarakhand in its critical times. He informed that the ICAI had already made a request to its members across the country through e-mails and SMSs requesting them to contribute. *Charity begins at home*. He, therefore, informed the audience that all the Central Council members had contributed to the cause.

Then the Chief Guest of the session, Union Minister of Corporate Affairs Shri Sachin Pilot, addressed the august audience. He first greeted the ICAI President and other dignitaries from the ICAI present on the dais, followed by greeting the Additional Secretary, Joint Secretary and other officials from MCA.

Candid Moments- ICAI President with Union Corporate Affairs Minister

Excerpts from Speech of Union Minister of Corporate Affairs Shri Sachin Pilot

It is my great pleasure to be here today to be a part of the celebrations on the profession reaching an important milestone. The Institute has set high standards since its inception 64 years ago. Today this profession in India is amongst the largest accounting bodies in the world. It provides services to entrepreneur activities at all levels, grooms a new cup of young professionals every year to ensure fusion of talent and keeps pace with the latest developments in the field. The bridging of expectations' gap in what an accountant does and what the society expects out of him or her is going to be the cornerstone for the continued success of the profession to reach newer and greater heights. The economic landscape in which the profession renders the services has undergone important changes. Our economy has become much more global and larger. Sustained growth over several years starting in the early 1990s has expanded the size of our economy. Share of services in the national output has steadily increased. There are large investment flows in and out of the country. Our capital market exceeds a trillion dollars and is fairly sophisticated. There has been a shift towards a competitive based regime and strengthening of both over-arching [pronunciation not clear] sector of regulations. Aligning the domestic environment to the needs of an open market has paid rich dividends especially in sectors that are driven by knowledge and data. These changes are consistent with world-wide trends in global networking dissolving business frontiers and shrinking distances. Services have started dominating the economic activities of countries at virtually every stage of development. It is impossible for any country to prosper today under the burden of an inefficient service infrastructure. Emergence of firms managed in line with global best practices, greater shareholder participation and visibility, need to align

Presenting a bouquet to Shri Sachin Pilot

commercial sustainability and social objectives of enterprise and regulatory compliances pose an important challenge for this profession. There are also opportunities to re-orient the profession to fulfil the needs of very large economy. The Institute needs to intensify its efforts to upgrade the skills of practicing professionals and be a centre of excellence and research for the profession in India and other economies where the profession is far more nascent. As large parts of our economy make the important transition from informal to the formal sector, there has to be a gradual and a painless adoption of the formal accounting regime.

As you are very well aware that the Companies Bill has been passed by the Lok Sabha and now awaits the passage in Rajya Sabha. This will completely replace the existing Act.

To meet the growing demand for the quality professionals in times ahead, the Institute must scale its capacities by a magnitude, if necessary, through appropriate academic and professional tie-ups. We, in the Corporate Ministry, are your partners in these efforts. We have been working towards repositioning the Ministry as an even more significant facilitator in creating a positive and healthy environment for doing business in India by offering an enlightened regulatory regime and efficient services.

Friends, the new Companies Bill, as some of you may have gone through, I think, marks a paradigm shift in the thinking of the economy, thinking of the Government and while we replace the existing Act, it is important to note that this Bill has been in the making for more than a decade. It is after tremendous debate, discussions, deliberations among almost all the shareholders that this Bill was finally approved by the Cabinet and then now has been given the approval of the Lok Sabha. We are looking for greater transparency, more participation of Independent Directors, greater shareholder participation, greater protection for people who are able to do whistle-blowing. These are all issues that are being practiced globally and as Indian economy expands and becomes a major player in global arena, we have to make sure that our accounting standards are thinking in the corporate sector, good governance, more compliances, less regulation but more compliances. I think that is the key with which we, in the Ministry, are working towards. There is no point in having a thousand regulations and then having companies meet only 800 of them. You rather have few regulations but 100% compliance and that is the way, I think, we all, in this profession as well as in the Ministry, have got to create an eco-system for our companies to operate. Small companies, large companies will need the kinds of exposure to the best practices that are being done around the world and I think no better agents of change than the accounting body and the accounting professionals such as yourselves to be able to usher in this era when this Bill becomes an Act.

There are many aspects of the Companies Bill but I think two or three are important for me to mention here because it is pertinent that the accounting community, the ICAI and all its members, young accountants especially, as you go into the business environment must be fully aware of the nuances with which we have to deal with and the kinds of things that we have to work collectively. I say this because we have a common objective, and the objective is to expand the community of accountants, people who become chartered accountants, practicing accountancy in audit, companies that have and must grow in the future, Government as a regulating body, we all have a common objective of making our economy much larger much deeper much more resilient much more growth and job-oriented. We can only *achieve this as we work hand in hand and move forward.*

Issues of corporate are very very pertinent today. There has to be a sense of responsibility in how we conduct our businesses. There have been so many instances where poor people have been duped of their hard-earned money. Well, it is easy to point fingers and shift blame. It is important for us to look what regulations what legislations what rules we have currently in India today and how we need to change them. It is the collective responsibility of every single one of us that we must ensure full compliance especially in companies where there is a suspicion of wrong-doing. There is no greater injustice than to dupe the smallest of our investors who invest 10, 20, 40, 50000 rupees, their life savings, and then those moneys are disappeared. It is to be proper execution proper implementation and really a single one-minded determination to make sure that we give to our people our economy our country our fellow citizens the best corporate governance structures that we can think of.

The other aspect of doing corporate social responsibility is an important one. India will be one of the first few countries to have CSR as a statute. Many countries have some loose legislations relating to CSR but we have had many discussions and I am very proud to report that the business community, the corporate sector is a very very willing party to participate in doing things that will help our social sector develop through the corporate field. This is a new initiative and I am looking for support from the corporate sector. Once it is built, is enacted into law, is notified, companies with certain clauses will have to dedicate two per cent of their net profit into developing communities and infrastructure and doing all sorts of work that need to be done for a responsible corporate entity. There again, I think, the support and guidance of the accounting community is very very important for us to make this happen.

...The Ministry of Corporate Affairs is also working towards reforming an enabling environment for effective functioning of every single industry, and I urge the corporate sector to take into account the concerns of stakeholders beyond their investors and to demonstrate that the responsible business governance can generate value for the stakeholders. We, in the Ministry, are of the opinion that sustainability reporting is also one critical aspect of good corporate governance. Sustainability reporting is indeed required to instil confidence in the company's stakeholders about its long-term sustenance and to give a licence to operate for future. Public sector enterprises in India are being urged to embrace sustainability reporting under newly revised guidelines issued by the Indian Government.

Friends, the accountancy profession has come a long way with the distinguished history of guarding the integrity of financial statements of the companies. Audit companies have to play an increasingly important role to ensure efficient resource allocation, encourage innovation, retain talent and advise company boards on financial prudence. CAs must remain inquisitive, sceptical, vigorous in their application of these highest of standards. I am fully confident that our chartered accountants would live upto the expectations of the Government, of the society and of the country, their peers in India and abroad and the public at large. The credibility of the profession will be enhanced depending upon the manner in which the members of the profession respond to the needs of the society collectively and remain accountable in terms of the service to the nation. Time has arrived for the accounting profession to play its just and dual role and position itself on a wider altar to activities which touch the very core of a sustainable development network.

The *vote of thanks* was offered by the **ICAI Vice-President CA. K. Raghu**, who thanked the *Chief Guest*, Shri Sachin Pilot for accepting the ICAI's invitation and for being amidst the celebrations. He recalled how magnetically the Union Minister had asked the young members to look beyond the nation, in the past. He expressed his heart-felt gratitude for the fact that Shri Sachin Pilot had always inspired the accountancy professionals *to conquer the world*. The ICAI Vice-President acknowledged that Shri Sachin Pilot's presence had always been comforting for the accountancy stakeholders.

CA. K. Raghu briefly sketched the recent developments in accountancy profession and expressed that the accountancy institute was confident about the way accountancy profession had been progressing.

Session Two

In the *Second Session* of the CA Day functions at Vigyan Bhawan, ICAI Secretary Shri T. Karthikeyan welcomed the Chief Guest of the Session, Chairman of Economic Advisory Council to the Prime Minister **Dr. C. Rangarajan**, present on the dais, and exclaimed that was an honour for the Institute to have him as the *Chief Guest*. He expressed his gratitude extending a warm and heartiest welcome to the Chief Guest. He straightforwardly invited Dr. C. Rangarajan to address the audience.

The Chief Guest of the Second Session, Dr. C. Rangarajan, addressed the dignified audience:

Excerpts from Speech of Chairman of Economic Advisory Council to Prime Minister Dr. C. Rangarajan

I am indeed very happy to be in your midst this evening. You all belong to a profession which plays a critical role in the effective functioning of the economy. You are, in an important sense, the watchdogs of the economy. The success of the economy depends on the way in which the resources are utilised. The more efficient the use of the resources the greater the rate of growth of the economy. Ask chartered accountants who have a responsibility not only to see that the expenditures are incurred by the corporate and others, according to the principles enunciated but also to see that the resources are efficiently utilised. Time and cost overruns are features which we must try to reduce in the economy, if you have to move faster.

In any economy, the state or government can play three important roles – one, as a provider of marketable goods and services; two, as a regulator; and three, as a provider of public goods and services. The role of a state, as a provider of marketable goods and services, is coming down. Simultaneously, the role of the state as a regulator, the role of the state as a provider of public goods and services is increased. That is why someone remarked, somewhat paradoxically, "More market does not mean less government but only different government". That the policy change that we adopted in 1991 was correct is vindicated by the developments since that time. Since 1992-93, the average rate of growth of the Indian economy has been 6.9% and coming to the more recent period, as I mentioned earlier, in the eight-year period beginning 2005-06, the average rate of growth has been 8%. The per capita income has been growing close to 7% per annum. In the wake of the international financial crisis, the Indian economy grew at a lower rate of 6.7% in 2008-09. This is after having grown at a rate exceeding 9% per annum for three consecutive years. But, the recovery from the crisis was quick. In 2009-10, the Indian economy grew at 8.6% and as late as 2010-11, the growth of the economy was 9.3%. For the last two years, I have seen a decline. In 2011-12, the growth rate was 6.2%, and in 2012-13, it has been 5%. The primary decline has come in the manufacturing or the industrial sector. In 2011-12, the manufacturing sector grew at 2.7% and in 2012-13, the manufacturing sector grew at 1.2%.

If we have to move forward and step up the growth rate, we need to understand the factors that might have contributed to the decline in growth rate. First of all, there was supply shorts. Output of the some of the critical inputs like coal, iron ore fell during this particular period. There are also price shorts both domestic and external. With the decline in the growth rate of the advanced countries, one had expected that international commodity prices will come down but did not happen. Oil prices continue to remain high except in the more recent period. In 2011-12 and 2012-13, they remained high domestically for a variety of reasons which I will come to later at a higher level. Thirdly, there were a variety of factors both economic and non-economic which *contributed to the weakening of the investment and demand.*

If we have to move ahead, we need to correct all of these. I believe in 2013-14, the growth rate will pick up. The growth rate of the economy could be close to 6% plus. The Economic Advisory Council had earlier estimated that the growth rate in the current fiscal would be 6.4%, but I believe that it will be at least 6%, if not more. Why do I say that? I say that for three reasons.

First, we have taken a series of measures. The Government has taken a series of measures in the last six months and the impact of these measures will be seen fully only in the current year. The Government have taken policy actions relating to a number of areas such as FDI, FII, inflows, and also certain pricing decisions as well as delicencing as has happened in the case of sugar industry. So, the full impact of the various measures taken during the last six months and more will be felt during the second quarter of this fiscal or perhaps more particularly in the second half of the year.

Second, a special emphasis is being laid on the key infrastructure sectors that lie in the public domain such as coal, power, roads and railways. So, you see the impact of the focussed attention. In the case of coal, two years ago, the rate of growth was less than 2%. Last year, the growth rate was 3.4%. Actions are being taken in order to step up the coal production during the current year to a growth rate of about 7% or more. Similarly, efforts are being made in all the three other areas and in fact I believe that the public sector investment will act as the driver of growth during this particular year. The fulfilment of the production and capacity creation targets in these four sectors will act as stimulant of private investment activity and all other economic activities.

Third, an honest effort is being made to remove the bottlenecks in the clearances on implementation of large projects. The Cabinet Committee on Investment is meeting regularly to overcome the obstacles that come in the way of the speedy implementation of projects. In some ways, [disturbance] is critical. For a variety of reasons, the various investment projects are stalled. The effort in order to speedily implement these projects will pay us rich dividends even in the current year.

...As far as inflation is concerned, we have had almost 2½ - 3 years of high inflation. It all started with the failure of the monsoon in the year 2009-10. In 2009 April, before the start of the monsoon, the inflation rate in India, according to the wholesale price index, was 1.2%. In April 2010, which was the peak almost, it touched 10.9%. In April 2011, it was 9.7%. In April 2012, 7.5%. In April 2013, a few months ago, it came down to 4.9% and as of May, it is 4.7%. What caused this inflation? Many have written on it. I have also written. I will not go into the various factors that have contributed but certainly it is true. Both in 2009-10 and 2010-11, the major factor contributing or the major factor triggering inflation was food inflation. In 2009-10, it was the failure of foodgrain production in the wake of poor monsoon. In 2011-12, it was food inflation but not caused by foodgrains but the abnormal and extraordinary increase in the prices of vegetables.

Now, this takes me directly to the next

Presenting a bouquet to Dr. C Rangarajan *question and that is the balance of payments. India's balance of payments was very much under control till 2008-09. In fact, our current account deficit was low. Many of you know how the balance of payments is struck. The balance of payments has two parts to it. If I call it the top part of the account, it deals with the current transactions, and the current transactions are two-fold. One, what we call merchandise trade, that is, trade in goods – import of goods and export of goods. The difference between the two is what we call the trade deficit or the merchandise trade deficit. The second part deals with services. Our service exports as well as payment for services that we make use of. There is difference between the two. Then, you add the two to arrive at what the current account deficit is. It so happens in India now that the merchandise trade deficit is almost about 10% of the GDP and we have a surplus on the service sector. That almost reduces the trade deficit by more than half so that you finally get a current account deficit which is much lower.*

...At the import side, we need to look at very closely three things. One is coal. Coal imports have increased enormously. In 2009-10, it was 75 million tons. In the more recent period, it is almost 105 million tons. But, that in quantitative terms, coal imports have increased by 40%. In value terms, it has doubled – from 9 billion to 18 billion. Why? Because our domestic production is not increasing fast enough to meet the demand. We are making up for the shortfall in domestic production by importing. Therefore, as our domestic production of coal increases, the import of coal from outside can come down.

The second, of course, is gold. I think much has been talked about it. But, let me say also that in 2011-12, gold import came to 56 billion dollars. In 2012-13, it was 54 billion dollars. The average in the previous years is used to be something like 35-40 billion dollars not even 40, 35 billion dollars. Why this extraordinary increase. [disturbance] one, this was the period in which gold prices were rising and people thought gold was a good investment. This was a period of high inflation as well. During this period, the rate of return on financial assets was not attractive enough. Therefore, gold seemed to be an alternative investment and that is why we see an extraordinary increase in the import of gold in the last two years. Going ahead, I believe, if inflation comes down and if the return on financial assets becomes attractive, the lure of gold as an investment will come down and I think that will also help us to manage the current account deficit.

Oil, of course, is a more difficult problem. As we grow, we will need more oil. The domestic production has its own limitations but perhaps we must pay greater attention to conservation of energy.

The last area, the third area, is fiscal consolidation. Fiscal deficit needs to be constrained at an appropriate level. The Fiscal Responsibility and Management Act requires the Central Government to contain the fiscal deficit at 3% of the GDP. I will not go into the reasons why this 3% was fixed. There is a valid reason for it. I think the Act did that. But, in the wake of 2008-09 financial crisis, the fiscal deficit went up very high. In 2008-09, it was 6.2%. Following year – 6.4%. It fell in 2010-11 but rose again in 2011-12 to 5.9%. This is only the fiscal deficit of the Central Government. There is also the fiscal deficit of all the state governments taken together. We need a roadmap for fiscal consolidation. It is good that the Finance Minister brought it down to 5.2% last year. In fact, later numbers showed even lower. In 2013-14, he has promised to bring it further down to 4.8%. Going ahead by 2015-16 or even beyond, we should bring it down to 3% of the GDP as mandated by the FRM Act. Obviously, the way to do it is to raise the revenues and to cut expenditures. In fact, you will know that the tax GDP ratio is lower today than it was in 2007-08. Therefore, an effort must be made to get back to the tax-GDP ratio of 2007-08. On the expenditure side, the most important thing is to contain what we call fixed subsidies. The total subsidies – food, fertilizer, everything, petroleum products – in 2005-06, was 1.3% of the GDP. By 2008, it had become 2.3% of GDP. Therefore, in 2012-13, they are 2.6% of the GDP but in the current year's budget, it is supposed to go around 2% of the GDP and further down. I think we really need to act in the way of containing the subsidies, adjusting the prices, making the subsidies more targeted and focussed. Subsidies will be an integral part. Subsidies cannot be avoided. All that is required is to make the subsidies more focussed, targeted and directed towards those beneficiaries who desire that.

...Let me, therefore, conclude. I believe we

have the potential in the country to prove 8.5%. Our savings rate is high. Our investment rate is high. We need to ensure that the effective utilisation of the savings and investments will result in a faster rate of growth. Only if we grow at 8-9% per annum, India's per capita GDP will grow from the current level of something like 1600 dollars to 8000-10000 dollars by 2020-25. Then only, India will graduate to become a middle-income country. It is true because of our size, India is the third largest country in the world in terms of the GDP in terms of PPP (Purchasing Power Parity). But, if you look at the per capita income, it is only by 2025, we will graduate to become a middle-income country and that requires we need to grow at 8-9% per annum. Growth is important in order to provide employment for the increasing labour force, and also remember we have been able to introduce in the recent period a number of safety nets such as the Employment Guarantee Scheme, Extended Food Security, National Rural Health Mission. All this was possible because we were growing at a faster rate. It is only growth that will enable us to fulfil our socio-economic obligations. Development has many dimensions. It has to be inclusive. It must be reducing poverty and it must be environment friendly. All of this needs to be built into the growth process. But, at the same time, growth is important. At our stage of development, it is growth which will provide the answer to many of the problems. It is growth that will fulfil multiple objectives in the economy including poverty reduction. People very often talk about equity. Equity is important. After all, the benefits of growth must percolate to all sections of the society. We cannot afford to sacrifice it in a democratic country. But, at the same time, it is growth that will provide the resources which are needed to bring about that equality of opportunities the necessary support to the people who are not earning enough. In my view, equity and growth should not be posed as opposing considerations. They must be weaved together to produce a coherent pattern of development wherein lies, if I may say so, economic statesmanship.

The *vote of thanks* was offered by the **ICAI President CA. Subodh Kumar Agrawal**, who had all praise for the delivery of Dr C. Rangarajan. He accepted candidly that he was quite spell-bound listening to him, a man who had seen more monsoons than his age. He mentioned the previous responsibilities of Dr. Rangarajan, such as, a member of the Finance Commission, Governor of the Reserve Bank of India, Governor of Andhra Pradesh etc. and accepted that Dr Rangarajan was the right person to deal with critical situations in the economy of our nation.

The ICAI President found Dr. Rangarajan quite knowledgeable and analytical in his approach. While responding to Dr. Rangarajan's address, the ICAI President CA. Subodh Kumar Agrawal explained the inherent strength of the Indian economy, and tried to give a perspective to the notion of governance.

He then requested the august audience to extend a standing ovation to the Chief Guest. After that, he pronounced the conclusion of the CA Day celebration functions of the day. He added proudly that the webcast of that programme had been viewed by a huge number of members across the globe. Finally, he thanked everybody for their presence and encouragement. ■

Classifieds

5037 New Delhi 38 years practice interested in Merger/branch office/liasion work. e-mail : opeeceejain@yahoo.com.in, 09891636216.

5038 Kalyanasundaram & Associates (KSA), a 25 year old CA firm head quartered in Chennai and having offices in Delhi, Bengaluru and Kolkata is looking for a full time partner to help build the NCR Delhi practice and also grow along with the firm. The ideal partner would be pleasant, hard-working, below 35 years of age, in practice for at least the last 5 years, proficient in audit, direct and indirect taxation and is open to merging his/her practice. The partner can look forward to fair terms of merger and post-merger remuneration and share in the overall firm's profits. Dynamic CAs can look at this as a great opportunity to co-create a great Indian institution. Interested CAs may mail to contact@ksaca.com.

Circulars/Notifications

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

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

A. Notifications

1. Date of enforcement of Commodities Transaction Tax notified

In exercise of the powers conferred by section 115(2) of Finance Act, 2013, Central Government has, through this notification, notified 1st July, 2013 as the date for enforcement of Chapter VII of the said Act (i.e. Commodities Transaction Tax).

[Notification No. 45/2013, dated 19-6-2013]

2. Commodities Transaction Tax Rules, 2013

In exercise of the powers conferred by section 133(1) and 133(2) of the Finance Act, 2013, the Central Government has, through this notification, notified Commodities Transaction Tax Rules, 2013 which shall come into force from 1st July, 2013. The said rules have provided for Short title and commencement; Definitions; Agricultural commodities; Rounding off value of taxable commodities transaction, commodities transaction tax, etc.; Payment of commodities transaction tax; Return of taxable commodities transactions; Return by whom to be signed; Time limit to be specified in the notice calling for return of taxable commodities transaction; Notice of demand ; Prescribed time for refund of tax to the person from whom such amount was collected; Appeal to Commissioner of Income-tax (Appeals)and Appeal to Appellate Tribunal. The said Rules have further prescribed the format of Form No. 1(Return of taxable commodities transactions), Form No. 2 (Notice of demand), Form No. 3 [Form of Appeal to CIT (Appeals)] and Form No. 4 (Form of Appeal to Appellate Tribunal).

[Notification No. 46/2013, dated 19-6-2013]

3. Authorisation and maintenance of documents etc for the purposes of section 94A-Notification of Rule 21AC and Form No. 10FC

Section 94A deals with the special measures in respect of transactions with persons located in Notified Jurisdictional Area (NJA). In order to claim deduction in respect of any payment made to a financial institution located in NJA, section 94(3)(a) requires the assessee to furnish an authorisation in a prescribed format authorising the Board to seek relevant information on behalf of the assessee from the such financial institution. Further, section 94(3)(b) provides that no deduction in respect of any other expenditure or allowance arising from the transaction with a person located in NJA shall be allowed unless the assessee maintains such other documents and furnishes such information as may be prescribed.

In exercise of the powers conferred by Section 94A(3) read with section 295 of the Income-tax Act, 1961, the Central Government has, through this notification, notified Income-tax (Eighth Amendment) Rules, 2013 which has inserted Rule 21AC to provide for the manner of Furnishing of authorisation and maintenance of documents etc. for the purposes of section 94A. These Rules also require that the format of authorisation as required under section 94(3)(a) should be in Form No. 10FC.

[Notification No. 47/2013, dated 26-6-2013]

4. Agreement for avoidance of double taxation and prevention of fiscal evasion with Bangladesh – Amendment in Notification No. GSR 758(E), dated 8-9-1992

In exercise of the powers conferred by section 90 of the Income-tax Act, 1961, Central Government has, through this notification, directed that all the provisions of protocol amending the convention between the Government of the Republic of India and the Government of the Republic of Bangladesh for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, shall be given effect to in the Union of India from 13th June, 2013.

[Notification No.50/2013, dated 4-7-2013]

5. Conditions to be fulfilled to qualify as a "recognised association" and procedure for notification thereof – Insertion of Rules 6DDC & 6DDD and Form No. 3BC

The Finance Act, 2013 had inserted clause (e) in the proviso to section 43(5) of the Income tax Act, 1961 to provide that an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association shall not be deemed to be a speculative transaction.

In exercise of the powers conferred by clause (e) of proviso to section 43(5) read with section 295 of the Income-tax Act, 1961, CBDT has, through this notification, amended Income-tax (Ninth Amendment) Rules, 2013 which has notified Rules 6DDC & 6DDD and Form No. 3BC to provide the following:

(i) *Rule 6DDC* provides the conditions to be fulfilled by a recognised association to be notified as a recognised association for the purposes of clause (e) of the proviso to section 43(5).

(ii) *Rule 6DDD* provides for the procedure to be followed by a recognised association for getting notified for the purpose of clause (e) of the proviso to section 43(5).

(iii) *Form 3BC* provides the format of the monthly statement to be furnished by a recognised association in respect of transactions in which client codes have been modified after registering in the system.

[Notification No. 51/2013, dated 4-7-2013]

6. Guidelines/Conditions for approval/ notification of skill development project under section 35CCD - Insertion of Rules 6AAF, 6AAG, 6AAH and Form Nos. 3CQ & 3CR

As per Section 35CCD, a deduction shall be allowed to a company of a sum equal to 1.5 times of the expenditure incurred on any skill development project notified by the Board in accordance with the guidelines as may be prescribed.

In exercise of the powers conferred by section 295 read with section 35CCD(2) of the Income-tax Act, 1961, the Central Board of Direct Taxes has, through this notification, notified Income-tax (10th Amendment) Rules, 2013 to provide the following :

a) *Rule 6AAF* specifies the guidelines for approval of such skill development project under section 35CCD;

b) *Rule 6AAG* specifies the conditions subject to which such skill development project is to be notified under section 35CCD; and

c) *Rule 6AAH* provides meaning of expressions used in Rule 6AAF and Rule 6AAG.

The CBDT through this notification has also notified the Form of application, namely Form No. 3CQ, for approval under section 35CCD(1), which is to be accompanied by the specified note/details/letter of concurrence. The application is to be made by the eligible company to the National Skill Development Agency (NSDA). A copy of the application shall also be sent to the Commissioner of Income-tax or the Director of Income-tax, as the case may be, having jurisdiction over the case. The NSDA shall intimate any defect in the application before the expiry of one month from the date of receipt of application and the applicant shall remove the defect within fifteen days or a further extended period (maximum of 30 days in total). If the applicant fails to remove the defect the NSDA shall send its recommendation to the CBDT for treating the application as invalid and the CBDT, if satisfied, may pass an order treating the application as invalid. If the application form is complete in all respects, the NSDA may, after making enquiry and satisfying the genuineness of the current and proposed activity of the applicant, send its recommendation to the CBDT for grant of approval or rejection of the application before the expiry of the period of two months from receipt of the application, complete in all respects.

After due verification, before the expiry of one month, the Commissioner shall send his recommendation for grant of approval or rejection of application to National Skill Development Agency (NSDA). Thereafter, CBDT shall, within a period of fifteen days from the end of the month in which it receives the report, after due verification, issue a notification in Form No. 3CR to be published in the Official Gazette specifying the skill development project subject to conditions mentioned in rule 6AAG or such other conditions, as it may deem fit, to be effective for such period not exceeding three assessment years or pass an order rejecting the application.

The conditions subject to which skill development project is to be notified under section 35CCD have been provided in Rule 6AAG include, maintenance of separate books of account and getting the same audited by an accountant, furnishing of specified documents on or before due date under section 139(1), etc.

[Notification No. 54/2013, dated 15-7-2013]

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

B. Circulars

1. Withdrawal of Circular No. 2/2013, dated 26-3-2013

The Central Board of Direct Taxes had issued Circular No. 2/2013 dated 26-3-2013 regarding application of profit spilt method. The said appeared to give an impression that there was a hierarchy among the six methods listed in section 96C and that profit spilt method was the preferred method in the case involving unique intangible or in multiple interrelated international transactions and thus the said circular has been withdrawn with immediate effect.

[Circular No. 5/2013, dated 29-6-2013]

2. Clarification on functional profile of development centres engaged in contract R&D services with insignificant risk with regard to conditions relevant to identify such development centres – Amendment in Circular No. 3/2013 dated 26-3-2013

In order to clarify and settle the divergent views amongst the field officers and the assessees regarding functional profile of development centres engaged in contract R&D services with insignificant risk for the purposes of determining arm's length price/transfer pricing, the Central Board of Direct Taxes has, through this circular, issued guidelines for identifying the development centre as a contract R&D service provider with insignificant risk. The said circular also provides that the Assessing Officer or the Transfer Pricing Officer, as the case may be, shall have regard to the said guidelines and shall take a decision based on the totality of the facts and circumstances of the case. In doing so, he shall be guided by the conduct of the parties and not merely by the terms of the contract.

[Circular No. 6/2013, dated 29-6-2013]

The complete text of the above circulars can be downloaded from the link below: http://law.incometaxindia.gov.in/DIT/Circulars.aspx

C. Press Release

The Prime Minister's Office issued a press release on July 30, 2012, stating that the Hon'ble Prime Minister had constituted a Committee to Review Taxation of Development Centres and the IT Sector under the Chairmanship of Mr. N Rangachary, former Chairman CBDT & IRDA. The press release also underlined certain grounds for seeking resolution of tax issues through an arm's length exercise in the form of a review by the Committee. The Committee has, vide Press release dated 1.7.2013, issued First Report of the Committee to review taxation of Development centres and the IT sector.

The complete text of the above press release can be downloaded from the link below: http://law.incometaxindia.gov.in/DIT/Circulars.aspx

D. Instructions

1. Directions of Hon'ble Delhi High Court in the case *'Court on its own motion Vs. Union of India & Ors.*in WP(C) 2659/2012 & WP(C) 5443/2012

In pursuance of several mandamuses issued by Hon'ble Delhi High Court *vide* judgement in case of *Court on its own motion vs. UOI and Ors.* in WP(C) 2659/2012 and 5443/2012, dated 14.3.2013, for necessary action by Income-tax Department, the Central Board of Direct Taxes has issued the following instructions:

(i) With regard to applications received under section 154 of the Act, instructions have been issued mentioning the manner of receipt of applications, maintenance of "Online rectification register" and disposal of applications–***Instruction No. 3/2013, dated 5-7-2013***.

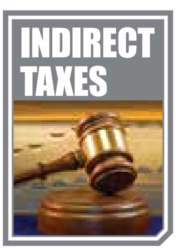
(ii) Intimations/orders issued under section 143(1) prior to 31.03.2010 but not communicated be treated as invalid for want of communication within reasonable time. However, where an order under Section 143(1) was sent and communicated to the assessee but could not be served due to non-availability/change of address or other valid reasons, should not be treated at par with case where there is no communication or no attempt is made to serve the order whatsoever. But when there is failure to dispatch or send communication/intimation/ to the assessee consequences must follow. The Assessing Officers have been instructed to carry out this exercise by 31st August, 2013. The instruction specifically requires the Assessing officers to keep in mind the observations of Court with regard to intimations under section 143(1), disposal of application under section 154 and also passing of an order under section 245 while dealing with such matters–***Instruction No. 4/2013, dated 5-7-2013***.

(iii) When an assessee approaches the Assessing Officer with requisite details and particulars in the form of TDS certificate as an evidence against any mismatched amount, the said Assessing Officer has to verify whether or not the deductor has made payment of the TDS in the Government Account and if the payment has been made, credit of the same has to be given to the assessee. The instruction further provides that the Assessing Officer is at liberty to ascertain and verify the true and correct position about the TDS with the relevant AO (TDS) and that the AO may also, if deemed necessary, issue a notice to the deductor to compel him to file correction statement as per the procedure laid down. - ***Instruction No. 5/2013, dated 8-7-2013***.

(iv) This instruction requires that the cases where returns have been processed by the CPC, Bengaluru and refunds have been fully or partly adjusted against the past arrears while passing or communicating the order under Section 143(1) of the Act, without following the procedure under Section 245 of the Act, be transferred to the Assessing officers (AO), who shall issue notice to the assessee. The assessee shall be entitled to reply to such notice. After considering the reply, if any, order under section 245 is to be passed. The CBDT has instructed that such procedure be carried out by 31st August, 2013. - ***Instruction No. 6/2013, dated 10-7-2013***.

(v) In no case interest under section 244A be denied where the assessee is not at fault. - ***Instruction No. 7/2013, dated 15-7-2013***

The complete text of the above Instructions can be downloaded from the link below: http://law.incometaxindia.gov.in/DIT/Circulars.aspx



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

A. SERVICE TAX

1. New Service tax refund procedure in case of services provided to SEZ unit/Developer

CBEC has issued a *Notification No. 12/2013-ST dated 01.07.2013* with a view to simplify the procedure of exemption of service tax, by way of refund, paid on the specified services received by the SEZ unit or the Developer, used for the authorised operation.

In case the specified services received by the SEZ Unit or the Developer are used exclusively for the authorised operations, the person liable to pay service tax has the option not to pay the service tax *ab initio*, subject to the conditions and procedure mentioned in the notification.

In the previous *Notification No.40/2012 ST dated 20.06.2012*, the *ab-initio* exemption was admissible only to the specified services which were "wholly consumed" within the SEZ. However, the exemption would be allowed if the specified services are 'used exclusively' for the authorised operations, whether or not they are wholly consumed within the SEZ.

The notification also provides a refund mechanism in cases where specified services are used for authorised operations as well as for other operations. It also mentions that in case the specified services are common to the authorised operations in an SEZ and domestic tariff area [DTA], then service tax paid shall be distributed amongst the SEZ Unit and the DTA Unit in the manner prescribed in Rule 7 of CCR, 2004 i.e, on pro rata basis.

It further mentions that in case SEZ unit/developer is not a registered assessee under Central Excise/ Service Tax, then unit should get itself registered, before filing of refund claim. The claim for refund is to be filed within one year from the end of month in which actual service tax payment is made by SEZ Unit/Developer. Only one refund claim can be filed in each quarter.

Forms A-1 to A-4 have been prescribed to claim the exemption benefit under this Notification. The detailed procedures and conditions have been mentioned in the Notification.

[Notification No. 12/2013 - ST., dated 01.07.2013]

B. CUSTOMS

1. Introduction of Risk Management Systems in Exports

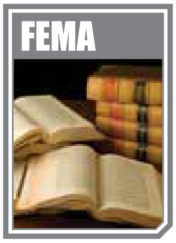
With a view to enhance the level of facilitation and speed up the cargo clearance process, CBEC has introduced Risk Management Systems (RMS) in exports at Customs locations where the Indian Customs EDI Systems (ICES) is operational. RMS will enable clearance of low risk consignments on self assessment of the declarations by exporters.

With the introduction of the RMS in exports, the present practice of routine verification of self-assessment and examination of Shipping Bills will be discontinued and the focus will be on quality assessment, examination and post clearance audit (PCA) of Shipping Bills selected by the Risk Management System.

Initially, RMS in Exports has been introduced w.e.f. 15.7.2013 at ICD Mulund and ICD Patparganj. The detail instruction has been mentioned in the circular.

[Circular No. 23/2013 - Cus., Dated 24.06.2013]

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



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

A. Foreign Direct Investment – Reporting of issue/transfer of shares to/by a FVCI

Notification No. FEMA.266/2013-RB dated March 05, 2013 and A. P. (DIR Series) Circular No.110 dated June 12, 2013

RBI has clarified that whenever a SEBI registered FVCI acquires shares of an Indian company under FDI Scheme in terms of Schedule 1 of Notification No. FEMA 20/2000-RB dated May 3, 2000, as amended from time to time, such investments have to be reported in form FC-GPR/FC-TRS only, as applicable. Where the investment is under Schedule 6 of the Notification *ibid*, no FC-GPR/FC-TRS reporting is required. Such transactions would be reported by the custodian bank in the monthly reporting format as prescribed by RBI from time to time. Accordingly, a SEBI registered FVCI while making investment in an Indian company may determine upfront whether the said investment is under FDI or FVCI scheme and report accordingly.

The forms FC-GPR and FC-TRS are accordingly revised and are enclosed to the circular. The above circular is available on RBI website at: http://rbidocs.rbi.org.in/rdocs/notification/PDFs/110APR120613F.pdf

Consequently, the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 [Notification No. FEMA 20/2000–RB] is amended vide Notification No. FEMA 266/2013-RB dated March 05, 2013 issued by RBI to give effect to the above amendments.

B. Foreign Investment in India by SEBI registered Long Term Investors in Government dated Securities

A.P. (DIR Series) Circular No.111 dated June 12, 2013

RBI has in consultation with Government of India enhanced the limit for foreign investment in Government dated securities with USD 5 billion to USD 30 billion with immediate effect. The enhanced limit of USD 5 billion will be available only for investments in Government dated securities by long term investors registered with SEBI–Sovereign Wealth Funds (SWFs), Multilateral Agencies, Pension/Insurance/Endowment Funds, Foreign Central Banks. The operational guidelines in this regard will be issued by SEBI.

C. Liberalisation/rationalisation of External Commercial Borrowing (ECB) policy

1. ECB for the low cost affordable housing projects

A.P. (DIR Series) Circular No.113 dated June 24, 2013

ECB for low cost affordable housing projects is allowed as a permissible end-use under the approval route. The policy regarding ECB for the low cost affordable housing projects has been reviewed and modified as under:

(i) Developers/builders should have a minimum of three year's experience in undertaking residential projects as against five years prescribed earlier and should have good track record in terms of quality and delivery.

(ii) The condition of minimum paid-up capital of not less than ₹50 crore, as per the latest audited balance sheet, for Housing Finance Companies (HFCs) stands withdrawn. However, the condition of the minimum Net Owned Funds (NoF) of ₹300 crore for the past three financial years remains unchanged.

(iii) The aggregate limit for ECB under the low cost affordable housing scheme is extended for the financial years 2013-14 and 2014-15 with a ceiling of USD 1 billion in each of the two years, subject to review thereafter.

(iv) The ECB availed of by developers & builders shall be swapped into Rupees for the entire maturity on fully hedged basis.

Interest rate spread to be charged by National Housing Bank (NHB) may be decided by NHB taking into account cost and other relevant factors. NHB shall ensure that interest rate spread for HFCs for on-lending to prospective owners' of individual units under the low cost affordable housing scheme is reasonable.

HFCs while making the applications, shall

(a) submit a certificate from NHB, the nodal agency, that the availment of ECB is for financing prospective owners of individual units for the low cost affordable housing;

(b) ensure that cost of such individual units does not exceed ₹30 lakh and loan amount does not exceed ₹25 lakh;
(c) ensure that the units financed are having maximum carpet area of 60 square metres; and
(d) ensure that the interest rate spread charged by the HFCs to the ultimate buyer is reasonable.

2. ECB for 3G spectrum allocation

A.P. (DIR Series) Circular No.114 dated June 25, 2013

As per the extant policy, the payment for spectrum allocation shall initially be met out of the Rupee resources by the successful bidders, to be refinanced with a long term ECB, under the approval route, subject to the condition that ECB should be raised within 12 months from the date of payment of the final installment to the Government.

RBI has now decided that ECB window for financing 3G spectrum rupee loans, that are still outstanding in telecom operator's books of accounts, will be open upto March 31, 2014.

3. ECB for Civil Aviation Sector

A.P. (DIR Series) Circular No.116 dated June 25, 2013

In terms of A.P. (DIR Series) Circular No. 113 dated April 24, 2012 the ECB for working capital for the civil aviation sector was to be raised within twelve (12) months from the date of issue of the circular. It has now been decided that the scheme for availing of ECB for working capital for civil aviation sector will continue till December 31, 2013.

4. ECB in Renminbi (RMB)

A.P. (DIR Series) Circular No.117 dated June 25, 2013

Since the facility of ECB in Renminbi (RMB) has remained unused so far, the scheme of ECB in Renminbi has been discontinued from the date of issue of this circular.

5. Import of Services, Technical know-how and License Fees

A.P. (DIR Series) Circular No.119 dated June 26, 2013

RBI has decided to include import of services, technical know-how and payment of license fees as part of import of capital goods by the companies for the use in the manufacturing and infrastructure sectors as permissible end uses of ECB under the automatic/approval route as the case may be subject to the specified conditions.

6. Structured Obligations

A.P. (DIR Series) Circular No.120 dated June 26, 2013

It has been decided that credit enhancement can be provided by eligible non-resident entities to the domestic debt raised through issue of INR bonds/debentures by all borrowers eligible to raise ECB under the automatic route. It has also been decided to reduce the minimum average maturity of the underlying debt instruments from 7 years to 3 years. Prepayment and call/put options, however, shall not be permissible for such capital market instruments up to an average maturity period of 3 years.

On invocation of such credit enhancement, if the guarantor meets the liability and if the same is permissible to be repaid in foreign currency to the eligible non-resident entity, the all-in-cost ceilings, as applicable to the relevant maturity period of the Trade Credit/ECBs as per extant guidelines, would apply to the novated loan.

7. Non-Banking Finance Company - Asset Finance Companies (NBFC - AFCs)

A.P. (DIR Series) Circular No. 06 dated July 08, 2013

Presently, NBFCs are allowed to avail of ECB under approval route from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks with minimum average maturity of 5 years to finance import of infrastructure equipment for leasing to infrastructure projects. Further, NBFC–Infrastructure Finance Companies (IFCs) have been permitted to avail of ECB for on-lending to infrastructure sector both under automatic and approval routes subject to certain terms and conditions.

RBI has now allowed NBFCs, categorised as Asset Finance Companies (AFCs) to avail of ECB subject to specified conditions mentioned in the above circular.

Please refer Circular as available on RBI website for detail terms and conditions: http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8219&Mode=0

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

A.P. (DIR Series) Circular No. 09 dated July 11, 2013

All-in-cost ceiling as specified in the A.P. (DIR Series) Circular No. 28 dated September 11, 2012 for trade credits for imports into India will continue till September 30, 2013 until further review.

It has also been decided that for availment of trade credit, the period of trade credit should be linked to the operating cycle and trade transaction. AD banks are advised to ensure that these instructions are strictly complied with.

9. Refinancing/Rescheduling of ECB

A.P. (DIR Series) Circular No.10 dated July 11, 2013

RBI had vide A.P. (DIR Series) Circular No. 112 dated April 20, 2012 allowed the borrowers desirous of refinancing/rescheduling an existing ECB to raise fresh ECB at a higher all-in-cost under the approval route subject to the condition that the enhanced all-in-cost does not exceed the all-in-cost ceiling prescribed as per the extant guidelines.

It has been decided to continue with these instructions till September 30, 2013 and is subject to review thereafter.

10. Review of all-in-cost ceiling - ECB Policy

A.P. (DIR Series) Circular No.10 dated July 11, 2013

All-in-cost ceiling as specified in A.P. (DIR Series) Circular No. 99 dated March 30, 2012 for ECB shall continue to be applicable till September 30, 2013 until further review.

D. Buyback/prepayment of Foreign Currency Convertible Bonds (FCCBs)

A.P. (DIR Series) Circular No.115 dated June 25, 2013

Considering the developments in the global financial markets and on a review of the aforesaid scheme, it has been decided that the existing scheme of Buyback/Prepayment of FCCBs under the approval route which expired on March 31, 2013 may be continued till December 31, 2013 and shall stand discontinued thereafter.

E. Export of Goods and Services – Project Exports

A.P. (DIR Series) Circular No.118 dated June 26, 2013

Presently, exporter undertaking Project Exports and Service contracts abroad are required to submit form DPX1, PEX-1 and TCS-1 to the Approving Authority (AA) i.e. AD Bank/Exim Bank/Working Group, within 15 days of entering into contract for grant of post-award approval. The said time limit is increased and henceforth the exporter undertaking Project Exports and Service contracts abroad should submit form DPX1, PEX-1 and TCS-1 to the Approving Authority (AA) i. e. AD Bank/Exim Bank/Working Group, within 30 days of entering into contract for grant of post-award approval.

F. Import of Gold by Nominated Banks /Agencies

A.P. (DIR Series) Circular No. 122 dated June 27, 2013

RBI has vide A.P. (DIR Series) Circular No. 103 dated May 13, 2013 and A.P. (DIR Series) Circular No. 107 dated June 04, 2013 restricted the import of gold on consignment basis by banks, nominated agencies/premier/star trading houses who have been permitted by Government of India, to import gold only to meet the genuine needs of the exporters of gold jewellery. Further, it was advised that all Letters of Credit (LC) to be opened by Nominated Banks/Agencies for import of gold under all categories will be only on 100% cash margin basis and imports of gold will necessarily have to be on Documents against Payment (DP) basis. Accordingly, gold imports on Documents against Acceptance (DA) basis will not be permitted.

RBI has now clarified that import of gold against supplier's/buyer's credit, as also import of gold on unfixed price basis has to necessarily observe the discipline stipulated relating to cash margins and Documents against Payment (DP) basis. In other words, AD Category I Banks are required to ensure that credit in any form or name is not enabled for import of any form of gold. Import of gold on loan basis shall, however, continue to be allowed since the scheme envisages that the nominated banks/nominated agencies can import gold on loan basis for on-lending only to the genuine exporters of jewellery in sync with the non-applicability of the above restrictions to exporters of gold jewellery.

G. Guidelines for calculation of total foreign investment in Indian companies, transfer of ownership and control of Indian companies and downstream investment by Indian companies

Notification No. 278/2013-RB dated June 07, 2013 and A.P. (DIR Series) Circular No. 06 dated July 08, 2013

The DIPP had issued Press Notes 2 and 3 (2009 series) dated February 13, 2009, issuing guidelines for calculation of total foreign investment, i.e. direct and indirect foreign investment in Indian companies and for establishment of Indian companies/ transfer of ownership or control of Indian companies from resident Indian citizens to non-resident entities, in sectors with caps. Further, DIPP, vide their Press Note 2 (2012 series) dated July 31, 2012, had made certain other changes. These Press Notes are comprehensively incorporated in the Consolidated FDI Policy Circular 1 of 2013 dated April 5, 2013. The RBI has now notified these guidelines vide Notification No.FEMA.278/2013-RB dated June 07, 2013 and A.P. (DIR Series) Circular No.01 dated July 04, 2013

Any foreign investment already made in accordance with the guidelines in existence prior to February 13, 2009 shall not require any modification to conform to these guidelines. All other investments, after the said date, would come under the ambit of these new guidelines. As regards investments made between February 13, 2009 and the date of publication of the above mentioned notification, Indian companies shall be required to intimate, within 90 days from the date of this circular i.e. July 8, 2013, through an AD Category I bank to the concerned Regional Office of the RBI, in whose jurisdiction the Registered Office of the company is located, detailed position where the issue/transfer of shares or downstream investment is not in conformity with the regulatory framework prescribed in the above Circular. The RBI shall consider treating such cases as compliant with these guidelines within a period of six months or such extended time as considered appropriate by RBI in consultation with Government of India.

Accordingly, the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 [Notification No. FEMA 20/2000–RB] is amended vide Notification No. FEMA 278/2013-RB dated June 07, 2013 issued by RBI effective from February 13, 2009 to give effect to the above amendments.

The guidelines summarised in the aforesaid circular are available on RBI website at:

http://rbidocs.rbi.org.in/rdocs/Notification/PDFs/01APDIR040713.pdf

http://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=8208&Mode=0

H. Overseas Investments – Shares of SWIFT

A.P. (DIR Series) Circular No. 08 dated July 11, 2013

Presently, in terms of FEMA provisions, the proposal of acquisition of the shares of Society for Worldwide Interbank Financial Telecommunication (SWIFT), Belgium by the resident bank is considered by the RBI on case to case basis under the approval route.

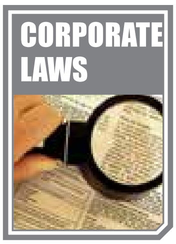
RBI has now decided to grant general permission to a bank in India, being licensed by the RBI under the provisions of the Banking Regulation Act, 1949, to acquire the shares of SWIFT as per the by-laws of SWIFT, provided the bank has been permitted by the RBI for admission to the 'SWIFT User's Group in India' as member.

Consequently, the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 [Notification No. FEMA 120/2000–RB] is amended vide Notification No. FEMA 271/2013-RB dated March 19, 2013 issued by RBI to give effect to the above amendment.

I. Review of the policy on FDI in Multi Brand Retail Trading (MBRT) sector

Press Note No.3 (2013 Series) issued by the DIPP dated July 04, 2013

The Government of Karnataka has given its consent to implement the MBRT policy in Karnataka in terms of paragraph 6.2.16.5(1)(viii) of Circular 1 of 2013-Consolidated FDI Policy (FDI Policy). Accordingly, the list of States/Union Territories which have conveyed their agreement for the policy in MBRT and mentioned in Paragraph 6.2.16.5(2) of the FDI Policy is amended and updated to include state of Karnataka.



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

MCA (www.mca.gov.in)

1. Amendment to Name Availability Guidelines, 2011- Registration of Electoral Trusts

The MCA has issued General Circular No. 12/2013 dated 28.06.2013 in relation to registration of electoral trusts as companies under section 25 of the Companies Act, 1956 and has clarified that if it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed, for example, cooperative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG, etc. It is also clarified that the name including the phrase 'electoral trust' may be allowed for registration of companies to be formed under section 25 of the Companies Act, 1956 under the Electoral Trusts Scheme, 2013 as notified by the Central Board of Direct Taxes (CBDT). However, the company to be formed under section 25 of the Act, shall be the new company and such company will be required to comply with section 293-A of the Act. Further, the name application may be accompanied with an affidavit to the effect that the name to be obtained shall be only for the purpose of registration of companies under Electoral Trust Scheme as notified by the CBDT. One may refer to the above citation for further details.

SEBI (www.sebi.gov.in)

1. SEBI Certification of Associated Persons in the Securities Markets

The SEBI has issued Circular No. LAD-NRO/GN/13/6109 dated 19.06.2013 stating that in terms of regulation 3(1) of the SEBI (Certification of Associated Persons in the Securities Markets) Regulations, 2007 (the Regulations), the Board may require any category of associated persons as defined in the Regulations to obtain requisite certification(s). SEBI has now notified that investment Advisers and their associated persons, including their representatives and partners, offering investment advice, shall obtain certification from the National Institute of Securities Markets (hereinafter referred to as "NISM") by passing the NISM-Series-X-A: Investment Adviser (Level 1) Certification Examination (hereafter referred to as "IACE-1") as mentioned in the NISM communiqué No. NISM/Certification/Series-X-A: IA-L1/2013/01 dated May 21, 2013. It is also clarified that if such an associated person has obtained certification by passing NISM Certified Personal Financial Advisor (CPFA) Examination as on the date of this notification, he shall not be required to obtain certification by passing IACE-1, till the validity of the said certification. Such associated persons who pass the IACE-1 or CPFA shall also obtain certification for the purpose of regulation 7(2) of the SEBI (Investment Advisers) Regulations, 2013 from NISM by passing NISM-Series-X-B: Investment Adviser (Leve 2) Certification Examination, as and when notified by the Board. Such associated person, may, in alternative, also obtain certification from organisations and institutions accredited by NISM, for the purpose of regulation 7(2) of the SEBI (Investment Advisers) Regulations, 2013. One may refer to the above citation for further details.

2. Amendment to SEBI Buyback Regulations governing buy-back through open market purchase

The SEBI has issued Press Release No. PR No. 60/2013 dated 25.06.2013 approving changes to buyback of shares or other specified securities from the open market through stock exchange mechanism and which are detailed below :

- The mandatory minimum buy-back has been increased to 50% of the amount earmarked for the buy-back, as against existing 25%, failing which amount in the escrow account would be forfeited subject to a maximum of 2.5% of the total amount earmarked.
- The maximum buy-back period has been reduced to 6 months from 12 months.
- Companies shall create an escrow account towards security for performance with an amount equivalent to at least 25% of the amount earmarked for buy-back.
- The company shall not raise further capital for a period of one year from the closure of the buy-back except in discharge of subsisting obligations as against the existing 6 months.
- The company shall not make another buy-back offer within a period of one year from the date of closure of the preceding offer.
- The disclosure requirements have been rationalised requiring disclosure of the shares bought back on a cumulative basis on the website of the company and the stock exchange, only on a daily basis instead of the current requirement of disclosure on daily, fortnightly and monthly basis.
- The companies can buy-back 15% or more of capital (paid-up capital and free reserves) only by way of tender offer.
- Procedure for buy-back of physical shares (odd-lot) has been modified which includes creation of separate window in the trading system for tendering the shares, requirement of PAN/Aadhaar for verification, etc.
- Companies are permitted to extinguish shares bought back during the month, within fifteen days of the succeeding month subject to the last extinguishment within seven days of the completion of the offer.
- The promoters of the company shall not execute any transaction, either on-market or off-market, during the buy-back period.

One may refer to the above citation for further details.

3. SEBI – Arbitration Mechanism in Stock Exchanges – Investor Service Centres

The SEBI has issued Circular No. No. CIR/MRD/ICC/21/2013 on 05.07.2013 regarding investor service centres providing *inter alia* arbitration facility (arbitration as well as appellate arbitration) which are presently provided at eight centres viz. Delhi, Mumbai, Kolkata, Chennai, Ahmedabad, Hyderabad, Kanpur and Indore. With a view to extend these facilities, it has been decided to increase the number of investor service centres so as to reduce travelling and other incidental costs to investors and set up new ones at Bangalore, Pune, Jaipur, Ghaziabad, Lucknow, Gurgaon, Patna and Vadodara. The investor service centres at Bangalore, Pune, Jaipur and Ghaziabad shall be established before December 31, 2013 and at Lucknow, Gurgaon, Patna and Vadodara shall be made functional by June 30, 2014. One may refer to the above citation for further details.

4. SEBI – Arbitration mechanism in stock exchanges – place of arbitration

The SEBI has issued Circular No. CIR/MRD ICC/20/2013 on 05.07.2013 in relation to place of arbitration and stated that stock exchanges (SEs) having nationwide terminals, shall provide arbitration facility (i.e arbitration as well as appellate arbitration) at least at all centres specified by SEBI from time to time. However, the SEs having nationwide terminals may provide arbitration facility at additional centres, if SEs so desire. The arbitration and appellate arbitration shall be conducted at the centre nearest to the address provided by client in the KYC form. Other stock exchanges shall provide the arbitration facility, including appellate arbitration, at the place where it is located. The application under section 34 of the Arbitration and Conciliation Act, 1996, if any, against the decision of the appellate panel shall be filed in the competent Court nearest to the address provided by client in the KYC form. One may refer to the above citation for further details.

5. FII/QFI investments in security receipts

The SEBI has issued Circular No. CIR/IMD/ FIIC/9/2013 dated 09.07.2013 stating that the consolidated FDI policy circular issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, effective from April 05, 2013, stated that FII investments in security receipts issued by Asset Reconstruction Companies (ARCs) should be within the FII limit on corporate bonds prescribed from time to time. Accordingly, the investments in security receipts issued by ARCs by FIIs shall be reckoned against the extant corporate debt limits. One may refer to the above citation for further details.

RBI (www.rbi.gov.in)

1. Raising money through private placement by NBFCs-debentures etc.

The RBI has issued Circular No. RBI/2012-13/560/ DNBD(PD) CC No. 330/03.10.001/2012-13 dated 27.06.2013 stating that when NBFCs raise money by issuing capital/debt securities including debentures by way of public issue or private placement and when it is a case of public issue of such securities, institutions and retail investors can participate. Private placement, on the other hand, may involve institutional investors. RBI has observed that NBFCs have lately been raising resources from the retail public on a large scale, through private placement, especially by issue of debentures. As certain adverse features have come to the notice of the Reserve Bank in private placements by certain NBFCs, it has been decided to put in place a minimum set of guidelines for compliance by all NBFCs. The Guidelines require NBFCs to space out such issuances and also aim to bring NBFCs at par with other financial entities as far as private placement is concerned by restricting the maximum number of subscribers to forty nine (currently the ceiling of investors stipulated by the Companies Act 1956 for private placement is not applicable for NBFCs). It may be noted that all other extant guidelines on private placement remain unchanged. The provisions of these guidelines will however override other instructions in this regard, wherever contradictory. The circular has also clarified on security cover for any debenture issue and the treatment of unsecured debentures as public deposits. One may refer to the above citation for further details and the detailed set of guidelines to be observed by NBFCs in this regard.

2. Amendment to NBFC directions

The RBI has issued Circular No. DNBS.(PD) 257/ PCGM(NSV)-2013 on 27.06.2013 amending the definition of 'public deposit' by removing the option to convert any amount raised by the issue of bonds or debentures making it compulsory to convert the same into equity. Also, in the said definition, in relation to any amount received as hybrid debt or subordinated debt the minimum maturity period of which is not less than sixty months, it is now provided that there is no option for recall by the issuer within that period. One may refer to the above citation for further details.

3. Clarification on raising money through private placement by NBFCs-Non-Convertible Debentures

The RBI has issued Circular No. RBI/2013-14/115-DNBS(PD) CC No. 349/03.10.001/2013-14 on 02.07.2013 stating that in order to facilitate the process of moving into a more robust ALM (asset liability management) in a non-disruptive manner, it the instruction with regard to minimum gap between two successive issuances of privately placed NCDs may not be operationalised immediately. A decision on the appropriate minimum time gap would be taken by the Bank in due course. NBFCs, in the meantime, are advised to put in place before the close of business on September 30, 2013, a Board approved policy for resource planning which, inter-alia, should cover the planning horizon and the periodicity of private placement. It is clarified that private placement means non-public offering of NCDs by NBFCs to such number of select subscribers and such subscription amounts, as may be specified by the Reserve Bank from time to time. It is also clarified that the earlier circular dtd. 27.06.2013 (summary reported in this reporting separately), the provisions of the said circular shall not be applicable to primary dealers, the restrictions on core investment companies shall not be applicable and that the provisions of paragraph B to the said circular shall not apply to subordinated debt. One may refer to the above citation for further details.

4. Payment of interest by NBFCs on overdue public deposits

The RBI has issued Circular No. DNBS.PD/CC.NO. 350/03.02.001/2013-14 on 04.07.2013 stating that at times NBFCs are required to freeze the term

deposits of customer based on the orders of the enforcement authorities or the deposit receipts are seized by the enforcement authorities. It is now clarified that in relation to payment of interest on such deposit which have either been seized by the government authorities, and/or have been frozen till further clearance is received by the concerned government authorities, NBFCs should follow the following procedure :

- A request letter may be obtained from the customer on maturity and NBFCs should also advise him to indicate the term for which the deposit is to be renewed. In case the depositor does not exercise his option of choosing the term for renewal, NBFCs may renew the same for a term equal to the original term.
- No new receipt is required to be issued. However, suitable note may be made regarding renewal in the deposit ledger.
- Renewal of deposit may be advised by registered letter/speed post/courier service to the concerned Government department under advice to the depositor. In the advice to the depositor, the rate of interest at which the deposit is renewed should also be mentioned.
- If overdue period does not exceed 14 days on the date of receipt of the request letter, renewal may be done from the date of maturity. If it exceeds 14 days, NBFCs may pay interest for the overdue period as per the policy adopted by them, and keep it in a separate interest free sub-account which should be released when the original fixed deposit is released.

However the final repayment of the principal and the interest so accrued should be done only after the clearance regarding the same is obtained by the NBFCs from the respective Government agencies.

One may refer to the above citation for further details.

5. Revised guidelines for availing of ECB by NBFCs

The RBI has issued Circular No. RBI/2013-14/126-A.P. (DIR Series) Circular No. 6 on 08.07.2013 stating that currently NBFCs are allowed to avail of ECB under approval route from multilateral financial institutions, reputable regional financial institutions, official export credit agencies and international banks with minimum average maturity of five years to finance import of infrastructure equipment for leasing to infrastructure projects. Further, NBFC–Infrastructure

Finance Companies (IFCs) have been permitted to avail of ECB for on-lending to infrastructure sector both under automatic and approval routes subject to certain terms and conditions. It has now been decided to allow NBFCs categorised as Asset Finance Companies (AFCs) by the RBI to avail of ECB subject to following conditions:

- NBFC-AFCs are allowed to avail ECB under the automatic route from all recognised lenders as per the extant ECB guidelines with minimum average maturity period of five years in order to finance the import of infrastructure equipment for leasing to infrastructure projects
- In cases where the NBFC-AFCs avail of ECB in the form of Foreign Currency Bonds from international capital markets, such ECBs will be permitted to be raised only from those international capital markets that are subject to regulations prescribed by the host country regulator in a Financial Action Task Force (FATF) member country compliant with FATF guidelines
- Such ECBs (including outstanding ECBs) under the automatic route can be availed upto 75 per cent of owned funds of NBFC-AFCs, subject to a maximum of USD 200 million or its equivalent per financial year
- ECBs by AFCs above 75 per cent of their owned funds will be considered under approval route by Reserve Bank
- The currency risk of such ECBs is required to be hedged in full.

One may refer to the above citation for further details.

6. Master circulars issued by RBI for CICs and NBFCs

The RBI has issued Master Circulars on 01.07.2013 as under :

- Regulatory Framework for Core Investment Companies
- Frauds-Future approach towards monitoring of frauds in NBFCs
- Miscellaneous Instructions to NBFC-ND-SI
- Returns to be submitted by NBFCs
- The Non-Banking Financial Company Factors (Reserve Bank) Directions, 2012
- Opening of Branch-Subsidiary-Joint Venture-Representative office or Undertaking Investment Abroad by NBFCs
- Non-Banking Financial Company-Micro Finance Institutions' (NBFC-MFIs) - Directions
- Miscellaneous Instructions to NBFC-ND-SI
- Non-Banking Financial (Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007
- Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008
- Non-Banking Financial (Non-Deposit Accepting or Holding) Companies Prudential Norms (Reserve Bank) Directions, 2007

One may refer to the above citation for further details. ■

Legal Decisions[1]

Income-tax Act

LD/62/7
CIT, Kolkata-III
Vs.
Rajarani Exports Pvt. Ltd.
April 24, 2013 (CAL)

Section 37(1) of the Income-tax Act, 1961 – Business Expenditure – Allowability of

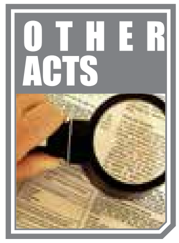
Without calling in question commercial expediency of commission paid by assessee, fact that services was rendered to assessee by a party other than agent to whom commission was paid, was wholly immaterial so far as deductibility of commission in hands of the assessee was concerned.

The assessee had made payment of export commission. The Assessing officer disallowed the commission in view of the *Explanation* to section 37 (1). Against this disallowance the assessee preferred appeal before the Commissioner (Appeals) which was allowed.

The Tribunal dismissed the department's appeal holding *inter alia* as follows:

> *"The assessee had made payment for commission and had been rendered services in consideration of the same. As a matter of fact, it was not even revenue's case that no services had been rendered at all. The fact that services had been rendered by a party other than the agent to whom commission was paid was wholly immaterial so far as deductibility in the hands of the assessee was concerned.*
>
> *As for the position that the payment was highly excessive vis-à-vis the local costs, even if that be so, that aspect of the matter did not affect the deductibility in the hands of the assessee either. The assessee was concerned with commercial expediency of the said payment and not with what were the actual costs incurred in rendering the services for which the payment was made. It was absolutely necessary for the assessee to make the impugned payments and, in any event, the commercial expediency of these payments had not even been called into question by the Assessing Officer. The case of the revenue was confined to invoking the Explanation to Section 37(1). Thus, the Tribunal held that the objections to the said commission payments were, therefore, not sustainable in law, so far as deductibility under section 37(1) is concerned."*

The Calcutta High Court upheld the order of the Tribunal taking into the finding of facts recorded by the Tribunal.



Companies Act

LD/62/8
V.L.S. Finance Ltd.
Vs.
Union of India & Ors.
May 10, 2013 (SC)

Section 211 read with Section 621A of the Companies Act, 1956 – Form and Contents of Balance Sheet and Profit and Loss Account

An accused charged with offence under section 211(7), not being an offence punishable with imprisonment only or imprisonment and also with fine, is permissible to be compounded by Company Law Board either before or after institution of any prosecution and prior permission of court is not necessary

The Registrar of Companies, NCT of Delhi and Haryana laid complaint in the Court of Chief Metropolitan Magistrate alleging that during the course of inspection of company 'S' it was noticed in the balance sheet of 1995-96 Schedule of the fixed assets included land worth ₹21 crore. According to the complaint the Company 's' had taken this land from New Delhi Municipal Corporation on licence and the Company only pays the yearly licence fee thereof. Thus, according to the complainant, without any right, land had been shown as land in the Schedule of fixed assets, which is not a true and fair view and punishable under Section 211(7). The Company and its Chairman-cum-Managing Director were arrayed as accused.

However, before the court in seisin of the case could proceed with the complaint, the Company and its Managing Director jointly filed an application before the Company Law Board for compounding the offence. The Company Law Board acceded to the prayer and compounded the offence against the Managing Director on payment of ₹1000/- for each offence each year.

Aggrieved by the same, appellant preferred Company Appeal before the High Court, *inter alia*, contending that the power of compounding could

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

be exercised by the criminal court and not by the Company Law Board. Said submission had not found favour and the Company Judge dismissed the appeal.

The Supreme Court held that it is an admitted position that the allegation made exposed the Company and its Managing Director for punishment under Section 211(7) which provides for imprisonment or fine or with both. In the face of the same, no fact needs to be adjudicated and the point being a pure question of law going to the root of the matter, same can be permitted to be raised before the Supreme Court for the first time.

From a plain reading of Section 621A(1) it is evident that any offence punishable under the Act, not being an offence punishable with imprisonment only or with imprisonment and also with fine, may be compounded either before or after the institution of the prosecution by the Company Law Board and in case, the minimum amount of fine which may be imposed for such offence does not exceed ₹5000/-, by the Regional Director on payment of certain fine. The penal provisions of the Act provide for different kinds of punishments for variety of offences and can be categorised as, (i) offences punishable with fine only, (ii) offences punishable with imprisonment only, (ii) offences punishable with fine and imprisonment, (iv) offences punishable with fine or imprisonment, (v) offences punishable with fine or imprisonment or both.

Section 211(7) provides for punishment with imprisonment for a term which may extend to six months or with fine or with both. Therefore, an accused charged with the offence under Section 211(7) has not necessarily to be visited with imprisonment or imprisonment and also fine but can be let off by imposition of fine only. Therefore, the punishment provided under Section 211(7) comes under category (v). Section 621A(1) excludes such offences which are punishable with imprisonment only or with imprisonment and also with fine. The nature of offence for which the accused has been charged necessarily does not invite imprisonment or imprisonment and also fine. Hence, the nature of the offence is such that it was possible to be compounded by the Company Law Board.

Sub-section (1) of Section 621A and sub-section (7) thereof are differently worded but on their close reading it is evident that both cover such offences depending upon the nature of punishment. Sub-section (1) of Section 621A excludes offence punishable with imprisonment only or with imprisonment and also fine and includes the residue offences which will obviously include offence punishable with imprisonment or with fine or with both whereas sub-section (7) specifically include those and excludes, like sub-section(1), offences punishable with imprisonment only or with imprisonment and also fine. Therefore, both cover similar nature of offences. Hence, the power for compounding can be exercised in relation to the same nature of offences by the Company Law Board or the court in seisin of the matter with the difference that the Company Law Board can proceed to compound such offence either before or after the institution of any prosecution. In this connection, it shall be relevant to refer to Section 621A(4)(b) of the Act, which provides that where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the Company to the Registrar within 7 days from the date on which the offence is compounded. Section 621A(4)(d) mandates that where the composition of any offence is made after the institution of any prosecution, such composition would be brought by the Registrar in writing to the notice of the court in which the prosecution is pending and on such notice of the composition of the offence being given, the accused in relation to whom the offence is so compounded shall be discharged.

It is more than clear that an offence committed by an accused under the Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, is permissible to be compounded by the Company Law Board either before or after the institution of any prosecution. In view of sub-section (7) of Section 621A, the criminal court also possesses similar power to compound an offence after institution of the prosecution.

Both sub-section (1) and sub-section (7) of Section 621A start with a non-obstante clause. As is well known, a non-obstante clause is used as a legislative device to give the enacting part of the section, in case of conflict, an overriding effect over the provisions of the Act mentioned in the *non-obstante* clause.

Ordinarily, the offence is compounded under the provisions of the Code of Criminal Procedure and the power to accord permission is conferred on the court excepting those offences for which the permission is not required. However, in view of the non-obstante clause, the power of composition can be exercised by the court or the Company Law Board. The legislature has conferred the same power to the Company Law Board which can exercise its power either before or after the institution of any prosecution whereas the criminal court has no power to accord permission for composition of an offence before the institution of the proceeding. The legislature in its wisdom has not put the rider of prior permission of the court before compounding the offence by the Company Law Board.

Thus the power under sub-section (1) and sub-section (7) of Section 621A are parallel powers to be exercised by the Company Law Board or the authorities mentioned therein and prior permission of Court is not necessary for compounding the offence, when power of compounding is exercised by the Company Law Board. The order impugned does not require any interference.

Note: Order dated November 5, 2003 of Delhi High Court in Company Appeal (B) No. 1 of 2001, upheld.

SEBI

LD/62/9

N. Narayanan
Vs.
Adjudicating Officer, SEBI
April 26, 2013 (SC)

Section 15HA, read with section 15JA of the SEBI Act, 1992 read with Regulations 3 & 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003 – Penalty for Fraudulent and Unfair Trade Practices

Where company had committed serious irregularities in its books of accounts and showed inflated profits and revenues in the financial statements and lured the general public to invest in the shares of the company based on such false financial statements, it should be held to have violated the provisions of SEBI FUTP Regulations; directors would be penalised therefor

The appellant was the promoter as well as a whole time Director of Pyramid Saimira Theatre Limited (PSTL), a company registered under the Companies Act, 1956. The shares of PSTL were listed on Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange (NSE) at the relevant time. The company was involved in the business of Exhibition (Theatre), Film and Television, Content Production, Distribution, Hospitality, Food & Beverage, Animation and Gaming and Cine Advertising etc. The company had nine Directors, including the appellant herein.

The investigation department of SEBI noticed that the company had committed serious irregularities in its books of accounts and showed inflated profits and revenues in the financial statements and lured the general public to invest in the shares of the company based on such false financial statements thereby violated the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003.

The appellant-director's main defence was that, though he was the Whole Time Director as well as Promoter of the company, yet was not involved in the day-to-day management of the company and that he was looking after the Human Resource Department of the company. Further, the financial statements, accounts etc. were prepared and duly audited by the statutory auditors, verified by the audit committees and reviewed by the managing Director and that, in the company, the role of each Director was confined to his field of operation and there was no justification for holding a Director to be in over-all charge and control of the affairs of the company. Further, it was also pointed out that the auditors were well versed in accounts and f inance, therefore, there was no reason for the Directors who have no expertise or knowledge of the intricacies of the accounts and finance to suspect them or sit in judgment over their decisions. In such circumstances, it was contended, that there is no justification in debarring appellant-directors from buying, selling or dealing in securities or accessing securities market or to impose penalty.

The Supreme Court held as follows:

India's capital market in the recent times has witnessed tremendous growth, characterised particularly by increasing participation of public. Investors' confidence in the capital market can be sustained largely by ensuring investors' protection. Disclosure and transparency are the two pillars on which market integrity rests. Facts of the case disclose how the investors' confidence has been eroded and how the market has been abused for personal gains and attainments.

Companies whose securities are traded on a public market, disclosure of information about the company is crucial for the accurate pricing of the companies' securities and also for the efficient operation of the market.

Corporate Governance and Directors

SEBI Act read with Regulations of the Companies Act would indicate that the obligations of the Directors in listed companies are particularly onerous especially when the Board of Directors makes itself accountable for the performance of the company to share holders and also for the production of its accounts and financial statements especially when the company is a listed company.

The Directors of the company or the person in charge directly or indirectly use or employ, in connection with the issue, purchase or sale of any securities listed in stock exchange, any manipulative or deceptive device or contrivance in contravention of SEBI Act or the Regulations made thereunder have necessarily to be dealt with in accordance with the provisions of the Act and the Regulations which is absolutely necessary for the investor's protection and to avoid market abuse.

The facts clearly indicated that the company had made false corporate announcement stating that it had entered into agreements with 802 theatres and that false corporate announcement gave false figures relating to advance, security deposit and income pertaining to the theatres which were not inexistence. The deposits shown were turned out to be not genuine but mere book entries to hide receivables in the balance sheet.

Responsibility is cast on the Directors to prepare the annual records and reports and those accounts should reflect 'a true and fair view'. The over-riding obligation of the Directors is to approve the accounts only if they are satisfied that they give true and fair view of the profits or loss for the relevant period and the correct financial position of the company.

Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. A director is liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provided against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.

The Directors of the company in question had failed in their duty to exercise due care and diligence and allowed the company to fabricate the figures and making false disclosures. Facts indicate that they have overlooked the numerous red flags in the revenues, profits, receivables, deposits etc. which should not have escaped the attention of a prudent person. For instance, profit as on quarter ending June 2007 was three times more than the preceding quarter, it doubled in the quarter ending December 2007 over the preceding quarter. Further, there was disproportionate increase in the security deposits i.e. ₹36.05 crore in September 2007 to ₹270.38 crore in December 2007 as compared to increase in the number of theatres during the same period. They have participated in the board meetings and were privy to those commissions and omissions. Still they took no corrective measures.

Securities Market – Market abuse

The Directors of the company have "created artificiality" by projecting inflated figures of the company's revenue, profits, security deposits and receivables and that the manipulation in the financial results of the company resulted in price rise of the scrip of the company and the promoters of the company then pledged their shares to raise substantial funds from financial institutions. The conduct of the appellant-director and others was, therefore, fraudulent and the practices they had adopted, relating to securities, were unfair, which attracted the penalty provisions contained in Section 15 HA read with 15J of the SEBI Act.

Disclosure and Transparency

The Companies Act casts an obligation on the company registered under the Companies Act to keep the Books of accounts to achieve transparency. Previously, it was thought that the production of the annual accounts and it preparation is that of the Accounting Professional engaged by the company where two groups who were vitally interested were the shareholders and the creditors. But the scenario has drastically changed, especially with regard to the company whose securities are traded in public Market, disclosure of information about the company is crucial for the accurate pricing of the company's securities and for market integrity. Records maintained by the company should show and explain the company's transactions, it should disclose with reasonable accuracy the financial position, at any time, and to enable the Directors to ensure that the balance sheet and profit and loss accounts will comply with the statutory expectations that accounts give a true and fair view. Companies (Amendment) Act, 2000 has added clause (a)(iii) under which SEBI has also been given the power of inspection of listed companies or companies intending to get listed through such officers, as may be authorised by it.

After the declaration of financial results on January 31, 2008, containing inflated profits, revenues for the quarter ended on 31.12.2007, the Managing Directors of the company, his wife and the appellant had together pledged 72,75,455 shares of the company with various banks and financial institutions and raised 97.30 crores as loans. The Directors and the Chief Financial Officers of the company had caused to publish forged and misleading results of the company, various quarterly financial results and the annual results for the year 2007-08, were reported to the stock exchanges containing inflated figures of the company's revenue, profits, security deposits and receivables and those financial statements which were relied upon by investors in making investment decisions, which did not reflect a true and fair view of the state of affairs of the company.

The appellant, admittedly, was a whole time Director of the company, as regards the preparation of the annual accounts, the balance-sheet and financial statement and laying of the same before the company at the Annual General Meeting and filing the same before the Registrar of the Companies as well as before SEBI. The Directors of the company have greater responsibility, especially when the company is a registered company. Directors of the companies, especially of the listed companies, have access to inside knowledge, such as, financial position of the company, dividend rates, annual accounts etc. Directors are expected to exercise the powers for the purposes for which they are conferred. Sometimes they may misuse their powers for their personal gain and makes false representations to the public for unlawful gain.

The subsequent conduct of pledging their shares at artificially inflated prices, based on inflated financial results and raising loan on them would indicate that they had deliberately and with full knowledge committed the illegality and hence the principle of *"acta exteriora indicant interiora secreta"* (meaning external actions reveals inner secrets) applies with all force.

Decision

The SEBI has rightly restrained the appellant for a period of two years from the date of that order from buying, selling or dealing with any securities, in any manner, or accessing the securities market, directly or indirectly and from being Director of any listed company and that the adjudicating officer has rightly imposed a penalty under Section 15HA of the SEBI Act.

<u>A word of caution</u>

SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity.

Print and Electronic Media have also a solemn duty not to mislead the public, who are present and prospective investors, in their forecast on the securities market. Of course, genuine and honest opinion on market position of a company has to be welcomed. But a media projection on company's position in the security market with a view to derive a benefit from a position in the securities would amount to market abuse, creating artificiality. SEBI has the duty and obligation to protect ordinary genuine investors and the SEBI is empowered to do so under the SEBI Act so as to make security market a secure and safe place to carry on the business in securities.

Note: Order dated 5-10-2012 of Securities Appellate Tribunal (SAT), Mumbai in N. Narayanan Vs. SEBI (Appeal Nos. 28 & 29 of 2012), upheld. ■

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from Periodicals/Newspapers, received during June-July, 2013 for the reference of Faculty/ Students & Members of the Institute

1 ACCOUNTING

Accounting Standards: GAP in GAAP Accounting for Warranty Obligations by D'Souza, Dolphy. *Bombay Chartered Accountant Journal*, June 2013, pp. 86-90.

Fair Value and Value in Use: An Improvement Over Historical Cost? By Cao, Tongyu, etc. *Accountancy Ireland*, June 2013, pp.59-61.

Financial Reporting in Singapore: How Sturdy is Our Foundation? By Chew, Jezz and Geat, Kang Wai. *I S Chartered Accountant*, July 2013, pp. 54-57.

Managing Change, People, and Transparency: An Interview with Former FASB chairman Robert Herz by Tysiac, Ken. *Journal of Accountancy*, July 2013, pp. 40-43.

New Financial Planning Standard APES 230 by Wijesinghe, Channa. *Charter*, June 2013, pp. 46-47.

What's a Little Dept Between Friends? : How to Apply Accounting Rules for Related Party Transactions by Pucek, Ralph M. and Richards, Glenn E. *Journal of Accountancy*, July 2013, pp. 48-51.

2 AUDITING

Charity Audit: There are Different Audit Approaches to Audit Legacies, Direct Mail Income, New Media Giving, Face-to-Face Income or Grants by Framjee, Pesh. *Accountancy*, June 2013, pp. 76-78.

Impact of Voluntary Audit and Governance Characteristics on Accounting Errors in Private Companies by Clatworthy, Mark A. etc. *Journal of Accounting*, Public Policy, May/June 2013, pp. 1-25.

20 Under 30 : Meet the Next Generation of Internal Auditors. Their Fearlessness, Professionalism, and Passion for Their Work is Driving the Profession to New Heights by Jackson, Russell A. *Internal Auditor*, June 2013, pp. 27-43.

3 ECONOMICS

Is a 'Green Economy' Possible? By Kadekodi, Gopal K. *Economic & Political Weekly*, Vol.48/25, June 22, 2013, pp. 44-49.

Non-Performing Assets of Indian Banks : Phases and Dimensions by Pandey, Shruti J. etc. . *Economic & Political Weekly*, Vol.48/24, June 15, 2013, pp. 91-95.

4 INVESTMENT

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ICPAS Supports IFAC-GPPC Symposium on Asean Capital Markets by Teo, Josephine. *CPA Singapore*, June 2013, Vol. 4/6, pp. 18-25.

5 LAW

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Companies Bill, 2012 Brings Focus on Corporate Compliance in the Boards' Report by Mukherjee, Ranjan. *Chartered Secretary*, June 2013, pp. 785-789.

6 MANAGEMENT

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Corporate Social Responsibility: A Business Imperative by Gupta S K. and Arora, Amit Kumar. *The Management Accountant*, June 2013, pp. 660-666.

Customer Connect: Finance People are Often Urged to Get Out on the Front Line of Their Business. But what are the real benefits? Explained by Brown, Adam. *Charter*, June 2013, pp. 36-37.

Good Corporate Governance: a Game Change for Sustainable Strategies by Garnier, Miriam. *Quality Times*, July 2013, pp. 17-26.

Impact of CSR initiatives on Brand Value: An Overview by Nath, Rahul. *The Management Accountant*, June 2013, pp. 644-650.

PFP Q&A: Planning for Change by Baysden, Chris. *Journal of Accountancy*, July 2013, pp. 36-39.

7 TAXATION & FINANCE

Indian Income Tax Act and the Theory of Relativity by Muralidharan, V. N. *Chartered Secretary*, June 2013, pp. 802-804.

Taxation of Real Estate Transactions by Srikanth, S. *Hindustan Chamber Review*, July 2013, pp. 10-19. ■

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Adjustment of Losses on Sale of Fixed Assets, Writing-Off Inventory and Doubtful Receivables against Capital Reserves Arising Out of Acquisition of Business, Capital Redemption Reserves and Revaluation Reserves

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

A. Facts of the Case

1. A company (hereinafter referred to as 'the company') is a 50:50 joint venture between two companies. The company is in the business of manufacture and sale of power/telecom cable joining kits, transformers, gas meters, energy meters & corrosion protection products and providing services. During the financial year 2010-11 (i.e., w. e. f. 24th September, 2010), the company acquired the energy business, consisting of manufacture and sale of connectors, fittings and insulation products from another company, 'A' Pvt. Ltd, Bangalore, on going concern basis under slump sale agreement. Based on valuation report from an independent valuer, the company has recognised fixed assets, inventories and liabilities at fair value and a capital reserve of ₹1476.72 lakh being excess of assets acquired over purchase consideration paid. A detailed working of the same has been supplied by the querist for the perusal of the Committee. Apart from the above-mentioned capital reserve, the company also has capital redemption reserve and revaluation reserve in its books as on 31.03.2011. The break-up is as follows:

	₹ in lakh
Capital reserve created as above	1476.72
Revaluation reserve	82.17
Capital redemption reserve	250.00
	1808.89

2. During the financial year 2012-13, the company has passed the following two entries by debiting the above capital reserve:
   (i) Non-moving inventory acquired out of the above acquisition amounting to ₹1,06,813.10 written off by debiting the above capital reserve.
   (ii) Fixed assets acquired out of the above acquisition have been scrapped and loss amounting to ₹1,04,117.81 has been debited to the above capital reserve.

From the above, it can be summarised that the company has adjusted the following losses against the above reserves:

(i) Any loss/likely loss on sale/disposal of some of the fixed assets acquired from 'A' Pvt. Ltd.
(ii) Any shortages/write-off in inventory taken over from 'A' Pvt. Ltd. and transferred to Baroda (new manufacturing facility) from Bangalore on acquisition of business.
(iii) Old and doubtful receivables pertaining to any of the business of the company.

B. Query

3. In this context, the querist has sought the opinion of the Expert Advisory Committee as to whether the correct accounting treatment has been applied by the company by debiting the above-mentioned reserves as per the provisions of the Accounting Standards and the Companies Act or any other law.

C. Points considered by the Committee

4. The Committee notes that the basic issue raised by the querist relates to adjustment of losses on sale/disposal of fixed assets, writing-off inventories and old and doubtful receivables against capital reserves

created from business acquisition, and capital redemption reserves and revaluation reserves already standing in the books of the company. The Committee has, therefore, considered only this issue and has not examined any other issue that may arise from the Facts of the Case, such as, valuation of assets and liabilities acquired by the company, detailed aspects of accounting for acquisition of energy business by the company, recognition of capital reserves, recognition of impairment loss on assets as per AS 28, etc. The Committee wishes to point out that as per Rule 2 of the Advisory Service Rules, the Committee has answered the issue only from accounting point of view and not from the angle of interpretation of any legal enactments, etc. The Committee notes that the Companies Act, 1956 does not specifically contain any provision for utilisation of capital reserve and revaluation reserve. Further, Companies Act, 1956 does not envisage utilisation of capital redemption reserve for writing off losses on sale of fixed assets as well as for writing-off inventory and doubtful receivables. Accordingly, the relevant accounting standards as applicable to the circumstances mentioned above have been considered for expressing the opinion given hereinafter.

5. As regards accounting for loss/likely loss on sale of fixed assets, the Committee notes paragraphs 24 to 26 and paragraph 32 of Accounting Standard (AS) 10, 'Accounting for Fixed Assets', notified under the Companies (Accounting Standards) Rules, 2006 (hereinafter referred to as 'the Rules') which are reproduced below:

> ***"24. Material items retired from active use and held for disposal should be stated at the lower of their net book value and net realisable value and shown separately in the financial statements.***
>
> ***25. Fixed asset should be eliminated from the financial statements on disposal or when no further benefit is expected from its use and disposal.***
>
> ***26. Losses arising from the retirement or gains or losses arising from disposal of fixed asset which is carried at cost should be recognised in the profit and loss statement."***
>
> ***"32. On disposal of a previously revalued item of fixed asset, the difference between net disposal proceeds and the net book value should be charged or credited to the profit and loss statement except that to the extent that such a loss is related to an increase which was previously recorded as a credit to revaluation reserve and which has not been subsequently reversed or utilised, it may be charged directly to that account."***

From the above, the Committee notes that losses arising on sale or disposal of fixed assets should be recognised in the statement of profit and loss. However, in case of a previously revalued item, the loss to the extent it is related to an increase which was previously recorded as a credit to revaluation reserve and which has not been subsequently reversed or utilised, is charged directly to that account (revaluation reserve). From the Facts of the Case, the Committee presumes that revaluation reserve which stands in the books of the company does not pertain to the transferor company. In other words, revaluation reserve does not pertain to the assets acquired by the company in business acquisition. Thus, the losses arising on sale or disposal of fixed assets cannot be adjusted against revaluation reserve of the company. Accordingly, the losses arising on sale of fixed assets acquired by the company in business acquisition should be recognised in the statement of profit and loss. Further, as regards likely/expected loss on sale of fixed assets, the Committee is of the view that as per the existing accounting framework, only 'incurred' losses are recognised. However, in the context of assets retired from active use and held for disposal, there is possibility that the company may expect loss on their disposal due to difference between their net realisable value and net book value, which again as per AS 10 should be recognised in the statement of profit and loss. On the basis of the above, since the losses on sale or retirement of fixed assets are to be recognised in the statement of profit and loss, the question of their adjustment against capital reserves and capital redemption reserves does not arise.

6. As regards accounting for non-moving inventories, the Committee is of the view that these represent obsolescence of inventories which would be reflected in the determination of net realisable value of the inventories. In the context of writing down the inventories to their net realisable value, the Committee notes the following paragraphs of Accounting Standard (AS) 5, 'Net Profit or Loss for the Period, Prior Period Items and Changes in Accounting Policies', notified under the 'Rules':

"5. All items of income and expense which are recognised in a period should be included in the determination of net profit or loss for the period unless an Accounting Standard requires or permits otherwise."

"12. When items of income and expense within profit or loss from ordinary activities are of such size, nature or incidence that their disclosure is relevant to explain the performance of the enterprise for the period, the nature and amount of such items should be disclosed separately."

"14. Circumstances which may give rise to the separate disclosure of items of income and expense in accordance with paragraph 12 include:

(a) the write-down of inventories to net realisable value as well as the reversal of such write-downs;

…" (emphasis supplied by the Committee)

From the above, the Committee is of the view that write-off of non-moving inventory should be included in the statement of profit and loss.

7. Further, as regards write-off of inventories due to shortages observed in the acquisition of business and writing off of old and doubtful receivables, the Committee is of the view that these represent losses. In this regard, the Committee notes the following paragraphs of the Framework for the Preparation and Presentation of Financial Statements, issued by the Institute of Chartered Accountants of India:

"77. The definition of expenses encompasses those expenses that arise in the course of the ordinary activities of the enterprise, as well as losses. Expenses that arise in the course of the ordinary activities of the enterprise include, for example, cost of goods sold, wages, and depreciation. They take the form of an outflow or depletion of assets or enhancement of liabilities.

78. Losses represent other items that meet the definition of expenses and may, or may not, arise in the course of the ordinary activities of the enterprise. Losses represent decreases in economic benefits and as such they are no different in nature from other expenses. Hence, they are not regarded as a separate element in this Framework.

79. Losses include, for example, those resulting from disasters such as fire and flood, as well as those arising on the disposal of fixed assets. The definition of expenses also includes unrealised losses. When losses are recognised in the statement of profit and loss, they are usually displayed separately because knowledge of them is useful for the purpose of making economic decisions."

From the above, the Committee is of the view that losses also represent expenses and accordingly, these should be charged to the statement of profit and loss as per the requirements of paragraph 5 of AS 5. Accordingly, the Committee is of the view that any write-off of inventories and receivables cannot be adjusted against capital reserves, capital redemption reserves and revaluation reserves.

D. Opinion

8. On the basis of the above, the Committee is of the opinion that accounting treatment followed by the company of debiting capital reserves, capital redemption reserves and revaluation reserves in respect of losses arising on (i) retirement or sale or disposal of fixed assets, (ii) writing-off of inventory, and (iii) writing-off of doubtful receivables is not correct as per the provisions of the Accounting Standards as discussed in paragraphs 5, 6 and 7 above.

1	The Opinion is only that of the Expert Advisory Committee and does not necessarily represent the Opinion of the Council of the Institute.
2	The Opinion is based on the facts supplied and in the specific circumstances of the querist. The Committee finalised the Opinion on 07.02.2013. The Opinion must, therefore, be read in the light of any amendments and/or other developments subsequent to the issuance of Opinion by the Committee.
3	The Compendium of Opinions containing the Opinions of Expert Advisory Committee has been published in thirty volumes. A CD of Compendium of Opinions containing thirty volumes has also been released by the Committee. These are available for sale at the Institute's office at New Delhi and its regional council offices at Mumbai, Chennai, Kolkata and Kanpur.
4	Recent opinions of the Committee are available on the website of the Institute under the head 'Resources'.
5	Opinions can be obtained from EAC as per its Advisory Service Rules which are available on the website of the ICAI, under the head 'Resources'. For further information, write to eac@icai.org.

Social Audit: An Indian Experience

Social Audit has gained popularity in recent times because of corruption, improper utilisation, fraudulent leakage of national resources and public money, degradation of morality and ethics of the people worldwide. Social audit emanates from 'Social Accountability' of the civic management to the general public. Social accountability is "an approach towards building accountability that relies on civic engagement, in which it is the ordinary citizens and/or civil society organisations who participate directly or indirectly in exacting accountability" (The World Bank). Social Audit is a process of evaluation and reporting which is to some extent similar to a financial audit but mainly focuses on social performance of accountability instead of financial performance. It is a source of the strongest and undisputable direct evidence of compliance, performance verification and a framework for providing assurance against misuse, misappropriation, fraud of resources and of public money. This article is an insight into the conceptual framework of Social Auditing and practices followed by the companies and the Government in the Indian scenario. Read on…

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Principles of Social Audit

The following eight key principles are identified from social auditing practices around the world:

- **Polyvocal/Multi-perspective-** Aims to reflect the views/voices of all stakeholders involved with or influenced by the organisation/department/programme.
- **Comprehensive-** Focuses to report on all aspects of the work and performance of the organisation.
- **Participatory -** Encourages stakeholders' participation and sharing of their values.
- **Multidirectional-** Stakeholders share and give feedback on multiple aspects.
- **Regular-** Aims to publish social accounts on a regular basis so that entire concepts and practice become embedded in the organisational culture.
- **Comparative-** Focuses on yearly intra-organisational comparison of performance against external norms or benchmarks and provides means of inter-organisational comparison among the firms doing similar works and reporting in similar fashion.

- **Verified-** Ensures audit of social accounts by experienced persons or firm with no vested interest in the reporting entity.
- **Disclosed-** Focuses on disclosure of audited accounts to stakeholders and wider community in the interest of accountability and transparency.

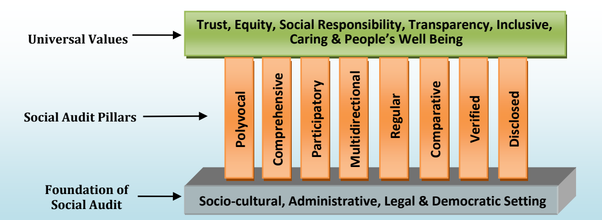


FIGURE 1- UPHOLDING UNIVERSAL VALUES THROUGH SOCIAL AUDIT

The above principles act as pillars to uphold some universal values such as transparency, accountability etc. and are founded on socio-cultural, democratic, administrative and legal foundation. Figure 1 shows the principles and universal values of social AUDIT.

Influences of Stakeholders in Social Audit

Stakeholders play vital roles, as they influence, facilitate, and execute the functioning of a project or department. They are the extension of the organisation/ project. Social audit mainly centres around them. It needs to encompass their views on service delivery as well of those seeking benefits from the project/ department.

Principles of Stakeholders Identification-

- Inclusivity- Aims at including all stakeholders who are affected/impacted without leaving anyone. For any organisation/project, stakeholders can be segmented as follows:

Stakeholders that affect the organisation- Owners, staff, funders & pressure groups.	***Stakeholders affected by the organisation-*** Customers, local/ international communities.
Stakeholders with which the organisation most directly and commonly interacts- Customers & suppliers.	***Stakeholders core to the mission and values of the organisation-*** Disadvantaged communities, international suppliers.

Source: Accountability.

- **Relevance-** Focuses on those who have important stakes in the programme/project.
- **Representative-** Concentrates on different segments and sub-segment in the society (both male and female) and geographical representatives.
- **Balanced-** Focuses on comprehensive assessment at all levels instead of being skewed towards a particular community.

Table 1- Stakeholders Analysis Matrix

Stakeholder Groups	Interest(s) at stake in relation to department/ project programme	Effect of project on interest(s) [+/ 0/ -]	Stakeholders importance for success of the project U= Unknown 1= Little/ No Importance, 2= Some Importance, 3= Moderate Importance, 4= Very Important, 5= Critical Player	Degree of influence of the stakeholders over project U= Unknown 1= Little/ No Influence 2= Some Influence 3= Moderate Influence 4= Significant Influence

Source: Participation and Social Assessment: Tools & Techniques, World Bank.

Maximum information of social audit is obtained from stakeholders' interview, observations, consultation, suggestions and replies gathered from questionnaires. They also help in framing audit planning and boundary. Table 1 is a representative framework for identifying and recording their stakes that acts as a basis of forming audit conclusion.

Social Auditing- How it is Conducted

Steps of social audit depend on the level and the scope of auditing. According to the Centre for Good Governance (2005) there are basically the following six key steps for such audit:

- ***Step 1-*** Preparatory activities.
- ***Step 2-*** Defining audit boundaries and identifying stakeholders.
- ***Step 3-*** Social accounting and book- keeping.
- ***Step 4-*** Preparing and using social accounts.
- ***Step 5-*** Social audit and dissemination.
- ***Step 6-*** Feedback and institutionalisation of social audit.

The entire process of social audit is explained with the help of a flow chart in Appendix 1.

An Explorative Study of Social Audit in Indian Context

India is home to 18 % of the world's population (second position after China) with only 2.4 % of the total land area of the world (Census Report, 2011). Its population growth per annum is near about the total population of Australia and a great number of them come under 'below poverty line' (BPL) category.

It is true that both the Central and State governments have been adopting various schemes/ projects for the improvement of the standard of living and eradication of poverty of large numbers of people, but all these have failed to reach to a great number of needy people. Aiyar Swaminathan once commented that the *"likelihood of money reaching the poor would be higher if we simply drop money by helicopter or gas balloon into rural areas than route it through employment programmes"* (the Times of India, 19th December, 2004). Threat of corruption, leakage of government's money, misuse of stakeholders' funds and national resources, uneven distribution of income etc. have become deep-rooted problems in the Indian scenario. The recent Commonwealth Games scam, 2G scam and Satyam episode etc. are pinpointing to the above problems. In this context, the idea of social audit and its real implementation in all sectors have become very effective and almost essential.

In India, social audit is closely related with the activities of Mazdoor Kisan Shakti Sangathan (MKSS). This public accountability exercise of MKSS became popular in different civil society organisations like Parivartan, Action-Aid etc. The persistent effort of civil societies and social activists for 15 years or more has brought in many favourable scenarios for social audit in India. The civil societies are instrumental in influencing and facilitating the introduction of the Right to Information (RTI) Act, 2005 and policy-level changes in the programme like National Rural Employment Guarantee Act (NREGA) 2005. NREGA 2005 has integrated social audit as a process to be facilitated and initiated by the government machinery itself. The social audit experiences and practices in India are set forth as follows:

❖ **Practices in Indian Companies:** In 1978, Indian Textile Corporation (ITC) published the Social Audit Report. TISCO (Presently Tata Steel) popularised the concept of social audit in the Indian private sector in 1979 by publication of its first Social Audit Report. Instead of publishing social audit report, Cement Corporation of India (CCI) has been publishing Social Income Statement and Social Balance Sheet in its Annual Report since 1979-80.Tata conducted its second (1981-91) and third (1991-2001) social audit in the years 1991 and 2002-03 respectively. However, social audit in India does not ordinarily have any relation with corporate/ business institutions (Rastogi, 2011). Instead of conducting social audits, most of the companies are now publishing Sustainability Reports. In sustainability report, there is a segment which deals with the impacts of the reported company's operations on the society and community. Therefore, the companies are now not interested in conducting social audits, rather they have merged their social implications in their sustainability reports.

❖ **Social Audit through Jan Sunvais:** MKKS founded in 1990 in Rajasthan, was the first to adopt social audit in India outside corporate entities. It consists of the rural poor, with limited or no land ownership, who had to look for alternatives for their livelihood especially in summers as the region was environmentally degraded and chronically drought-prone. They started helping the poor in famine relief under Food for Work Programme (FWP), improving the rural infrastructures by providing jobs to poor and minimum wages etc. However, as the system was highly corrupted and instable, the benefits were not reaching the poor people. MKSS grouped marginal farmers and landless labourers to show traditional forms of protests like hunger strike, sit-in demand for payment of minimum wages etc. They first organised Jan Sunvais, a form of public hearings and a participatory social audit process, at which official records of state development projects were exposed at a public gathering to the scrutiny of intended beneficiaries with activities like asking questions, giving testimony, pointing out inconsistencies between official records and their own experiences etc. It often resulted in shocking revelations of corruptions, led to embarrassing officials, apologies, investigations and in some case return of stolen funds. MKSS, also realising the needs for freedom and right to access to information and facts, started a movement which eventually resulted in passing the RTI law by the Rajasthan Government and then by the Central Govt. in 2005. MKSS is working even today on exposing corruption and increasing the accountability among governments' functionaries.

❖ **Social Audit through Parivartan, New Delhi under "Where Did Our Money Go?"Movement:**

Like other developing countries, in India, funds meant for poor do not reach their destination and are siphoned off in between. In August 2002, Parivartan started the initiative against corruption of Municipal Corporation of Delhi (MCD) in civil works in Sundarnagari and Seemapuri inhabited by lower income group households. In December 2002, it started Jan Sunvais in Sundarnagari along with the National Campaign for People's Right to Information (NCPRI) and MKSS, to discuss publicly the works audited. The public hearing was attended by almost 1000 people including local residents of the area, journalists and eminent personalities. Out of the 68 works audited and discussed in the public hearing, calculations of estimated misappropriation of funds have been done for 64 works worth ₹1.3 crore. In these 64 works, total amount of embezzlement found on account of missing items/works was approximately ₹70 lakh (i.e. items or works worth about 70 lakh do not physically exist at all in these 64 works).

❖ **The Practice in the Central Government of India:** In our Parliament, there is a permanent body called Public Accounts Committee which assumes the functions of National Social Auditor. The committee is constituted with not more than 22 members (of which 15 members are from the Lok Sabha) every year. It examines the accounts relating to the money granted by the Parliament to meet the expenditure of the Government of India, Annual Finance Accounts of Govt. and reports of the Comptroller & Auditor General (CAG) of India.

❖ **Social Audit and Gram Sabhas:** Social audit has taken an important position in the evaluation of the performance and propriety of any project/scheme of the Govt. of India or any other state governments. Social Audits are mandatory as per the 73rd amendment of Constitution of India in 1993. The amendment has given 'watchdog' powers and responsibilities to Gram Sabhas to supervise and monitor the functioning of the Panchayat and government functionaries and examine the annual statement of accounts and audit reports. These provisions indirectly empower the Gram Sabhas to conduct social audit in addition to other functions. However, negative aspect is that the Gram Sabha is not effective as a grass root level institution as most of the people are unaware of their constitutional power. Moreover, Gram Sabhas are conducted once in every quarter and have become routine meetings to complete the paper works and formalities of Panchayats. For central government funded programmes, there is no central policy/ regulation making accounting audit and social audit mandatory other than the mechanism of Gram Sabha. As per the recommendations of the 11th Finance Commission, Comptroller & Auditor General (CAG) of India shall be responsible for exercising control and supervision over the proper maintenance of accounts of all the three tiers of Panchayati Raj Institutions (PRI). Although CAG has been doing well, but it cannot effectively control accounting and auditing of PRIs because Panchayats are state subjects and it is virtually not possible for CAG to conduct audit of all 2.41 lakh Panchayats.

❖ **Social Audit through the Right to Information (RTI) Act:** Article 19 (Freedom of Expression) of the Constitution of India guarantees all citizens regarding the right of freedom of speech and expression and in the year 1982, the Supreme Court of India recognised that right to information is also included in the constitutional guarantees. RTI is important in the Indian context because food security, shelter, environment, employment and other survival needs are inextricably linked to it. People can ask questions only when they possess the requisite information regarding the subject. Therefore, a pre-requisite of social audit process is the dissemination of information. Social audit is meant for information availability, for which the Government of India passed the RTI Act in 2005. This Act is a key pillar for the support of social audit system. Since India is a democratic country, people are the masters and government exists to serve them. People use the rights to information to obtain details of the works carried out by the govt. departments or the manner in which the public money was spent in a particular project. Such information can be cross verified with the field realities in order to form opinions. RTI is a form of public/ social audit which although does not have any legal sanction, but is capable of creating a lot of pressure on the government's machineries to take corrective measures.

❖ **Social Audit & Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005:** Social audit is an embedded and mandatory provision in MGNREGA 2005. The Act mandates the formation of a statutory body Central Employment Guarantee Committee at the Central level, State Employment Guarantee Committee at the State Level and Village Monitoring Committees at the village level to monitor the implementation. Section 17 mandates social audit as "the Gram Sabha shall conduct regular social audits of all the projects under the Scheme taken up within the Gram Panchayat. The Gram Panchayat shall make available all relevant documents including the master rolls bills, vouchers, measurement book, copies of sanction orders and other connected books of accounts and papers to the Gram Sabha for the purpose of conducting the social audit."It is the responsibility of the state government to conduct such audit in a pre-designed schedule. The government has been instrumental in establishing an independent 'Society for Social Audit' for carrying out such auditing of NREGA in the state (Rastogi, 2011).

Social Audits thus become an important transformative measure, ensuring that the rights of the poor and the disadvantaged groups are protected and any violations and delays in conferring their entitlement are addressed. Below, a summary of social audit issues that were raised and resolved across the country under MGNREGA is shown.

Issues	Issues raised in Social Audits	Action Taken
Wages	Delay in opening bank account and payment to wrong workers.	Payment through mobile banking and coordination meeting with Financial Institutions were held.
Registration	Denial of registration.	On the spot registration and issuance of Job Cards.
Job Cards	Job Cards without photo	On the spot photo taken and Job Cards updated.
Documents availability at Social Audits	Master Rolls were not available and required Registers were not maintained at Gram Panchayat.	Necessary documents provided and Gram Rojgar Sahayak dismissed.
Works measurement	Delay in works valuation making the workers dissatisfied.	Sub Engineers were dismissed and works re-measured in front of the workers.
Funds deviations	Frauds by Mate and Gram Rojgar Sahayaks.	Mate and Gram Rojgar Sahayaks dismissed and FIR lodged to recover funds.
Gender equity	33 % quota was not fulfilled while allocating jobs to women.	Allocation of works through Self Help Groups (SHGs).

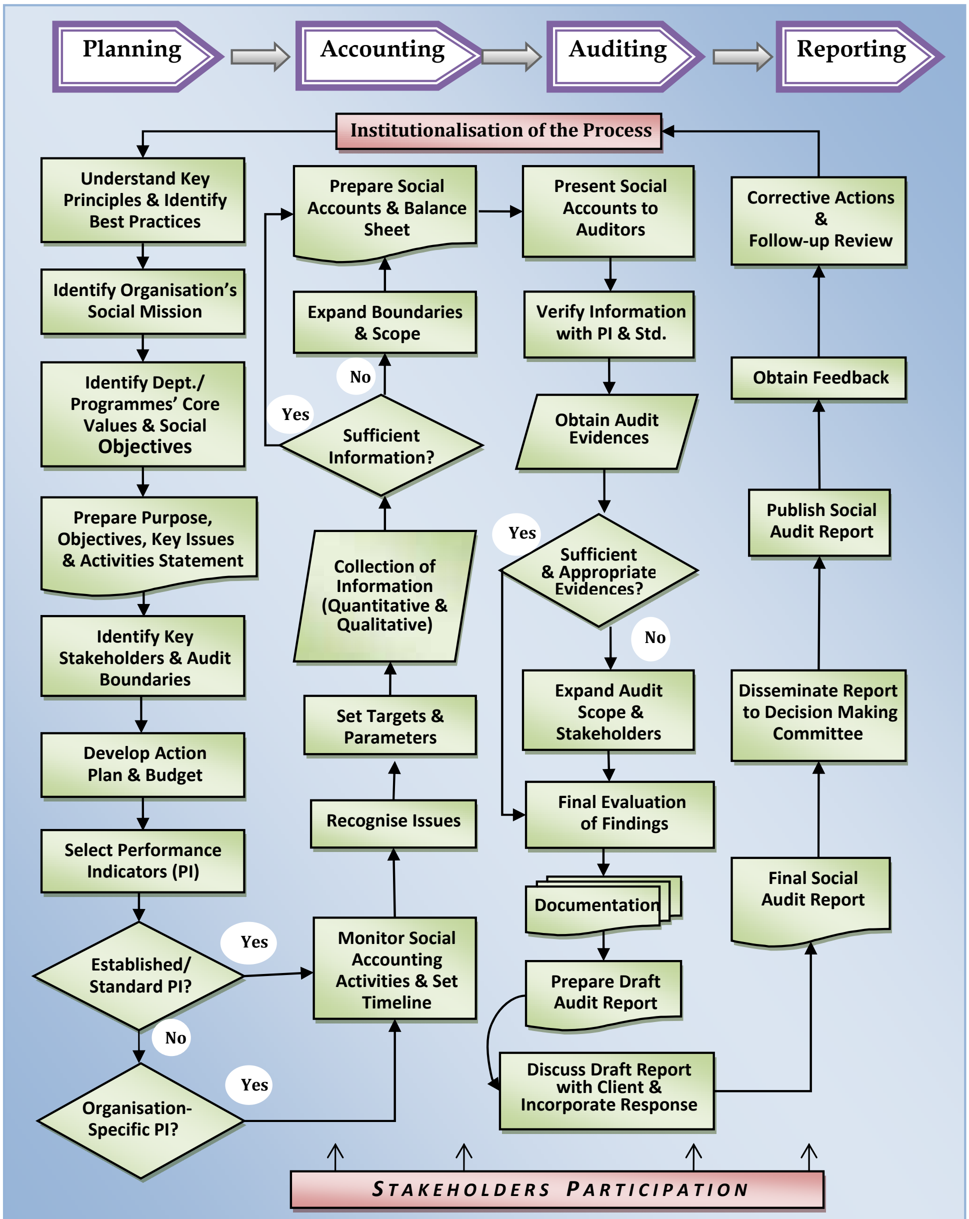
Source: NREGA Operational Guidelines 2008, Third Edition, Ministry of Rural development, Govt. of India

❖ Social Audit as a means of eradicating child labour problem: Child labour problem is one of the biggest problems facing India. Elimination of child labour is one of the promises made by the Govt. of India at various points of time. The Government of India enacted the Child Labour (Prohibition and Regulation) Act, 1986 which prohibits employment of children (below 14 years) in work places. Social audit seeks to empower the children to raise concerns on the unavailability of services/quality of services available. The World Vision India conducted several social audits in India on the state of child labour and the performance of the key duty bearers against the above Act.

In addition to the above, the idea of social audit is also important in various other programmes of the government, such as, National Rural Health Mission (NRHM), Sarva Shiksha Abhiyan (SSA), Mid-day Meals Scheme (MMS), Pradhan Mantri Gram Sadak Yojana (PMGSY), Rajiv Gandhi Gramin Vidyutikaran Yojana, Bharat Nirman, Swarn Jayanti Shahari Rozgar Yojana etc. CAG has been conducting performance audits on the above areas. CAG's audit is an external audit on behalf of the tax payers and therefore, such audit itself is a social audit.

Conclusion

Social audit is a supplement to conventional audit to help the government/organisation to improve and understand their performance as perceived by the stakeholders. In order to obtain good results, the framework of social audit can be integrated with other forms of audits, like financial, cost and management audits. Social audit can play a very important role in a country like India, if such framework is implemented properly in all the required areas involving use of public money and national resources. In the near future, it is highly expected that more and more companies and governments will be adopting social audit practices for better and efficient utilisation of resources, transparency and accountability.



APPENDIX 1- FLOW CHART OF SOCIAL AUDIT PROCESS

Source: Author

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Audit of Human Resource Department

The human resource department is all the more important because companies want to attract, retain and groom top-class talent. One of the key challenges for an organisation is aligning the motivation, behaviour and goal of the very best individuals with the values and business goals of the organisation so that management by objective can be achieved. These days, businesses operate in a liberalised and globalised economy and being proactive to changes in business needs and environment is the key to survival and success. The challenges of HR department are frequent restructuring, retaining the good existing human resources, meeting the changing staffing requirements and constant innovations in appraisal and compensation. The auditor should ensure that demands on the HR department be integrated in the areas like recruitment, personnel information, training and integrated database of information on the human resources of the company and powerful tools that facilitate analysis and decision making. HR managers need to implement human resources information systems (HRIS) at a fast pace and the alternatives for implementing the HRIS are either building in-house systems or using packaged software.

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Evolution of HR Department

HR department should transform itself to align with forward thinking practices and executive leadership must ask HR leaders some tough questions. Today's organisations cannot afford to have an HR department that fails to contribute.

Human Resources function was considered the last bastion of bureaucracy. Traditionally, the role of the Human Resource Department in many organisations has been to serve as the systematising, policing arm of executive management. Their role was more closely aligned with personnel and administration functions that were viewed by the organisation as paperwork.

In many companies, HR comes out of the administration or finance department because hiring employees, paying employees, and dealing with benefits were the organisation's first HR needs.

The auditor has to review the HR function of a company, point out weaknesses and recommend improvements to assist the organisation realise the overall workforce optimisation and achieve its planned objectives. Moreover, HR audit is conducted to make the HR department to be proactive and effective in the organisation and it ensures that policies on HR are implemented in the organisation in the most economical and vigorous way.

In this atmosphere, much of the HR role is changing. The role of the HR manager must parallel the needs of a changing organisation. Successful organisations are becoming more adaptive, resilient, quick to change direction and customer-oriented. Within this environment, the HR professional is a strategic partner and a change mentor.

Strategic Partner

The HR department contributes to the development of and the accomplishment of the organisation-wide business plan and objectives. In today's organisations, to guarantee their viability and ability to contribute, HR managers need to think of themselves as strategic partners. HRD should have deep knowledge about the design of work systems in which people succeed and contribute.

The HR business objectives are established to support the attainment of the overall strategic business plan and objectives. This strategic partnership impacts HRD such as the design of work positions, hiring, reward, recognition and strategic pay, performance development and appraisal systems, career and succession planning, and employee development. When HRD is aligned with the business, the personnel component of the organisation is thought about as a strategic contributor to business success.

To be successful business partners, the HRD has to think like business people, know finance and accounting, and be accountable and responsible for cost reductions and the measurement of all HR programs and processes. It's not enough to get appointed in HRD but they will have to prove that they have the business savvy necessary for the organisation.

Objective of HR Audit

The auditor has to review the HR function of a company, point out weaknesses and recommend improvements to assist the organisation realise an overall workforce optimisation and achieve its planned objectives. Moreover, HR audit is conducted to make HR department to be proactive and effective in the organisation and it ensures that policies on HR are implemented in the organisation in the most economical and vigorous way.

Scope of HR Audit

The scope of HR audit depends on the size of an organisation and problems being faced by the management and areas where improvements are needed. However, the following may be treated as the general scope of audit and it may vary from organisation to organisation depending upon the problems being faced by the organisation and areas where improvements are expected.

(a) He should scrutinise the existing HR Policies and processes of the Organisation and suggest the improvements required.
(b) He should scrutinise the personal files of the current employees and closed files and bring out shortcomings.
(c) He should study the previous audit report and check for the action taken by the Organisation on the same.

Methodology

An auditor begins the HR audit process with a business needs analysis that pinpoints specific performance improvement opportunities. This offers an insight into how an auditor can help the organisation realise an overall workforce optimisation and achieve its planned objectives. The auditor draws on a variety of diagnostic approaches such as on-site visits, interviews, surveys, in-the-field observation and documentation analysis.

The auditor makes sure that the procedures adopted are tailored to the needs of the organisation by a meeting with the management to understand the business strategy and pressing issues. He identifies gaps between objectives and activities and also recommends areas where improvements can be made.

The auditor provides the HR function with a much appreciated expert view of what it is doing well and where it can improve. He helps to align the HR function more closely with the real needs of the business. He makes sure that investments in HR in the organisation are directed where they are most needed.

Steps Involved in HR Audit

Step 1: Scope and purpose:

Following are the scope of HR audit which may vary according to the needs of the organisation.

a. He should prepare a Draft HR Audit scope and purpose, and obtain the Top management's direction and suggestions from HODs.
b. He should prepare a final HR Audit Scope and Purpose and obtain concurrence of the Top management so that audit can be effective and useful to the management.

Step 2: Plan Audit:
a. He should finalise the preliminary audit plan identifying the audit purpose, scope, methodology, the appropriate corrective action and follow up requirements, and audit database configuration.
b. He should finalise the audit process and schedule.
c. He should finalise database for capturing audit findings and prepare data collection documents.

Step 3: Perform Audit
a. He should send an initial mail to HR head requesting documentation or information needed to perform audit.
b. He should perform employee interviews, review of documentation or files and/or review documentation submitted in response to the initial letter.
c. He should compile information gathered during the review process.
d. He should discuss preliminary findings, circumstances that are unusual or outside the scope of the audit, and potential final report conclusions and recommendations with management and/or HR head, as necessary or appropriate.
e. He should notify the Company of the preliminary findings and if applicable request additional information to support HR audit action or decision.
f. He should review additional information received from company in response to the preliminary findings.

Step 4: Final Audit Report
a. Prepare draft final audit report.
b. Obtain concurrence on Draft final audit report from the top management.
c. Prepare and submit final audit report.

Step 5: Follow-Up
a. He should perform follow-up review of corrective actions required as per the final audit report.
b. Prepare 'Follow-up audit report' for addition to final audit report.

Follow-Up on corrective action plans is generally performed within 3-4 months following conclusion of an audit. The follow up process typically takes one to two months to complete.

Now, we will discuss in detail about the various aspects to be taken into account for conducting the HR audit. These are related to recruitment key results area training and development and performance management system and other areas of interest of management.

The HR Department of the organisation needs to work towards transforming itself into a Strategic HR Department and work towards creating an effective & result oriented work environment aligned to business goals.

Recruitment

There is always a need for reviewing the existing Recruitment Policy & Process and formulating & implementing the policy and processes for hiring of right talent. Auditor should check talent acquisition plan, recruitment channels and process.

In view of the above, the following measures may be suggested by auditor to improve the talent hiring standards of the Organisation:

(a) **Talent:** There is always a need to induct a Talent Acquisition Team, headed by a Senior Manager, who will be responsible for setting up and implementing policy & procedure for hiring of right talent.
(b) **Reviewing the Existing Recruitment Channel(s):** There is always a need to have a fair mix of recruitment through own HR Dept./Employee Referrals and hiring through Professional Recruitment Consultants.
(c) **Reviewing Existing Recruitment Process:** There is always a need for emphasis on hiring talent as per the Job Description (JD) for the said position.
(d) **Reviewing the Existing Interviewing Process:** There is always a need to put in force a credible

Auditor should insist on employees' self appraisal form to be filled by each employee to measure and evaluate each employee's job performance and behaviour, as there is always a need for formulation & implementation of an effective, honest, unbiased, and scientific Performance Management System (PMS) for the organisation.

interviewing process. The following aspects need to be incorporated :

The interview must be conducted by a panel of interviewers consisting of minimum two persons, an HR Manager and a Line Manager. The interview must be endorsed by each member of the panel on the 'Interview Assessment Sheet', which also needs to be formulated. Now these days, the companies can conduct behavioural profile analysis of the persons and the same may be used for recruitment, retention, motivation and development of talent. These analyses are conducted on a scientific basis with the help of software after getting the self description and other details from the person concerned.

Moreover, the management can understand an individual's natural behavioural styles, in-depth understanding regarding the way a individual will respond to problem solving needs and face challenges, influence others, respond to environment as well as what their responses will be to rules and procedures set by others in addition to their ability to self control their impulses and emotions.

There is a need to incorporate a system of conducting a written test to assess the attitudinal as well as technical skills of the candidates, specific to the job. This could be in the form of psychometric test for attitudinal skills and job proficiency test for technical skills.

The results obtained by the candidates in these tests are validated during a face to face interview.

Job Descriptions

Auditor should emphasise a need to formulate JDs for each position in the Organisation. Formulation of comprehensive JDs will help in identification & hiring of right talent as also help in formulation of Key Result Areas (KRAs).

HR audit is not only a tool to ensure the effectiveness of the HR system but also a mode of assurance to the people concerned with the organisation and the society as well. For the organisation to be able to utilise its one of the most critical resources in an optimised manner, conducting the HR audit becomes an integral process too. However, non standardised HR audit can be less useful or may come out with no results. So, the HR audit should include proper plan and program as its core elements.

JDs must cover the following aspects:-

(a) Job Responsibility.
(b) Technical Skills.
(c) Behavioural Skills.
(d) Qualification Requirement.
(i) Education.
(ii) Professional.
(iii) Age.
(iv) Gender.
(e) Salary Bracket.
(f) Reporting Structure.

Key Result Areas (KRAs):

Though KRAs have to be formalised for most of the positions, auditor should see a need to implement the same. Further, these need to be reviewed on a periodic basis to improve productivity and also bring in the accountability.

Competency Mapping

To identify gaps in the desired competencies, Competency Mapping needs to be carried out, especially for Senior and Middle Management. Auditor on the basis of his checks can suggest the training to be planned for concerned employees to bridge the identified gaps.

Training and Development

The company generally conducts training for the new joiners. Auditor should emphasise on the effectiveness of training in the organisation. There is need to conduct training, based on Training Need Analysis (TNA), on following aspects:-

(a) Behavioural Skills
(b) Attitudinal Skills
(c) Team Building
(d) Effective Selling Skills
(e) Leadership Skills: For Senior and Middle Management to be able to drive the growth and profitability of the Organisation, training on Leadership Skills is the single most important aspect.

Performance Management System

Auditor should insist on employees' self appraisal form to be filled by each employee to measure and evaluate each employee's job performance and behaviour, as there is always a need for formulation & implementation of an effective, honest, unbiased, and scientific Performance Management System (PMS) for the organisation. The PMS must be conducted with the following aims:-

- To measure the performance of each employee for the year through an objective and scientific evaluation process.
- To provide honest performance feedback to the appraisee, his/her performance in a one to one meeting with the appraisee on the performance achieved *vis-à-vis* targets set.
- To identify gaps in performance and take necessary actions to ensure the achievement of organisational and individual goals.
- To identify appraisee's developmental need for future growth.
- To define a proper career planning process and spotting talent for future leadership.
- To provide inputs for determining the Compensation, Rewards & Recognition to management.

Succession Planning

The auditor should emphasise the need for formulation & implementation of Succession Plan for each department of the Organisation. The Succession Plan must be announced to the employees to make it transparent.

Following aspects need to be linked with the Succession Plan:-

(a) Promotion Policy.

(b) Eligibility Criteria for each position (JDs).

(c) Appraisal Policy.

This will help the company in creating qualified employees to take on the next higher position/ designation in case of separation, thereby cutting down on the cost as well as man-hours required for hiring a new employee at that level.

Reward & Recognition

It is very important for motivation of employees in any Organisation. Auditor should emphasise an Effective Reward & Recognition System in the Organisation. This will also help in reducing attrition.

(a) **Annual Day/Department Get Together:** Auditor should ensure celebration of Annual Day and having periodic department wise get together assists employees and Line Managers to get to know each other better and bring in team cohesiveness. This also provides informal forum to the management to check the pulse of employees in the organisation.

(b) **Harassment and Grievance Handling:** Auditor should verify the policy of Harassment and Grievance Handling and ensure that it is implemented.

(c) **Circulation of Policies to the Employees:** HR policies to be prepared and to be implemented must be approved by the management and be circulated to the employees.

APPRAISAL AND PERFORMANCE SYSTEM of ABC Ltd.		
Name of Appraisee:	Designation:	Dept.
Team Involvement as Leader/member of the following Teams:-		
Name of Appraiser:	Designation:	Dept.
Name of Reviewing Officer:	Designation:	Dept.

Major Assignments	Expected Results	Results Achieved

Extra sheet may be added if required.

PERFORMANCE DIARY

Name: Designation: Dept. /Section:

DATE	NAME OF PERSONS INVOLVED	DETAILS OF CRITICAL INCIDENT/ ACHIEVEMENT

	PROFESSIONAL DEVELOPMENT CARD							
			QTR				**DATE:**	
	NAME-			**Team Lead-**				
	ATTRIBUTES		**N.Imp: 1**	**Avg: 2**	**Good: 3**	**V.Good: 4**	**Excellent: 5**	**Total**
(I)	**DRIVE TO SUCCEED**							
1	*Self Starter*							
2	*Reporting also what is not done*							
3	*Completeness*							
4	*Focus on Priorities*							
5	*Timeliness*							
(II)	**TEAM WORK**							
1	*Participation*							
2	*Sharing of Ideas*							
3	*Sharing of Responsibility*							
4	*Openness to Others Ideas*							
(III)	**WORK PROCESS**							
1	*Organised*							
2	*Persistent*							
3	*Flexible*							
(IV)	**TECHNICAL SKILL**							
1	*Technically Sound*							
2	*Continuous Learning*							
(V)	**COMMUNICATION SKILL**							
1	*One to One communication*							
2	*Responsive to communication*							
3	*Presentation/Documentation*						**TOTAL (5)**	
							(%)	
	Prof's Signature:							
	Lead Signature:							

(d) **Quarterly Appraisal:** The auditor should ensure that appraisal is carried out on Quarterly basis, as per the laid out policy. There should be performance appraisal and development system in the organisation and following format be filled to appraise the employee.

(e) **Attrition Levels**: The Attrition Level in the company is a cause of worry as this tremendously increases the cost of hiring & retaining trained manpower. Auditor should ensure for a need for continuous efforts to reduce it.

(f) **Employee Separation**: Separation in the organisation needs to be transparent and well defined parameters need to be laid down for different levels and types of employee Separation/ Termination. The process of Full & Final settlement should be completed on time. This needs to be looked into and streamlined as it not only affects the employee morale; it badly affects the Company's image in the environment.

(g) **Growth Path**: The Growth Path should be well defined and to be linked to the QRs for promotion, increments and Training needs. This is one of the most important policy documents and needs to be improved upon to incorporate the above mentioned aspects.

(h) **Standard Operating Procedure (SOPs)**: The required SOPs in line with the policies are to be made available. These need to be formulated and implemented.

  (i) Exit Interviews: The process of Exit Interviews should be in place, there is a scope of improvement and need for strict implementation. Following aspects be checked during audit:

  (a) Signatures of Employees interviewed must be checked.
  (b) HR Head's comments and signatures must be checked.
  (c) Action taken on the relevant points raised by the employees must be checked.
  (d) Auditor should check the points raised by the employees leaving the Organisation and the action taken on relevant points.

Conclusion

As of now, we all are aware of the importance of HR department for acquiring talent and achieving business goals, fulfilling business needs and helping in the process of decision making and to conduct HR audit

one should understand business strategy, pressing issues and diagnostic tools to be used for the benefits of its stakeholders.

HR being very dynamic in nature and it being the system requiring comprehensive participation of large group, the organisations keep on facing several hindrances in operating it even after installation of various HR packages and being equipped with highly skilled HR staffs. Auditor should find out the areas where improvements can be made and he should plan audit after knowing the scope and submit report and further do follow up so that efforts made by him give results.

Auditor should see the recruitment procedure, the process of job description, key responsibility areas, competency mapping, performance management system, succession plan, training and development of the employees. In the recent past, the need of HR audit has grown gradually in order to respond to the changing needs of the environment and the organisations have become able to give an attractive shape to the system of human resources through the process of HR audit.

HR audit is not only a tool to ensure the effectiveness of the HR system but also a mode of assurance to the people concerned with the organisation and the society as well. For the organisation to be able to utilise its one of the most critical resources in an optimised manner, conducting the HR audit becomes an integral process too. However,
non-standardised HR audit can be less useful or may come out with no results. So, the HR audit should include proper plan and program as its core elements.■

Works Contract - VAT and Service Tax Planning

Even after about 30 years of the 46th Amendment to the Constitution of India, taxation of 'Works Contract' is a subject matter of interpretations, controversies and complexities. It was expected to resolve the legal disputes by the introduction of levy of VAT on material element and Service Tax on service element of a Works Contract, but it has further aggravated the situation and there are a number of judgements which are contradicted by another judgement on the same issue. The term "Works Contract" has a wide scope and different from "General Sale". There is a transfer of property in definite form and the goods remain the same before or after the delivery in 'General Sale' under 'Supply Contract', whereas the form of goods may be different before the delivery and after incorporation under 'Works Contract'. Read on to know more…

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Works Contract Tax and Taxable Event

The 46th Amendment to the Constitution of India in 1983, by insertion of clause (29A)(b) of Article 366, introduced a new definition to the word 'Sale' which has enlarged the scope of 'tax on sale or purchase of goods' by inclusion of a provision for tax on transfer of property in goods (whether as goods or in some other form) invoked in the execution of Works Contract being a deemed sale. The following Guidelines are drawn from various court judgments, to ascertain taxable event of Works Contract:

- There must exist an indivisible works contract and divisible contracts are outside scope.
- Both goods and services must be involved in the execution of works contract.
- Transfer of goods must be in tangible property and pass on either in the same form or in other form when incorporated in work. Form of goods has no relevance.
- In case goods are consumed and their identity is lost then no transfer of property occurs in those goods. Example:- electrodes, lubricants, power, fuel, gas, waste cotton etc.

Passing of Property under Works Contract

The property in goods passes under the theory of 'Accretion', 'Accession' or 'Blending' when materials are incorporated in execution of works contract and not on bringing of goods to project site. Bills may be raised as and when materials are brought on site or by stages at agreed terms & conditions, but it will not have any effect on the above principle of passing of property in goods as explained below-

Accretion: A Contractor constructs a building on the land of Contractee using his own steel, bricks, sand, cement etc., which belongs to him till the stage of incorporation. But once the cement is pasted and bricks are applied on the land, these ingredients fasten themselves to the land and is not possible to remove without fundamental damage. Thus the ownership in these materials gets transferred to contractee by inference through Accretion.

Accession: A Car Garage undertakes the work of painting a car of Customer. The paint belongs to Car Garage till the stage of application on a car. But once the paint is applied on the car, the liquid paint gets attached on the metal of car and it is not possible to remove it without fundamental damage. Thus the ownership in paint gets transferred to Customer by inference through Accession.

Blending: Another situation of Works Contract could be a case where multiple movable goods owned by Contractor are 'blended' together to create new movable goods which are non-marketable in nature. For example, a printer who uses paper and ink to print cheque books for a bank.

VAT Aspects of Works Contract

Contractor can discharge VAT on value of materials incorporated under the following three options:

i. Regular Method: Under Regular Method, material value can be arrived either by "Value Deduction Mode" (or) "Value Addition Mode" as explained below:

Value Deduction Mode

Under this mode, taxable value of materials will be arrived after allowing the deductions towards labour charges; payment to Sub-contractor for labour/ services; charges for planning, designing & architect; Charges for obtaining on hire the machinery & tools; cost of consumables such as water, electricity, fuels etc., and other similar expenses or cost of establishment relatable to supply of labour/services. Tax is payable at applicable rate to those taxable materials under State VAT Tariff. State can also levy uniform rate of tax on value of materials incorporated in work under a separate item in Tariff and such rate may be different from applicable rate to materials individually. States like Assam, Delhi, Karnataka, Kerala, West Bengal etc., have specified a uniform rate on materials other than Declared Goods as specified under CST Act,1956.

Value Addition Mode

Under this mode, Contractors can arrive at material value by adding cost of goods, cost of conversion and all other expenses such as loading/unloading, transport etc., plus the margin of profit on them.

Tax cost will be less under 'Regular Method' when compared to other options since VAT is payable only on actual value of materials incorporated in the work after adjustment of VAT Input Credit. However, the Contractor has to maintain proper books of accounts and other records to identify value of materials and labour.

ii. Composition Method

Composition Scheme is simple and convenient for Contractors who cannot maintain proper accounts. Under this method, tax is payable on total contract value including labour at specified lumpsum rate. In states like Karnataka, Tamilnadu, Orissa, Delhi etc., Composition Option is to be exercised for all Works Contracts executed during a financial year and not permissible to opt each contract wise. VAT Input Credit is not available under this option except in Maharashtra State. Purchase tax is payable in states like Kerala, Karnataka etc., on interstate purchases but deduction of such turnover is allowed from total turnover and tax is payable on balance turnover only. Composition Option is not permissible in states like Gujarat, Himachal Pradesh, Tamil Nadu etc. if goods are imported from outside the state. Composition Method

Till GST Law is introduced it is essential to use the tool of integrated VAT and Service Tax Planning in order to minimise tax cost. Exercising a suitable option for payment of VAT and Service Tax is critical in tax planning which varies from one type of contract to another type of contract. It is difficult to frame one formula which is suitable to all situations.

may be opted where contract price is inclusive of taxes and consisting of substantial portion of materials value with marginal element of labour/services.

iii. Standard Deduction Method

Standard labour deductions are prescribed under VAT Laws to arrive at taxable value based on type of contract. Tax is payable at the specified rate on taxable value arrived after standard labour deduction in states like Andhra Pradesh, Jharkhand, Punjab, Assam etc., whereas at applicable VAT rates of such goods in other states like Gujarat, Rajasthan, Maharashtra, Uttar Pradesh, Tamil Nadu etc. However, VAT input credit is available under this method in most of states except in a few States like Andhra Pradesh, Jharkhand and Punjab. Tax cost is high under this option and hence not advisable to adopt it.

VAT / CST Planning

- Before exercising a right option for arriving at tax liability, Contractor has to analyse various components like labour/service charges, local/ interstate purchase of materials, other expenses and effect of them on tax cost.
- Award excavation work contracts on Cubic Metre Basis instead of on Hire Charges Basis of earth moving machinery where VAT is chargeable and ineligible item for input credit.
- Obtain Tax Invoice showing VAT amount separately for availing VAT input credit.
- Price reduction through passing on VAT input credit can be sought by buyer.
- CST not payable on freight, delivery charges, erection and commissioning.
- CST not payable if goods are returned within 6 months.
- CST Registration Certificate should include all the items on which Contractor is entitled to purchase at concessional rate against issue of C-Form.

Service Tax Aspects on Works Contract Service

Works Contract has been defined under Section 65B(54) of the Finance Act,1994 as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, of any movable or immovable property .

As per Rule 2A of Service Tax (Determination of Value) Rules, 2006, value of service portion of a Works Contract can be determined under following options:

Option-I: Regular Method (Service Portion)

Value of service portion in execution of Works Contract shall be equivalent to the 'Gross Amount' charged less value of property in goods transferred and VAT/Sales Tax on such goods. Gross Amount includes Labour/Service charges as enumerated in above paragraph under "VAT aspects of Works Contract-Value Deduction Mode".

Option-II: Abatement/Composition Method

Service portion can also be determined on 'Total Amount' of works contract as given below:

A. At 40% for original works (at 25% where gross amount includes value of land for residential unit having carpet area upto 2000 sq. ft. or where amount is less than Rs. 1 crore and at 30% for other than above);

B. At 70% for maintenance or repair or reconditioning or restoration or servicing of any goods;

C. At 60% on works not covered under above (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property.

'Total Amount' means Gross Amount charged plus fair market value of materials issued to the contractor by contractee but excludes value of materials issued on chargeable basis to the contractor and VAT thereon. Under both the above options, Cenvat credit is available on 'Capital Goods' and input services used for providing output service.

Service Tax Planning

If the price is inclusive of taxes, then service tax element becomes one of the major cost elements. Service tax cost can be minimised through proper tax planning as given below:

(A). In case of separate Supply Contract

Service tax is not applicable on supply contract for sale/trading of goods as per Section 66D of Act under Negative List.

(B). In case of separate Service Contract

Pay tax @12.36% on service contract value and avail Cenvat credit on capital goods/input services. Material value may be deducted in arriving taxable service value. If material value is also included in taxable service value, then excise duty credit on such material can be availed in terms of Rule 2(k) of Cenvat Credit Rules and as per clause (iv) of Notification No.33/2012 - ST dated 20-6-2012.

(C). In case of Composite Works Contract which is Divisible or Separate Contracts issued on split basis for supply and service portions

Pay tax @12.36% on service portion only as specified in the above option (B).

(D). In case of Composite Works Contract which is indivisible

Option I-Pay tax @12.36% on service portion as specified in above paragraph "Option-I".

Option II-Pay tax @12.36% on specified percentage i.e., 40% or 60% or 70% of Total Amount as enumerated in above paragraph "Option-II"under Standard Deduction/Abatement Method.

Option III-Pay tax @12.36% on Total Gross Bill Value including both material portion and service portion.

Eligible for Cenvat Credit on 'Capital Goods' and 'Input Services' under the above three options. However, excise duty credit on inputs is available for Option-III only in terms of Rule 2(k) of Cenvat Credit Rules since tax is paid on material portion also.

The net effect of tax liability for construction of a Commercial Building is given in the following tables for the selected states - Gujarat & Tamil Nadu:

I. When Labour Portion is 40% or 60% and Material Portion is 60% or 40%

Service Tax Plan / Particulars	Rate %	When Labour Value- ₹40	Option- I On Service portion	Option-II On 40% of total value	Option-III-On 100% value	When Labour Value- ₹60	Option- I On Service portion	Option-II On 40% of total value	Option-III On 100% value
Material	12.36	60	0	2.96	7.42	40	0	1.98	4.94
Labour	12.36	40	4.94	1.98	4.94	60	7.42	2.96	7.42
Total Tax Liability		**100**	**4.94**	**4.94**	**12.36**	**100**	**7.42**	**4.94**	**12.36**
Less : Cenvat Credit									
Excise Duty Credit on cement, steel etc.,					**5.56**				**3.89**
Excise Duty Credit on Capital Goods			**0.25**	**0.25**	**0.25**		**0.25**	**0.25**	**0.25**
Service Tax Credit			**4.45**	**4.45**	**4.45**		**6.67**	**4.45**	**6.67**
Total Cenvat Credit			**4.70**	**4.70**	**10.26**		**6.92**	**4.70**	**10.81**

Service Tax Plan / Particulars	Rate %	When Labour Value- ₹40	Option- I On Service portion	Option-II On 40% of total value	Option-III-On 100% value	When Labour Value- ₹60	Option- I On Service portion	Option-II On 40% of total value	Option-III On 100% value
Net Tax Liability			**0.24**	**0.24**	**2.10**		**0.50**	**0.24**	**1.55**

VAT Plan in Gujarat	VAT Rate %	Value of material ₹60	Regular Method	Standard Deduction Method	Composite Rate 0.6%*	Value of material ₹40	Regular Method	Standard Deduction Method	Composite Rate 0.6%*
Material									
Steel	5%	25	1.25	1.46		15	0.75	1.31	
Cement	15%	10	1.50	1.75		5	0.75	1.31	
Aggregates	5%	10	0.50	0.58		5	0.25	0.44	
Others	15%	15	2.25	2.63		15	2.25	3.94	
Labour		40				60			
Total VAT Liability		**100**	**5.50**	**6.42**	**0.60**	**100**	**4.00**	**7.00**	**0.60**
Less: VAT Input Credit	**% of VAT Purchase**	**% of CST Purchase**			**Purchase made with in State***				**Purchase made with in State***
Steel	50%	50%	0.56	0.56	0		0.34	0.34	0
Cement	50%	50%	0.68	0.68	0		0.34	0.34	0
Aggregates	100%		0.45	0.45	0		0.22	0.22	0
Others	50%	50%	1.01	1.01	0		1.01	1.01	0
Total VAT Credit			**2.70**	**2.70**	**0.00**		**1.91**	**1.91**	**0.00**
Net VAT Liability			**2.80**	**3.72**	**0.60**		**2.09**	**5.09**	**0.60**

VAT Plan in Tamil Nadu	VAT Rate %	Value of material ₹60	Regular Method	Standard Deduction Method	Composite Rate 2%*	Value of material ₹40	Regular Method	Standard Deduction Method	Composite Rate 2%*
Material									
Steel	5%	25	1.25	1.46		15	0.75	1.31	
Cement	14.5%	10	1.45	1.69		5	0.73	1.27	
Aggregates	5%	10	0.50	0.58		5	0.25	0.44	
Others	14.5%	15	2.18	2.54		15	2.17	3.81	
Labour		40				60			
Total VAT Liability		**100**	**5.38**	**6.27**	**2.00**	**100**	**3.90**	**6.83**	**2.00**
Less: VAT Input credit	**% of VAT Purchase**	**% of CST Purchase**			**Purchase made with in State***				**Purchase made with in State***
Steel	50%	50%	0.56	0.56	0		0.34	0.34	0
Cement	50%	50%	0.65	0.65	0		0.32	0.32	0
Aggregates	100%		0.45	0.45	0		0.23	0.23	0
Others	50%	50%	0.98	0.98	0		0.98	0.98	0
Total VAT Credit			**2.64**	**2.64**	**0.00**		**1.87**	**1.87**	**0.00**
Net VAT Liability			**2.74**	**3.63**	**2.00**		**2.03**	**4.96**	**2.00**

II. When Labour Portion is 30% or 70% and Material Portion is 70% or 30%

Service Tax Plan / Particulars	Rate %	When Labour Value- ₹30	Option- I On Service portion	Option-II On 40% of total value	Option-III-On 100% value	When Labour Value- ₹70	Option- I On Service portion	Option-II On 40% of total value	Option-III On 100% value
Material	12.36	70	0	3.46	8.65	30	0	1.48	3.71
Labour	12.36	30	3.71	1.48	3.71	70	8.65	3.46	8.65
Total Tax Liability		**100**	**3.71**	**4.94**	**12.36**	**100**	**8.65**	**4.94**	**12.36**
Less : Cenvat Credit									
Excise Duty Credit on cement, steel etc.,					**6.67**				**2.78**
Excise Duty Credit on Capital Goods			**0.25**	**0.25**	**0.25**		**0.25**	**0.25**	**0.25**
Service Tax Credit			**3.34**	**4.45**	**3.34**		**7.78**	**4.45**	**7.79**
Total Cenvat Credit			**3.59**	**4.70**	**10.26**		**8.03**	**4.70**	**10.82**
Net Tax Liability			**0.12**	**0.24**	**2.10**		**0.62**	**0.24**	**1.54**

VAT Plan in Gujarat	VAT Rate %	Value of material ₹70	Regular Method	Standard Deduction Method	Composite Rate 0.6%*	Value of material ₹30	Regular Method	Standard Deduction Method	Composite Rate 0.6%*
Material									
Steel	5%	30	1.50	1.50		10	0.50	1.17	
Cement	15%	10	1.50	1.50		5	0.75	1.75	
Aggregates	5%	10	0.50	0.50		5	0.25	0.58	
Others	15%	20	3.00	3.00		10	1.50	3.50	
Labour		30				70			
Total VAT Liability		**100**	**6.50**	**6.50**	**0.60**	**100**	**3.00**	**7.00**	**0.60**
Less: VAT Input Credit	**% of VAT Purchase**	**% of CST Purchase**			**Purchase made with in State***				**Purchase made with in State***
Steel	50%	50%	0.68	0.68	0		0.22	0.22	0
Cement	50%	50%	0.68	0.68	0		0.34	0.34	0
Aggregates	100%		0.45	0.45	0		0.22	0.22	0
Others	50%	50%	1.35	1.35	0		0.68	0.68	0
Total VAT Credit			**3.16**	**3.16**	**0.00**		**1.46**	**1.46**	**0.00**
Net VAT Liability			**3.34**	**3.34**	**0.60**		**1.54**	**5.54**	**0.60**

VAT Plan in Tamil Nadu	VAT Rate %	Value of material ₹70	Regular Method	Standard Deduction Method	Composite Rate 2%*	Value of material ₹30	Regular Method	Standard Deduction Method	Composite Rate 6%*
Material									
Steel	5%	30	1.50	1.50		10	0.50	1.17	
Cement	14.5%	10	1.45	1.45		5	0.73	1.69	
Aggregates	5%	10	0.50	0.50		5	0.25	0.58	
Others	14.5%	20	2.90	2.90		10	1.45	3.38	
Labour		30				70			
Total VAT Liability		**100**	**6.35**	**6.35**	**2.00**	**100**	**2.93**	**6.82**	**2.00**
Less: VAT Input credit	**% of VAT Purchase**	**% of CST Purchase**			**Purchase made with in State***				**Purchase made with in State***
Steel	50%	50	0.67	0.67	0		0.23	0.23	0
Cement	50%	50	0.65	0.65	0		0.33	0.33	0
Aggregates	100%		0.45	0.45	0		0.23	0.23	0
Others	50%	50	1.31	1.31	0		0.65	0.65	0
Total VAT Credit			**3.08**	**3.08**	**0.00**		**1.43**	**1.43**	**0.00**
Net VAT Liability			**3.27**	**3.27**	**2.00**		**1.50**	**5.39**	**2.00**

The following interpretations have been made for the workings given in the above tables:

- Cenvat Credit is worked out @12.36% on 90% of Cost of Excisable Materials/Input Services and on capital goods as ₹0.25 for Turnover of ₹100/-.
- A portion of materials are purchased within the State and VAT input credit is worked out at applicable VAT rates taking purchase cost as 90% of Sale Value.
- Standard Labour Deduction is allowed at 30% on Civil Work and VAT is payable on balance value at applicable VAT rates to goods.
- Purchases from outside state are not permissible in Gujarat & Tamilnadu under VAT Composition and hence assumed that materials are procured within the state.

The Finance Manager has to consider the following points which were emerged from the above analysis for selection of a suitable option for tax payment-

- ➢ In case of Turnkey Projects or EPC Contracts, Regular Method is beneficial by payment of service tax on service portion and VAT on material portion.
- ➢ Option-I is beneficial for service tax payment on Composite Contract which consists of material portion more than 60% and service portion less than 40%. Option-II is beneficial in case material portion is less than 60% and service portion is more than 40%. Hence, it is advisable to obtain the breakup of supply portion and service portion in a contract to exercise a suitable option.

Conclusion

Till GST Law is introduced, it is essential to use the tool of integrated VAT and Service Tax Planning in order to minimise tax cost. Exercising a suitable option for payment of VAT and Service Tax is critical in tax planning which varies from one type of contract to another type of contract. It is difficult to frame one formula which is suitable to all situations. It is depending upon so many factors such as type of contract/project or service, VAT/CST purchases, deploying own assets or hiring of equipments etc. Since the profit margin will be marginal and varies from 3% to 10% depending upon various factors in respect of construction industry, sometimes the element of tax cost may change the profit margin if not planned properly. Hence, integrated VAT and Service Tax planning helps the management in minimisation of tax cost. In this process, the Finance Manager plays a decisive role.■

FAQs Relating to Reverse/Joint Charge Mechanism

With the paradigm shift in the way services shall be charged to service tax, the scope of services covered under Reverse/Joint charge mechanism has also been increased. With this increase in the scope of services covered under reverse charge mechanism the questions relating to the procedural compliances have also increased. This article tries to club together the FAQ's relating to the reverse charge mechanism. This article also looks into the provisions governing the reverse charge mechanism.

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Scope

Section 68 of the Finance Act, 1994 (hereinafter referred to as '*the Act*') provides for person liable for the payment of service tax. As per Sub-Section (1) of the Section 68, it is the service provider who shall be liable for the payment of Service Tax. However, Sub Section (2) of the aforementioned Section 68 empowers the Central Government to determine in respect to notified services, the class of Person liable for the payment of service tax, and the extent to which the notified person will be liable for the payment of service tax. The remaining amount of service tax shall be paid by the service provider. The Central Government in exercise of its powers provided u/s. 68 of the Act has issued Notification No. 30/2012 dt 20-06-2012. The said Notification has been made effective from 01-07-2012.

In this article, time and again we will be using the term 'Reverse Charge' and 'Joint Charge'. These terms have not been defined under the provision of Service Tax laws, but in actual, they are the terms of industry usage, and hence, the same are summarised in the below table:

Reverse Charge	Joint Charge
Service Receiver is required to make the payment of 100% of service tax amount directly to the government exchequer.	Service Receiver is required to make payment of only specified % of service tax amount directly to the government exchequer, the remaining amount is to be paid by Service Provider.

The Notification No. 30/2012 effectively provides for 12 clauses from these 9 are relating to reverse charge and 3 are relating to Joint Charge. The same are summarised below:

Reverse Charge clauses as per Notification No. 30/2012

Sr. No	Service Provider	Service Receiver	Nature of Services	Remarks
1	Insurance Agent	Any person carrying on Insurance Business	Any Service	
2	Goods Transport Agency	Factory, Society, Dealer of Excisable Goods, Body Corporate, Partnership Firm	Transportation of Goods by Road	See Note 1,2 &3
3	Any Person	Body Corporate or Partnership Firm	Sponsorship	
4	Arbitral Tribunal	Business Entity	Any Service	See Note 4 & 5
5	Individual Advocate or Firm of Advocates	Business Entity	Legal Services	See Note 4 & 5
6	Government or Local Authority	Business Entity	Specified type of Support Services	See Note 5, 6 & 7
7	Individual, HUF or Partnership Firm	Business Entity registered as a Body Corporate	Renting of a Motor Vehicle designed to carry on passengers	See Note 5
8	Director of a Company	Company in which Director	Any Service	See Note 8
9	Located in the Non Taxable Territory	Located in the Taxable Territory	Any Service	See Note 9

1. As per Notification No. 25/2012 dt. 20-06-2012 exemption from service tax has been provided in relation to services provided by a Goods Transport Agency,
   - For the transportation of fruits, vegetables, milks, food grains, or pulses.
   - Gross amount charged on a consignment in a single goods carriage does not exceed ₹1,500 or goods for a single consignee does not exceed ₹750.
2. As per Notification No. 26/2012 dt. 20-06-2012 service tax is payable only on 25% of the amount of freight.
3. The Service Receiver will be the person liable for the payment of freight i.e. it can either be Consignor or Consignee of goods.
4. Services by an Arbitral Tribunal or Individual Advocate provided to any person other than a business entity or a business entity with a turnover of up to ₹10 lakh in the preceding financial year are exempted by Notification No 25/2012 dated 20-06-2012.
5. As per Section 65B(17) of the Act 'Business Entity' *'means any person ordinarily carrying out any activity relating to industry, commerce or any other business or profession.'*
6. In general, the services provided by a Government or Local Authority are covered under Negative List except of types mentioned under clause of Section 66D(a) of the Act.
7. The term *"support services"* has been defined u/s. 65B (49) of the Act to *mean infrastructural, operational, administrative, logistic, marketing or any other support of any kind comprising functions that entities carry out in ordinary course of operations themselves but may obtain as services by outsourcing from others for any reason whatsoever and shall include advertisement and promotion, construction or works contract, renting of immovable property, security, testing and analysis.*

8. The Whole Time Director/Managing Director are normally employed by the company. Therefore, services provided by such directors are not liable for service tax.
9. As per Section 65(B)(52) *'Taxable Territory'* means the territory to which the provision of this Chapter applies. The provision of Chapter V applies to whole of India except J&K.

Joint Charge clauses as per Notification No. 30/2012

Sr. No	Service Provider	Service Receiver	Nature of Service	Pro-portion
1	Individual, HUF or Partnership Firm	Business Entity registered as a Body Corporate	Renting of a Motor Vehicle designed to carry on passengers on non abated value	60:40
2	Individual, HUF or Partnership Firm	Business Entity registered as a Body Corporate	Supply of Manpower for any purpose or Security Services	25:75
3	Individual, HUF or Partnership Firm	Business Entity registered as a Body Corporate	Service portion in the execution of Works Contract	50:50

FAQ's

Q1. I am an Advocate; the services provided by me are covered under Reverse Charge (100%) mechanism. Am I required to take service tax registration?

A1. As per the provision of Section 69 of the Finance Act, 1994 every person *liable for the payment* of service tax is required to get oneself registered. The word person *liable for the payment of service tax* has been defined u/r 2(d) of the Service Tax Rules, 1994. On conjoint reading of the aforesaid legal provisions it can be concluded that if the service provider is providing services which are covered under Reverse Charge (100%) mechanism then said person is not required to get oneself registered.

Q2. I am an Advocate; the services provided by me are covered under Reverse charge mechanism. Am I required to mention the amount of service tax on the invoices raised by me?

A2. As per Rule 4A of the Service Tax Rules, 1994 the Invoice, Bill or Challan as the case may be should contain *the service tax payable thereon*. There is nothing so mentioned that the service tax is payable by provider or receiver. Therefore, the person covered under Reverse Charge (100%) mechanism should not mention the amount of *service tax payable thereon* as this is not the amount of service tax payable thereon by him. Further, it is suggested that a note should be given mentioning that the service receiver is required to make the payment of service tax in requirement of the relevant provision of Service Tax laws. However, in case of Joint Charge (proportionate) mechanism the service provider should mention the amount of service tax which is to be collected by him from the service receiver for deposition of the service tax and for the remaining liability the aforesaid note should be mentioned.

Q3. We are a Cement Manufacturer working in the style of a Pvt. Ltd. Company. We are registered with the Central Excise dept. and duly discharging our excise duty liability as per the provision of Central Excise laws. We also avail Cenvat Credit of excise duty and service tax paid on purchase/receipts of goods and services. Our query is that can we utilise the aforesaid Cenvat Credit, for discharging our liability of service tax arising on availing the services covered under reverse/joint charge?

A3. As per Rule 3(4) of the Cenvat Credit Rules, 2004 the Cenvat Credit availed can be utilised for the payment of tax on service tax on any *'Output Services'*. The term *'Output Service'* has been defined u/r 2(p) of the Cenvat Credit Rules, 2004. As per Rule 2(p) the term 'Output Service' shall not include those services where whole of the service tax is liable to be paid by the recipient of service i.e. services covered under reverse charge mechanism. Therefore, utilisation of Cenvat Credit for the payment of service tax on services covered under Reverse Charge is specifically prohibited. It is required to first make the payment of service tax in cash then take the Cenvat Credit of the taxes paid, if the same is available.

Q4. Does that mean the Cenvat Credit can be utilised for the payment of service tax on services covered under Joint Charge? As in case of Joint Charge the liability for the payment of whole of the service tax is not on the recipient of service.

A4. No, the reason for the same is that as per Explanation to Rule 3(4) of the Cenvat Credit Rules, 2004 Cenvat Credit can't be used for the payment of service tax in respect of services where the person liable for the payment of service tax is the service recipient. As per the explanation, irrespective of the proportion of service tax the utilisation of Cenvat Credit is prohibited in all those cases where the person liable for the payment of service tax is service receiver. In case of Joint Charge, the service receiver is liable for the payment of service tax, even though only the part of the service tax.

Q5. We have awarded a works contract to an Individual. Therefore, we are required to make the payment of 50% of the service tax amount under Joint Charge mechanism. The issue is that the contractor is availing the *'abatement scheme'* as given under Rule 2A (ii) of the Service Tax (Determination of Value) Rules, 2004. Whereas, in our observation the liability of Service Tax will be less, if the, valuation of taxable service is done as per Rule 2A (i) of the Service Tax (Determination of Value) Rules, 2004. Now, our Query is that is it possible that the value of services as determined by service provider and service receiver differ from each other?

A5. Yes, as per Explanation-2 of the Notification No. 30/2012 dated 20th June, 2012 it has been provided that, in respect of the works contract services where both service provider and service recipient are the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service. However, I will like to clarify that in respect to other services covered under reverse/joint charge this option of having different value of taxable services is not available.

Q6. We are working in the style of Public Ltd. Company. We have availed services covered under Reverse/Joint charge mechanism and, therefore, liable for the payment of service tax. However, we defaulted in the payment of the same. Now, we have found that the service provider has made the payment of service tax. Are we still required to make the payment of service tax? We are aware of the fact that under the provision of Income-tax Act, 1961 there is a circular which clarifies that if the tax has been paid by deductee then deductor is not required to make the payment of tax again. Is any same kind of provision available in Service Tax law that if the payment has been made by service provider then service receiver is not required to make the payment of service tax again?

A6. The Circular about which you are talking is Circular No. 275/201/95-IT(B) dated 29th January, 1997 which declares that *no demand visualised u/s.201(1) of the Income-tax Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been paid by the deductee-assessee*. Hence, if any TDS has been left from deduction by deductor and after that the deductee has duly discharged his tax liability then the income tax department is not entitled to recover the same again. But, no such Circular has been issued by CBEC on account of which, even if the service provider has made the payment of service tax on services covered under reverse charge, the service receiver is required to make the payment of service tax again.

Q7. We are working in the style of a LLP. We avail services of goods transport provided by a Goods Transport Agency (GTA). We are aware of the fact that as per Notification No. 26/2012 ST the GTA can claim exemption from the 75% of the value of Taxable Services subject to the condition that no Cenvat Credit of the taxes and duties paid on the Inputs, Input Services and Capital Goods has been availed. Now our consideration is that, can we being a person liable for the payment of service tax as per reverse charge mechanism can avail the benefit as given under Notification No. 26/2012 ST. If yes, then how we will assure that the GTA will not be availing the Cenvat credit of the taxes and duties paid?

A7. The problem mentioned by you has not arisen on account of implementation of Negative List regime. It also existed under the exhaustive list regime. To counter the same, up till 01-03-2008 the Service Receivers were required to take a declaration from the GTA in respect to that the GTA has not availed the Cenvat credit of taxes and duties. To dispense with this requirement from 01-03-2008 the service provided by a GTA were categorised under the exclusion clause of the definition of 'Output Services' given under Cenvat Credit Rules, 2004 thereon making the GTA's ineligible from availing the Cenvat Credit.

However, w.e.f. 01-07-2012 the definition of term 'Output Services' given under Cenvat Credit Rules, 2004 has again been amended and this time the exclusion in respect to the GTA services has not been made there and in my view, making the GTA's eligible for availing the credit. Therefore, in my view, the person covered under reverse charge on account of availing services from the GTA, if he paying service tax on 25% of the value of the taxable service, will again be required to take a declaration from the GTA that no cenvat credit has been availed by him so as to act as a proof that the requirements for availing Cenvat Credit has been fulfilled.

Q8. I am an Individual engaged in the services of providing manpower supply to a body corporate. The value of Gross Receipts during the previous year is less then ₹10 Lakh and I also fulfil the rest of the conditions for availing the benefit of Notification No. 33/2012 (New Notification for SSI Exemption). Can I avail the benefit of the SSI exemption in respect to the service tax liability which is arising on me on account of providing services of manpower supply on which I am required to pay service tax on only part of the services as such services are covered under Joint Charge?

A8. You will not be entitled for the said benefit on account of the reason that as per Notification No. 33/2012 (SSI exemption) the benefit of exemption Notification shall not be extended to such value of taxable service in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of Section 68 of the Finance Act 1994 read with Service Tax Rules, 1994. The services on which either Reverse charge or even Joint charge (as in your case) is created are those which are specified under Section 68(2) of the Finance Act, 1994. Therefore, in my view on making a strict interpretation of the words of the statute the manpower supply services when provided to body corporate are of the nature of the specified services u/s. 68(2), hence not be entitled for the SSI exemption benefit.

Q9. I am an Individual Works Contractor. I majorly provide services to Body Corporate, on account of which my 50% service tax liability is being discharged by service receiver. I am entitled to avail the Cenvat Credit for the Service Tax paid on Input Services and Excise Duty paid on the purchase of Capital Goods, but on account of Joint Charge I am able to utilise the Cenvat Credit to the extent of payment of 50% of the service tax. So what I should do of the available credit as I see that it will keep on accumulating as the time passes. I am unable to utilise the credit. Please suggest any remedial measure?

A9. The legislature has very well envisaged this problem of yours and for that reason a new Rule 5B has been inserted by Notification No. 28/2012 CE-NT in the Cenvat Credit Rules, 2004. The said rule read as:

> *5B. Refund of CENVAT credit to service providers providing services taxed on reverse charge basis.-*
>
> *A provider of service providing services notified under sub-section (2) of Section 68 of the Finance Act and being unable to utilise the CENVAT credit availed on inputs and input services for payment of service tax on such output services, shall be allowed refund of such unutilised CENVAT credit subject to procedure, safeguards, conditions and limitations, as may be specified by the Board by notification in the Official Gazette.*

The legislature has provided a rule specifically for those persons who are covered under Joint Charge mechanism to claim the refund of the unutilised credit.

Q10. On reading of the above rule it appears that even the persons who are covered under Reverse Charge (100% of the service tax liability to be discharged by service receiver) can claim the refund of taxes paid by them. Is this the case? Please clarify.

A10. Even though the above mentioned rule does not create any bar on claiming refund of unutilised credit by the service providers providing services covered under reverse charge, but still they will not be able to claim the benefit of the aforesaid Rule 5B of the Cenvat Credit Rules 2004. This is on account of the reason that a stage prior to utilisation is availment of the Credit. A person who is providing services covered under Reverse Charge has been specifically excluded from the definition of term 'Output Service' given u/r 2 (p) of the Cenvat Credit Rules, 2004. Cenvat Credit can be availed only and only by those persons who are providing 'Output Services'. Therefore, in my view, the person providing services covered under Reverse Charge are not eligible of availing the Cenvat Credit so the question of taking refund of unutilised credit does not arise at all.

Q11. We are receivers of service covered under Reverse/Joint Charge. Till date we have not got ourself registered with the service tax department. Kindly let us know the time limit within which we are required to get ourself registered?

A11. Rule 4 of the Service Tax Rules, 1994 which governs registration procedure do not provide any clarity on the said topic as first proviso to the said Rule 4 only covers the situation in respect to service providers. However, in my view the service receivers will be required to get them self registered within a period of 30 days from the date of availing the services, if the proviso is first to be read with necessary changes in the light of the service receiver.

NOTE: The views expressed in this article are personal and can differ on account of interpretational issues. The provisions relating to the Reverse/Joint Charge will be developed over time after a judicial review in case of disputes. ■

Advance Ruling is Subjected to Writ Jurisdiction of High Court

The authority for advance ruling may determine not only transaction but also the tax liability arising out of a transaction and such determination may include a determination of issue of fact or issue of law. The authority may determine the quantum of income and such determination may include a determination on an issue of fact of issue of law. The determination of the authority is not just advisory but binding on the applicant and the department. In the income tax, there is no provision for filing an appeal against the advance ruling. However, the authority being a tribunal is subject to the superintendence of high court. The Supreme Court held that the advance ruling is subjected to the writ jurisdiction of high court. Read on to know more.

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ADVNACE RULING:

Chapter XIX of Income-tax Act, 1961 ('Act' for short) deals with the advance ruling. Section 245N (a) of the Act defines the term 'advance ruling' as-

- A determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non resident applicant; or
- A determination by the Authority in relation to the tax liability of a non resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a respondent applicant with such non resident and such determination shall include the determination of any question of law or of fact specified in the application;
- A determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application.

BINDING NATURE OF ADVANCE RULING:

The determination of the Authority for Advance Ruling ('Authority' for short) is not advisory but binding under Section 245S of the Act. The said section provides that the advance ruling pronounced by the Authority under Section 245R shall be binding only-

- On the applicant who had sought it;
- In respect of the transactions in relation to which the ruling had been sought; and
- On the Commissioner and the income tax authorities subordinate to him, in respect of the applicant and the said transaction.

The advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced. The Authority in **'Cyril Eugene Pereira' – (1999) 239 ITR 650** held that Section 245S (2) has limited the binding nature of the ruling to the case of the applicant in respect of transaction in relation to which the advance ruling is sought and to the Commissioner and authorities subordinate to him only in respect of the applicant and the transaction involved. This is not to say that a principle of law laid down in a case will not be followed in future. The Act has made the ruling binding in the case of one transaction only and the parties involved in that case in respect of that transaction. For any other transaction and for other parties, the ruling will be of a persuasive nature.

The decision of the Authority in the above said case has been taken note of by Supreme Court in ***'Union of India & another vs. Azadi Bachao Andolan and another' – (2003) 263 ITR 706***. The Supreme Court held that the advance ruling of the Authority is binding on the applicant, in respect of transaction in relation to which the ruling had been sought and on the Commissioner of the Income Tax authorities subordinate to him and has persuasive value in respect of other parties. However, it has also been rightly held by the Authority itself that this does not mean that a principle of law laid down in a case will not be followed in future.

WHETHER THE AUTHORITY IS A TRIBUNAL?

Before going into the above said question we may see what Tribunal is. The expression 'Tribunal' in Article 227 of the Constitution has been explained by the Supreme Court in ***'Harinagar Sugar Mills vs. Shyam Sunder' – AIR 1961 SC 1669*** as – "With the growth of civilisation and the problems of modern life, a large number of administrative tribunals have come into existence. These tribunals have the authority of law to pronounce upon valuable rights; they act in a judicial manner and even on evidence on oath, but they are not part of the ordinary courts of civil judicature. **They share the exercise of the judicial power of the State**, but they are brought into existence to implement some administrative policy or to determine controversies arising out of some administrative law. **They are very similar to courts but are not Courts**. When the Constitution speaks of 'Courts; in Article 136, 227 or 288 or in Article 223 to 237 or in the Lists, it contemplates Courts of Civil Judicature but not tribunals other than such Courts. This is the reason for using both the expressions in Article 136 and 227. By 'Courts' is meant Courts of Civil Judicature and by 'Tribunals', those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State, and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals and the residue goes before the ordinary Courts of Civil Judicature. Their procedure may differ, but the functions are not essentially different. What distinguishes them has never been successfully established.

Where a Tribunal is constituted by an Act of the legislature for adjudicating any particular matter the power of the Constitutional Courts under Article 226/227 or 136 is not ousted even if the Act makes the decision of the Tribunal final as held by the Supreme Court in *'Union of India V. R. Gandhi, President, Madras Bar Association'* – 2010 (261) ELT 3 (SC). Under Article 226 of the Constitution, the High Court can issue writs of certiorari and prohibition to control the proceedings of not only a sub ordinate court but also of any person, body or authority having the duty to act judicially, such as a Tribunal.

In ***'Durga Shankar Mehta vs. Thakur Raghuraj Singh and others' – (1955) I SCR 267*** the Supreme Court held that the expression 'Tribunal' used in Article 136 of the Constitution includes, within its ambit, all adjudicating bodies, provided they are created by the State and are invested with judicial, as distinguished from purely administrative and executive functions.

Test for Tribunal:

From the above discussion, it is clear that the test for determination whether a body is a Tribunal or not is to find out whether it is vested with the judicial power of the State by any law to pronounce upon rights or liabilities arising out of some special law .

Authority is a Tribunal:

The Supreme Court in ***'Columbia Sportsware Co., vs. Director of Income Tax, Bangalore' – 2012 (283) ELT 321 (SC)*** held that as Section 245S of the Income-tax Act expressly makes the Advance Ruling binding on the applicant in respect of the transaction and on the Commissioner and the income tax authorities subordinate to him, the Authority is a body acting in judicial capacity. The Supreme Court also referred the quotes of Shri H.M. Seervai in his book 'Constitutional Law of India'. In that book, the author while discussing the tests for identifying judicial functions, quotes the passage from Prof. de Smiths Judicial Review – "An Authority acts in a judicial capacity when, after investigation and deliberation, it performs an act or makes a decision that is binding and collusive and imposes obligation upon or affects the rights of the individuals".

The Supreme Court, therefore, held that the Authority is a body exercising judicial power conferred by the Chapter XIX B of the Act and is a Tribunal within the meaning of the expression in Article 136 and 227 of the Constitution.

AUTHORITY, A TRIBUNAL, IS SUBJECT TO WRIT JURISDICTION:

Where a Tribunal is constituted by an Act of the legislature for adjudicating any particular matter the power of the Constitutional Courts under Article 226/227 or 136 is not ousted even if the Act makes the decision of the Tribunal final as held by the Supreme Court in '*Union of India vs. R. Gandhi, President, Madras Bar Association' – 2010 (261) ELT 3 (SC)*. Under Article 226 of the Constitution, the High Court can issue writs of *certiorari* and prohibition to control the proceedings of not only a subordinate court but also of any person, body or authority having the duty to act judicially, such as a Tribunal. Under Article 227 of the Constitution the High Court has superintendence over all courts and Tribunals throughout the territory in relation to which exercises jurisdiction. Under Article 136 of the Constitution, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or Tribunal in the territory of India.

In '*Columbia Sportswear Co., vs. Director of Income Tax, Bangalore' (supra)* the Supreme Court held that the fact that Section 245S(2) of the Act makes the advance ruling pronounced by the Authority binding on the applicant in respect of the transaction and on the Commissioner and the Income tax authorities subordinate to him in respect of the applicant and the transaction would not affect the jurisdictions of either the Supreme Court under Article 136 of the Constitution or of the High Courts under Articles 226 and 227 of the Constitution to entertain to challenge the advance ruling pronounced by the Authority. The Supreme Court further held that considering the settled position of the law that the powers of the Supreme Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in the statute by the legislature making the decision of the Tribunal final or conclusive, the Supreme Court held that Section 245S(1) of the Act, insofar, it makes the advance ruling of the Authority binding on the applicant, in respect of the transaction and the Commissioner and income tax authorities subordinate to him, does not bar the jurisdiction of the Supreme Court under Article 136 of the Constitution or the jurisdiction of the High Court under Article 226 and 227 of the Constitution to entertain a challenge to the advance ruling authority.

The Authority in response to the jurisdiction of the Supreme Court and the High Court in this regard in an advance ruling in 'Groupe Industrial Marcel Dassault' – (2012) 340 ITR 353 (AAR) observed as – 'Permitting a challenge in the High Court would become counter productive since writ petitions are likely to be pending in High Courts for years and in the case of some High Courts, even in Letters Patent Appeals and then again in the Supreme Court. It appears to be appropriate to point out that considering the object of giving an advance ruling expeditiously, it would be considered with the object sought to be achieved, if **the Supreme Court were to entertain the application for Special Leave to appeal directly from a ruling of this Authority**, preliminary or final, and render a decision thereon rather than leaving the parties to approach the High Courts for such a challenge'.

The Supreme Court also considered the above observation of the Authority in '*Columbia Sportswear*

Co., vs. Director of Income Tax, Bangalore' (supra). The Supreme Court did not think that they can hold that an advance ruling of the Authority can only be challenged under Article 136 of the Constitution before the Supreme Court and not under Articles 226 and 227 of the Constitution before the High Court. For this the Supreme Court relied on the decision of the Constitution Bench of the Supreme Court in *'L. Chandra Kumar vs. Union of India and others' 1997 (92) ELT 318 (SC)* which held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is part of the basic structure of the Constitution. Therefore, to hold as advance ruling of the authority should not be permitted to be challenged before the High Court under Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution. Nonetheless the Supreme Court did understand the apprehension of the Authority that a writ petition may remain pending in the High Court for years, first before a Single Judge and thereafter in Letters Patent before the Division Bench and as a result the Object of Chapter XIX-B of the Act which is to enable an applicant to get an advance ruling in respect of a transaction expeditiously would be defeated. The Supreme Court is of the opinion that when an advance ruling of the Authority is challenged before the High Court under Article 226/227 of the Constitution, **the same should be heard directly by a Division Bench of the High Court and decided as expeditiously as possible**.

The Supreme Court in the above said case decided accordingly. In this case the petitioner is a company incorporated in USA and is engaged in the business of designing, developing, marketing and distributing outdoor apparel. For making purchases for its business, the petitioner established a liaison office in Chennai with the permission of the RBI in 1995 which granted the permission subject to conditions stipulated therein. The RBI stated that the liaison office of the petitioner was for the purpose of undertaking purely liaison activities viz., to inspect the quality, to ensure shipments and to act as a communication channel between head office and parties in India except such liaison work, the liaison office will not undertake any other activity of a trading, commercial or industrial nature nor shall it enter into any business contracts in its own name without the prior permission of the RBI. The petitioner also opened a liaison office at Bangalore also on the same terms and conditions of the RBI.

The advance ruling of the authority is subject to writ jurisdiction of High Court. As observed by the Supreme Court the process would somewhat cause delay and the purpose of Chapter XIX-B would also be defeated. The Supreme Court, therefore, opined that the challenge to the advance ruling may be heard by the Division Bench of the High Court which would hear and dispose the petition as expeditiously as possible. Considering the opinion of the Supreme Court amendment may be brought in the Income Tax Act in this regard suitably by the Government of India.

The petitioner filed an application before the Authority on the questions relating to its transactions in its liaison office in India as detailed below:

1. Whether based on the nature of activities carried on by the Liaison Office in India of the applicant in India, any income accrues or arises in India as per Section 5(2) 9(B) of the Act?
2. Whether based on the nature of activities carried on by the India Liaison Office, the applicant can be said to have a business connection in India as per the provisions of Section 9(1)(i) of the Act read with its Explanation 2?
3. If the answer to the query 2 is in the affirmative, whether various activities carried out by the Liaison Office are covered under the phrase 'through or from operations which are confined to the purchase of goods in India for the purpose of export' as stated in part (b) of Explanation 1 to Section 9(1)(i) of the Act?
4. If the answer to the query 3 is negative, how would the profits attributable to the 'operations in India' be determined and what would be the broad principles to be borne in mind for attributing income to the India liaison office?
5. Whether the India Liaison Office creates a permanent establishment for the applicant in India under Article 5(1) of the Agreement for avoidance of Double Taxation and prevention of fiscal evasion with respect to taxes on Income and capital gains entered into between the Government of the Republic of India and the Government of USA ('Treaty') read with the PE exclusion available for purchase function in terms of paragraph 3(d) of Article 5 of the Treaty?
6. If the answer to the query 5 is in the affirmative, how would be the profits attributable to PE in India be determined and what would be the broad principles

to be borne in mind for attributing income to India Liaison Office under the Treaty?

After hearing the both sides the Authority gave its rulings for the six questions as follows:

1. A portion of the income of the business of designing, manufacturing and sale of the products imported by the applicant from India accrues to the applicant in India;
2. The applicant has a business connection in India being its liaison office located in India;
3. The activities of the Liaison Office in India are not confirmed to the purchase of goods in India for the purpose of export;
4. The income taxable in India will be only that part of the income that can be attributed to the operations carried out in India. This is a matter of computation;
5. The Indian Liaison Office involves a Permanent Establishment for the applicant under Article 5.1 of the DTAA;
6. In terms of Article 7 of DTAA only the income attributable to the Liaison Office of the applicant is taxable in India.

Aggrieved against the order of the Authority the petitioner filed a special leave petition before the Supreme Court challenging the same. The petitioner put forth the following arguments for the maintainability of special leave petition:

- The provisions of Chapter XIX-B of the Act shows that the Authority is a quasi judicial Tribunal;
- The order of the Authority is an adjudicating order determining a question of law or fact specified in the application and Section 245R(5) of the Act mandates compliance with the principles of Natural Justice;
- The Authority is also vested with the power of a civil court in relation to discovery and inspection, enforcing the attendance of persons and examining them on oath and compelling production of books of accounts etc;
- As the Authority is a quasi judicial Tribunal, its orders can be challenged before the High Court by way of judicial review under Article 226/227 of the Constitution or before Supreme Court under Article 136 of the Constitution;
- The Supreme Court may decline to interfere with the order passed by the Authority in exercise of their power under Article 136 of the Constitution where it feels that it would be more appropriate that the order of the Authority must first be examined by the High Court under Article 226/227 of the Constitution;

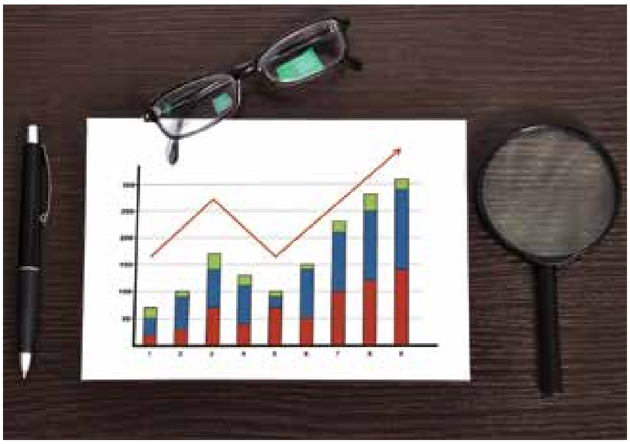
The Supreme Court considered the primary question in this case to decide is whether an advance ruling pronounced by the Authority can be challenged by the applicant or by the Commissioner or any income tax authority subordinate to him under Article 226/227 of the Constitution before the High Court or under Article 136 of the constitution before the Supreme Court. The Supreme Court relied on the judgment in "*Sirpur Paper Mills Limited vs. Commissioner of Wealth Tax, Hyderabad' – AIR 1970 SC 1520* in which the Supreme Court held that the Supreme Court does not encourage an aggrieved party to appeal directly to the Supreme Court against the order of a Tribunal exercising judicial function unless it appears to the Court that a question of principle of general importance or a similar question of principle of great importance arises. Unless a SLP raises substantial questions of general importance or a similar question is already pending before the Supreme Court for decision, the Supreme Court does not entertain a SLP directly against an order of the Tribunal.

In this SLP, the Supreme Court did not find that a substantial question of general importance arises nor it is shown that a similar question is already pending before the Supreme Court for which the petitioner should be permitted to approach the Supreme Court directly against the advance ruling of the authority. The SLP was disposed by the Supreme Court granting liberty to the petitioner to move the appropriate High Court under Article 226 and/or 227 of the Constitution. The Supreme Court requested the High Court concerned to ensure that the writ petition, if filed, be heard by the Division Bench hearing income tax matters and requested the Division Bench to hear and dispose of the matter as expeditiously as possible.

CONCLUSION:

As discussed in the article, it is clear that the advance ruling of the authority is subject to writ jurisdiction of High Court. As observed by the Supreme Court the process would somewhat cause delay and the purpose of Chapter XIX-B would also be defeated. The Supreme Court, therefore, opined that the challenge to the advance ruling may be heard by the Division Bench of the High Court which would hear and dispose the petition as expeditiously as possible. Considering the opinion of the Supreme Court, the amendment may be brought in the Income Tax Act in this regard suitably by the Government of India. ■

Attribution of Profits to Permanent Establishment – Formulary Apportionment vs. Arms Length Principle Approach



There has been a growing trend of MNCs (Indian and Overseas) entering other countries to carry on business or perform services. This trend raises multiple issues surrounding the concept of Permanent Establishment (PE) as well as the attribution of profits to PE. The PE concept is used in International Taxation to determine whether the particular income shall or shall not be taxed in the state from which the income originates. The purpose of this article is to highlight the methodology prescribed by OECD Model Convention 2010 and also the methodology adopted by various Tribunals to attribute profits in cases where arms length principles are not met. However, readers would need to also analyse the taxability under the Income-tax Act, 1961 ('Act') before arriving at a conclusion.

(Contributed by International Taxation Committee of the ICAI. Comments can be sent at citax@icai.in)

Currently, the international tax principles for attributing profits to a PE are provided in Article 7 of the OECD Model tax treaty, which forms the basis of the extensive network of tax treaties between OECD countries and also between several OECD and non-OECD countries. Variations in domestic tax laws regarding taxation of PEs and lack of consensus as regards correct interpretation of Article 7 may result in double taxation for such foreign entity. In a recent decision of Convergys Customer Management Group Inc vs ADIT[1], the Delhi Tribunal, while dealing with the issue of attribution of profits to PE, inter alia, held that attribution of profits to PE should be made by transfer pricing principles as laid down by Hon'ble Supreme Court in case of Morgan Stanley (292 ITR 416). Further, in respect of free of cost assets and software provided by the Taxpayer, the Hon'ble Tribunal has prescribed a four-step process to arrive at profit attribution, starting with applying global profit percentage to end customer revenue from Indian operations.

Concept of Attribution of Profits – As Prescribed by OECD

Under the provisions of the tax treaties, if a foreign enterprise carries on business in India through a PE, then the profits of such enterprise may be taxed in India but only so much of them as are directly or indirectly attributable to such PE.

As per Article 7(2) of the OECD Model Convention 2010, the profits to be attributed to the PE would be the profits which the PE might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed through the PE and other parts of the enterprise.

Para 16 of the OECD commentary on Article 7 further provides that profits that are attributable to the PE are to be determined under the fiction that

[1] ITA No 1443/Del/2012 and 5243/Del/2011

PE is a separate enterprise and that such an enterprise is independent from rest of the enterprise of which it is a part as well as from any other person. The second part of the fiction corresponds to the arms length principle.

OECD 2010 report on the Attribution of profits to PE provides for a two-step process to apply an arm's length separate enterprise principle in attributing profits to a PE:

- Step 1: Undertake a functional analysis and factual analysis, which attributes to the PE the functions performed, assets used and risks assumed (FAR) by the enterprise in respect of the business it carries on through the PE.
- Step 2: Determine the pricing on an arm's length basis, which determines an arm's length return for the FAR attributed to the PE.

Thus, the OECD has developed a working hypothesis as regards the approach for attribution. It has examined the feasibility of treating a PE as a hypothetical distinct and separate enterprise and has reviewed ways in which transfer pricing principles could be applied by analogy in order to attribute profits to a PE in accordance with the arm's length principle.

Background - The Indian Experience

The method of attribution of profits to the PE has become one of the major concerns for global multinational enterprises. The attribution has been a matter of dispute over a period of years and there are various judicial precedents which have tried to relate the attribution of profits and the arm's length principles and the same are briefly discussed below:

- Supreme Court judgment in case of *DIT (Intl Taxation) vs. Morgan Stanley and Co Inc* (292 ITR 416) held that there was no need to attribute further profits to the PE of the foreign company where the transaction between the two was held to be at arm's length, taking into account all the risk-taking functions of the enterprise.

  The Supreme Court further held that the situation would be different if transfer pricing analysis did not adequately reflect the functions and risks assumed by the enterprise. In such a case, there would be a need to attribute profits to the PE for those functions/risks that have not been considered. It also held that the entire exercise was to ascertain whether the service charges payable or paid to the service provider fully represented the value of profit attributable to its services.

Supreme Court judgment in case of *DIT (Intl Taxation) vs. Morgan Stanley and Co Inc* (292 ITR 416) held that there was no need to attribute further profits to the PE of the foreign company where the transaction between the two was held to be at arm's length, taking into account all the risk-taking functions of the enterprise.

  In each case, the data placed by the taxpayer had to be examined as to whether the transfer pricing analysis was exhaustive of attribution of profits and that would depend on the functional and factual analysis to be undertaken in each case.

- Delhi High Court in case of *Rolls Royce Singapore Pte Ltd. vs. ADIT* also held that while in principle it is correct that if a fair price is paid by the assessee to the agent for the activities of the assessee in India through the Dependent Agent PE and the said price is taxed in India at the hands of the agent, then no question of taxing the assessee again would arise, this is subject to a Transfer Pricing Analysis being undertaken u/s 92.

  The facts showed that the manner in which the commission/remuneration had been fixed was usually not done between independent parties in an uncontrolled transaction. As the commission paid by the agent to the DAPE is not at "arm's length", the estimation that 10% of the profits on sales of spare parts were attributable to the activities carried out by the agent in India and taxable is reasonable.

- The Hon'ble Bombay High Court, in case of *SET Satellite (Singapore) Pte Ltd.* (218 CTR 452), had held that in case the agent is remunerated at arm's length by the foreign principal, the tax liability of the foreign principal (which would arise in case it is regarded to have a PE in India) would stand extinguished.
- In the case of *BBC Worldwide Ltd. vs DDIT (2010-TIOL-59-ITAT-DEL)*, the Delhi ITAT held that where an agent is compensated on an arm's length basis for its agency services in India, there should be no additional income attribution in the hands of the Taxpayer which is a foreign enterprise. It may be pertinent to note that in the facts of this case the agent received a commission

of 15% of the revenues as compensation for services.

Indian Experience - Landmark Principles

Thus, the crux of all the decisions discussed above is that if the transactions are held to be at arm's length and the transfer price takes into account all the risk-taking functions of the foreign enterprise, then, nothing further can be attributed to the PE. Thus, no further attribution of profits only if following two conditions are cumulatively met:

- o The associate enterprise has been remunerated on arm's length basis and
- o By FAR (functions performed, assets utilised and risks assumed) analysis of Indian and foreign enterprise, nothing more can be attributed to PE.

Recent Ruling --- Delhi Tribunal in Case of Convergys Customer Management Group Inc vs ADIT[2]

Background and facts

- ➢ The assessee i.e. Convergys Customer Management Group Inc. is a US tax resident. It provides IT enabled customer management services by utilising its advanced information system capabilities, human resource management skills and industry experience. The assessee has a subsidiary in India viz. Convergys India Services Pvt. Ltd. ("CIS"). CIS provides IT enabled call centre/back office support services to the assessee.
- ➢ After confirming the existence of a PE, the AO had computed profits attributable to Indian PE by estimating revenue from Indian operations. AO had arrived at such revenue by allocating the global revenue in proportion of number of employees. The AO also allocated expenses (excluding direct expenses) in proportion of number of employees.
- ➢ The learned CIT(A) held that no further profits can be attributed to the Assessee's PE to the extent that the transfer pricing analysis of CIS has already captured such functions, assets and risks. However, further profit was required to be attributed on account of:
  - o Certain assets of the Assessee being deployed in India.
  - o Entrepreneurial services to manage risk related to the service delivery are performed by the Assessee in India.
- ➢ In computing the profits to be attributed, the learned CIT(A) considered total revenue of Assessee pertaining to contracts/projects in respect of which services were procured from CIS. However, while computing profits, the learned CIT(A) did not allow deduction for expenses such as research and development, depreciation, amortisation etc. It also considered only 50% of selling, general and administrative expenses and limited the quantum of deduction for "head office" expenses to the ceiling prescribed under domestic tax law.

Tribunal's ruling

- ➢ As a general principle, the Tribunal recognised that attribution of profits to the PE is a transfer pricing issue and no further profits can be attributed to a PE once an arm's length price has been determined for the Indian affiliate, if the transfer pricing analysis subsumes the risk profile of the PE.
- ➢ Hon'ble Tribunal rejected Revenue's attribution methodology. Hon'ble Tribunal held that the methodology adopted by the AO and the ld. CIT(A) cannot be accepted as they have considered revenue of the assessee company (Convergys Customer Management Group Inc as a multinational enterprise) as the starting point for arriving at the profits attributable to the PE of assessee in India.
- ➢ The revenue of the assessee company cannot be considered as the revenue of the PE by any stretch of imagination. Furthermore the expenses incurred outside India are linked with the business activities of the assessee undertaken outside India for the functions performed outside India and are not linked to the PE of the assessee in India.
- ➢ ITAT also rejected CIT(A)'s stand on further profit attribution to PE for risks. ITAT held that

Despite the recognition of arm's length principles for profit attribution, while concluding on the extent of profits attributable to the PE, the Delhi Tribunal appears to have adopted a formulary apportionment approach. This method employed by the Tribunal does not take into account the transfer pricing principle of function, asset and risk analysis that determine profit attribution.

[2] *While the ruling deals with a number of other issues such as existence of PE, characterization of payments as royalty etc, this Article covers the aspects relating to profit attribution to a PE.*

no attribution of profits can be made on account of management of risk as risk resides outside India.

- However, attribution can be made on account of free of cost assets and software provided by the Assessee. As the Assessee has submitted that it does not prepare India specific accounts, the attribution of profits on the basis as disclosed in the transfer pricing study for assets and software cannot be accepted.
- Based on the facts, the Tribunal accordingly worked following methodology to compute profit attribution to PE in India –

  Step 1 - Compute Global operating Income percentage (Operating Income/Total Revenue) as per annual report/10K of the company.

  Step 2 - Apply this percentage to End-customer revenue from Indian operations. The amount arrived at is the Operating Income from Indian operations.

  Step 3 - The operating income from India operations is to be reduced by the profit before tax of CIS (i.e. Indian subsidiary). The residual is attributable between US and India.

  Step 4 - The profit attributable to the PE should be estimated percentage of residual profits.
- To arrive at the estimated percentage of residual profits, Tribunal relied upon SC ruling in *Anglo French Textile Company Ltd. vs. CIT* (23 ITR 101) and Hukum Chand Mills Ltd. vs. CIT 103 ITR 548. In Anglo French, 10% attribution was held as reasonable and in the latter, 15% attribution was accepted.

  In this regard, ITAT held as under:

  "These cases decided by the Apex Court though are old, but they still hold the field as they have not been tinkered with. In our considered view, the adoption of higher figure of 15% as held by Hon'ble Supreme Court in the Hukum Chand Mills Ltd. (supra), for attribution of assessee's Indian PE operations will meet the ends of justice. Thus, the attribution of Indian PE income should be made at 15% of profit retained by CMG in the US."
- Accordingly, Tribunal concluded that 15% of the amount determined in Step 4 would be the income attributable to PE in India.

Conclusion of Tribunal and the Controversy

Despite the recognition of arm's length principles for profit attribution, while concluding on the extent of profits attributable to the PE, the Delhi Tribunal appears to have adopted a formulary apportionment approach. This method employed by the Tribunal does not take into account the transfer pricing principle of function, asset and risk analysis that determine profit attribution.

Further, the rationale for attributing a part of the "residual profits" to the PE does not appear to be very clear from the facts of the case. Under general transfer pricing principles, residual profits are typically allocated to an enterprise that owns valuable intangible property or makes other non-routine contributions. There is no finding in the order to suggest that the PE was making any non-routine contributions to the value chain or was the "economic owner" of intangibles.

The ruling also does not seem to have explicitly addressed the issue of possible economic double taxation which could potentially arise in a situation where the residual profit that is sought to be attributed to the PE is also taxed in the hands of the Indian company by way of a transfer pricing adjustment.

While there is a general consensus in the judicial decisions on the need to apply transfer pricing principles for income attribution, there is also some ambiguity on how these principles should be applied. There is a high risk that the Tax authority could attempt to attribute profits to a PE in the absence of adequate documentation to apply arm's length principles for attribution.

Way Forward

Accordingly, while there is a general consensus in the judicial decisions on the need to apply transfer pricing principles for income attribution, there is some ambiguity on how these principles should be applied.

There is a high risk that the Tax authority could attempt to attribute profits to a PE in the absence of adequate documentation to apply arm's length principles for attribution.

Given the same, it is imperative that the transfer pricing between two associates takes into account the FAR analysis of the foreign principal as well ie transfer pricing takes into account the FAR analysis of Indian Company as well as Foreign Company. ■

Specified Domestic Transactions – Beginning of a New Transfer Pricing Era

Based on the observations of the Supreme Court in the case of *CIT vs. Glaxo Smithkline Asia (P) Limited*, the applicability of transfer pricing provisions has been extended to specified domestic transactions (SDTs). Finance Act 2012 amended Chapter X of the Income-tax Act, 1961 ('Act') specifying applicability of transfer pricing provisions including compliance and penal provisions to specified domestic transactions with effect from FY 2012-13 onwards, subject to the threshold limit of ₹5 crore considering the increase in compliance burden on taxpayers. This article discusses the above in detail and some important practical aspects/ challenges that could/would arise with regard to the specified domestic transactions.

A. History of Extending Applicability of Transfer Pricing to SDTs

Transfer pricing provisions are in existence in India for more than 10 years. Since inception, the transfer pricing provisions have been applicable to international transactions mainly cross border transactions. There existed provisions in the Act which empowered a tax officer to scrutinise domestic transactions like disallowing unreasonable expenditure incurred between domestic related parties and re-computing the income (based on fair market value) of a taxpayer eligible for certain tax incentives (based on fair market value). However, no specific method to determine reasonableness of expenditure or fair market value to re-compute the income in such related transactions was provided under these sections.

In the case of *CIT vs. Glaxo Smithkline Asia (P) Limited* (2010-TII-02-SC-LB-TP), the issue before the Supreme Court ('SC') was whether transfer pricing provisions should be limited to cross-border transactions or the same should be extended to domestic transactions. While addressing the same, SC observed that under-invoicing of sales and over-invoicing of expenses ordinarily will be revenue neutral in nature, except in the following two circumstances having tax arbitrage:

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i. If one of the related companies is loss making and the other is profit making and profit is shifted to the loss making concern; and
ii. If there are different rates for two related units (on account of different status, area based incentives, nature of activity, etc.) and if profit is diverted towards the unit on the lower side of tax arbitrage.

Further, the Supreme Court expressed its view that transfer pricing provisions could be extended to cover domestic transactions between related parties. In this regard, the observations of Supreme Court are reproduced below for ready reference:

"In order to reduce litigation, we are of the view that certain provisions of the Act, like Section 40A(2) and Section 80IA(10), need to be amended empowering the Assessing Officer to make adjustments to the income declared by the assessee having regard to the fair market value of the transactions between the related parties. The Assessing Officer may thereafter apply any of the generally accepted methods of determination of arm's length price, including the methods provided under Transfer Pricing Regulations…"

B. Amendment by Finance Act 2012

Explanatory memorandum to Finance Bill 2012 clarified that the amendment in relation to SDT has been brought into the Act based on the observations made by SC in the case of Glaxo Smithkilne.

Accordingly, Section 92BA has been inserted in "Chapter X - Special Provisions Relating to Avoidance of Tax" of the Act providing definition of SDTs. Definition of SDT covers transactions between related parties under Section 40A, 10AA, 80A, 80-IA and other Sections where reference is made to Section 80IA-(10) of the Act.

Further, Section 92BA(f) of the Act provides that 'any other transaction as may be prescribed' would be covered under SDTs. However, no such transaction has been notified till date.

C. Coverage under SDT

Tabulated below are the eligible business/ taxpayer covered under SDTs:

Sr No	Section Number	Eligible business/ taxpayer
1.	10AA	Persons with income from Special Economic Zone (SEZ) units
2.	40A(2)	Payments to related parties
3.	80-IA	Infrastructure developers
4.	80-IA	Telecommunication service providers
5.	80-IA	Developers of Industrial park
6.	80-IA	Producers or distributors of power
7.	80-IAB	Developers of SEZ
8.	80-IB	Small scale industry engaged in operating Cold storage plant
9.	80-IB	Industrial undertaking in Industrially backward state as mentioned in VIII Schedule (ex: Jammu and Kashmir)
10.	80-IB	Company carrying on scientific research and development
11.	80-IB	Eligible housing projects
12.	80-IB	Eligible hospitals
13.	80-IC/ 80-IE	Persons with units in North-eastern states claiming deduction
14.	80-ID	Hotels located in districts having World Heritage site
15.	80-IB	Company carrying on scientific research and development
16.	80-IB	Eligible housing projects

D. Applicability of Transfer Pricing Provisions to SDTs

Transfer pricing provisions would be applicable to SDTs with effect from 1st April 2013. Accordingly, taxpayers who would be covered under SDTs would be required to comply with transfer pricing documentation and reporting requirements prescribed under the Act with effect from financial year 2012-13 onwards. The first due date for filing Form 3CEB i.e. reporting SDTs (along with international transactions, if any) would be 30th November 2013.

- Threshold limit of ₹5 crore: While introducing provisions in relation to SDT, Finance Minister has accepted that extending transfer pricing provisions to all SDTs would lead to increase in compliance burden on taxpayers which is not desirable.

In view of the above, a transaction would be covered under SDT provided the aggregate value of transactions exceeds ₹5 crore in a financial year under consideration. Taxpayer would need to keep in mind that the threshold of ₹5 crore is to be applied on aggregate basis and not transaction by transaction basis. The same could be understood with the help of following illustrations:

Illustration 1:

Nature of transaction	Amount (₹ in Crore)
Payments covered under Section 40A	3

Nature of transaction	Amount (₹ in Crore)
Purchase and sale of goods from one eligible unit to other eligible unit [Section 80A(6)]	4
Total	**7**

In the above illustration, since the aggregate value of transactions exceeds ₹5 crore, all the above mentioned transactions would be governed by transfer pricing provisions as SDTs.

Illustration 2:

Nature of transaction	Amount (₹ in Crore)
Payments covered under Section 40A	1
Purchase and sale goods from one eligible unit to other eligible unit [Section 80A(6)]	3
Total	**4**

In the above illustration, since the aggregate value of transactions does not exceed ₹5 crore, none of the above mentioned transactions would be covered under the transfer pricing provisions as SDTs.

E. Determination of Arm's Length Price for SDTs

Finance Act 2012 has made specific amendment to Section 92C of the Act to extend applicability of transfer pricing methods to SDTs for determination of arm's length price. Taxpayers can use any of the following methods for benchmarking SDTs:

a. Comparable Uncontrolled Price Method;
b. Resale Price Method;
c. Cost Plus Method;
d. Profit Split Method;
e. Transactional Net Margin Method;
f. Other method (as notified by CBDT vide notification dated 23rd May 2012).

F. Compliance Requirement i.e. Transfer Pricing Documentation and Reporting

The SC in case of Glaxo Smithkline specifically noted the following in relation transfer pricing documentation related requirement:

"….However, in number of matters, we find that, many a times, the Assessing Officer is constrained by non-maintenance of relevant documents by the taxpayers as, currently, there is no specific requirement for maintenance of documents or getting specific transfer pricing audit done by the taxpayers in respect of domestic transactions between the related parties. One of the suggestions which needs consideration is whether the law should be amended to make it compulsory for the taxpayer to maintain Books of Accounts and other documents on the lines prescribed under Rule 10D of the Income Tax Rules in respect of such domestic transactions and whether the taxpayer should obtain an audit report from his Chartered Accountant so that the taxpayer maintains proper documents and requisite Books of Accounts reflecting the transactions between related entities as at arm's length price based on generally accepted methods specified under the Transfer Pricing Regulations…"

Explanatory memorandum to Finance Bill 2012 has specifically mentioned that transfer pricing provisions (including procedural and penal provisions) would be applicable to SDTs. Amendments have been made to Section 92D (relating to transfer pricing documentation requirements) and Section 92E (relating to transfer pricing reporting requirements) of the Act to cover SDTs within their purview.

Accordingly, taxpayer would be required to obtain a certificate from a Chartered Accountant in Form 3CEB reporting SDTs (in case aggregate value of transactions exceeds ₹5 crore) along with international transactions as defined under Section 92B of the Act justifying the arm's length nature of all such transactions. Currently, Rule 10A to 10E of the Indian Income-tax Rules, 1962 ('the Rules') and Form 3CEB cover international transactions only. Amendment to the Rules and Form 3CEB is expected to specifically cover SDTs.

G. Penalty Exposure

Penal provisions in relation to SDTs are summarised below:

Section No.	Penal provision	Quantum of penalty
271AA(i)	Failure to keep and maintain information and document as required by section 92D(1) and (2)	2% of value of each specified domestic transaction
271AA(ii)	Failure to report a specified domestic transaction	
271AA(iii)	Maintain or furnish incorrect information or document	

Section No.	Penal provision	Quantum of penalty
271BA	Failure to furnish report under section 92E	One lakh
271G	section 92D, as requested by transfer pricing officer	2% of value of each specified domestic transaction

However, in case taxpayer has reasonable cause for failure, taxpayer may request Assessing officer ('AO') not to levy penalty for its failure (Section 273B of the Act).

H. Practical Aspects of SDTs

- **Widened scope of transfer pricing under SDTs:** There could be certain circumstances whereby the transaction between two entities could not be covered under transfer pricing since the said entities were not considered as associated enterprises under section 92A of the Act. However, in view of the amendment made by Finance Act 2012, such transactions could now be covered under transfer pricing provisions (section 92BAof the Act) since such entities could be covered as related parties under Section 40A(2)(b) of the Act. This could be understood with the help of the following illustration:

Illustration 3:

XYZ Inc holds shares carrying 23% voting rights in ABC Ltd. XYZ Inc. has transferred technology/ knowhow to ABC Ltd. in relation to manufacturing of certain goods/articles. ABC Ltd pays royalty to XYZ Inc at certain agreed percentage.

Pre-Finance Act 2012 scenario	Post-Finance Act 2012 scenario
Since, XYZ Inc. holds shares carrying less than 26% of voting rights in ABC Ltd., they would not become associated enterprises under section 92A of the Act and transfer pricing provisions would not be triggered.	Since, XYZ Inc. holds substantial interest in ABC Ltd. (i.e. beneficial holder of shares carrying more than 20% of voting rights in ABC Ltd.), they would be treated as related parties under Section 40A(2)(b)(iv) of the Act and domestic transfer pricing related provisions would apply.

- **Only expenses related i.e. payment transactions are covered under section 40A:** Section 40A(2) governs disallowance of expenditure in cases where the taxpayer incurs any expenditure in respect of which:
  - Payment has been or is to be made to a related party (as defined under Section 40A(2)(b) of the Act); and
  - AO is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of such goods and services.

In view of the above, only expense i.e. payment transactions are covered under Section 40A. Accordingly, following transactions still remain out of the purview of SDTs:

  - Income transactions of entities where payments at less than market value are made by other entities; and
  - Transactions at free of cost i.e. where no consideration is paid for goods or services availed.

- **Definition of related party:** *Related parties under Section 40A(2)(b):* Section 40A(2)(b) provides extensive list of related parties covered under Section 40A(2). Section 40A(2)(b)(iv) of the Act has been amended to expand the definition of related party to cover cases of companies which have the same parent company. Amended Section 40A(2)(b)(iv) of the Act reads as under:

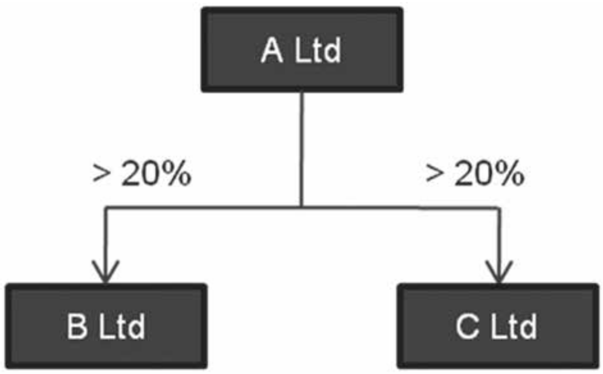
"(iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the assessee or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member *or any other company carrying on business or profession in which the first mentioned company has substantial interest];"* (Italic portion has been inserted by Finance Act 2012).

Section 40A(2)(b)(iv) is amended by Finance Act 2012 to specifically cover 'any other company carrying on business or profession in which the first mentioned company has substantial interest'. Substantial interest has been defined by way of an explanation to Section 40A(2) of the Act to include beneficial ownership of shares carrying not less than 20% of the voting power in other enterprise (in case of company).

Interpretation of the above definition in light of legislative intent provided in Explanatory memorandum to Finance Bill 2012 indicates that in case a company has substantial interest (i.e. beneficial holding of shares carrying more than 20% of voting rights) in two entities, those two entities would be treated as related parties under section 40A(2)(b) of the Act for the purpose of specified domestic transactions.

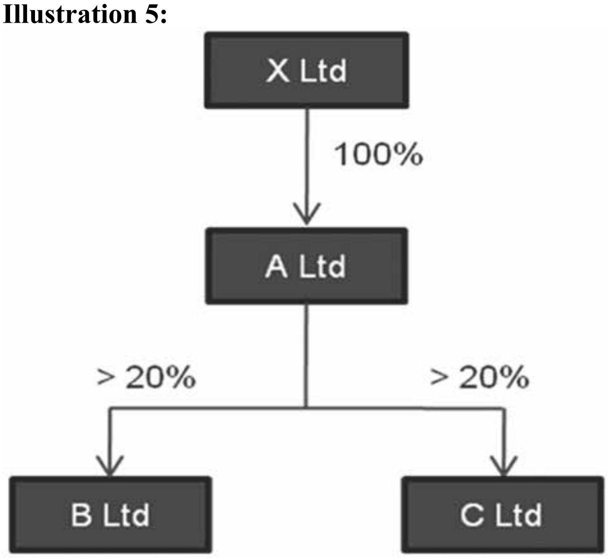
The same can be further understood with the help of following illustration:

Illustration 4:



In the above illustration, A Ltd is direct and beneficial owner of shares carrying not less than 20% of voting rights in B Ltd and C Ltd. Accordingly, as defined under Section 40A(2)(b)(iv) of the Act, B Ltd and C Ltd would qualify as related parties for the purpose of section 40A(2) and payment related transactions between B Ltd and C Ltd would qualify as SDT.

Illustration 5:



In Illustration 3, all other facts remain the same; X Ltd is the ultimate holding company of the group and holds 100% shares in A Ltd. B Ltd purchases goods from X Ltd. Whether X Ltd and B Ltd would be treated as related parties under Section 40A(2)(b)(iv) of the Act and consequently, whether the transaction would qualify as SDT?

Close connection provided under Section 80-IA(10) of the Act:

Section 80IA(10) of the Act reads as under:

"Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business…"

Under the provisions of Section 80-IA(10) of the Act, where AO feels that due to close connection between the taxpayer carrying on eligible business and other person, the business transactions are arranged to earn more than ordinary profits, AO has power to restrict deduction under chapter VI-A to the extent of amount of profit that could have been ordinarily derived from such transactions.

However, the word "close connection" has not been defined under the Act and not much of judicial guidance is available on this aspect. Accordingly, the type of relationships which could be termed as 'close connection' under Section 80-IA(10) of the Act while analyzing SDTs still remains a question with no definite answer.

- **Possibility of economic double taxation:** This could be understood with the help of following illustration:

Illustration 6:

A Ltd. has made payment of Rs 100 million for purchase of goods from B Ltd. [related party under section 40A(2)(b) of the Act]. At the end of year, while computing taxable income, A Ltd. claimed deduction of ₹100 million and on the other hand B Ltd. offered ₹100 million as income from sale of goods. During the course of assessment proceedings of A Ltd., let's say, AO determines market value of goods i.e. arm's length price of such goods at ₹80 million and accordingly, disallows ₹20 million as excessive and unreasonable expenditure under section 40A(2) in the hands of A Ltd.

Accordingly, A Ltd. would be required to pay additional tax on disallowance of ₹20 million whereas B Ltd. would be required to offer to tax its entire income of ₹100 million. Such cases would result in economic double taxation of income to the extent of disallowance of ₹20 million under Section

40A(2) of the Act in the absence of any correlative relief for B Ltd.

- **Inter-unit transfer of goods and services:** Practical challenge would arise in cases where one eligible unit procures goods from other eligible unit and TPO determines market value of such transfer at less than the actual transaction value. In such cases, there would be disallowance (to the extent of difference in market value and actual transaction price) in the hands of one of the eligible units procuring goods. However, there is uncertainty whether other eligible unit will get co-relative relief in relation to the amount disallowed by the TPO in the hands of first mentioned unit.

Further, no clarity on whether each eligible unit would be required to comply with the transfer pricing documentation and reporting requirements separately or whether the transfer pricing documentation and reporting compliance done for the entity as a whole would suffice.

- **Non applicability of advance pricing agreements ('APA') to SDTs:** Section 92CC of the Act dealing with APAs reads as under:

"92CC. (1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person."

Based on the reading of above provision, one could infer that SDTs are outside the ambit of APAs.

I. Practical Challenges in Determining Arm's Length Price of SDTs

Tabulated below are certain cases where there could be a challenge in determining arm's length price of SDTs:

SDT	Practical challenge in determining arm's length price
Payment of director's remuneration	➢ Director and company would always be related parties under section 40A(2)(b) ➢ Difficult to determine the arm's length price for payment of remuneration to directors
Payment of rent	➢ Difficult to identify uncontrolled transactions for determining the arm's length price - Municipal valuation could be an option
Payment for expenses allocated for use of common facilities	➢ Difficult to identify uncontrolled transactions for determining the arm's length price - Allocation keys used could be an option, however, the same might be questioned by the Revenue authorities ➢ Taxpayer may be required to justify the benefits received from making payment

Concluding Remarks

With effect from FY 2012-13 onwards, taxpayers would be required to additionally include the SDTs in its transfer pricing documentation and reporting compliances. It would be interesting for the practicing Chartered Accountants to deal with various new SDTs and determine the arm's length price in relation to the same. However, apart from being interesting, the same would pose a challenge considering the practical issues that might arise (as discussed above). Certain clarifications/ FAQs could be expected from CBDT considering the nascent stage of SDTs.

Till date there has been a total transfer pricing adjustment of more than ₹44,500 crore; applicability of transfer pricing to SDTs being a new entrant and the practical challenges including lack of sufficient guidance could further increase the amount of transfer pricing adjustment.■

Public Finance: Consulting Opportunities for CAs on Donor Funded Engagements

The CA profession is known for its quality of work, integrity and professionalism and has turned out to be one of the most significant career choices in our country. Chartered Accountants are playing an important role in traditional areas of providing audit and assurance services and tax advice. However, many of us may not be fully aware of the strong demand for our consulting expertise (as against the generally known assurance services including audit) on projects funded by donor agencies such as the Asian Development Bank, World Bank, Department of International Development of UK and similar organisations. The purpose of this article is to present an overview of the areas of opportunities which can be leveraged to offer professional support in specialised areas and for niche segments for the benefit of our members. Since the nature of financial expertise and the specifics of the tasks to be performed depend on the requirements of each assignment, this article focuses mainly on the opportunities for our members in some of the key areas pertaining to public finance and related government reforms.

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At the outset, to understand the demand for specialist consulting expertise of professional accountants, it is necessary to appreciate the development objectives of each of the funding agencies and the specific strategies they have formulated for individual countries such as ours. This will enable us to appreciate the context of the demand for services and the contours over which they are expected to be offered. All the funding agencies have in place a strategic framework for operations in a particular

Some of the key areas of opportunities available to CAs in areas of public finance and associated government reforms include 'project preparation & design,' 'public resource mobilisation,' 'public expenditure management,' 'service delivery frameworks,' 'public sector enterprise reforms,' 'fiduciary risk assessments,' 'due diligence reviews,' 'project/programme management,' and 'capacity building/training.'

region or country which is enunciated through a Country Strategy. For example, the ADB has an India Partnership Country Strategy (2009-12)[1] which lays out the present strategic objectives. Based on such overall objectives, the Country Operations Business Plan (2012-14) identifies the key sectors and themes which would be emphasised for funding. The proposed 3 year funding programme up to 2014 is expected to be on an average $2.2 billion annually[2]. Similarly, the World Bank has a Country Strategy for the period FY 2009-12[3] and during this period the bank has lent about $19 billion to the country. The strategy for 2013-16 is in the process of discussions with stakeholders. The Department of International Development of UK with its India Country Strategy Paper 2007-13[4] and backed up by an Operational Plan for 2011-15 has also reportedly spent around £1 billion in the past 5 years and is planning to spend a further £600 million up to the year 2015.

A general reading of the country strategy however, may not be able to bring out a clear picture of how CAs can contribute to the process and more specifically about how such development assistance can throw open consulting opportunities to our profession. The following are examples of some of the typical questions that can come to mind:

- What role can a CA have in assisting agencies on programmes of pro-poor investments by the private sector?
- How can accountants contribute to improve reach and better quality of social services?
- Can CAs have any role in project preparation for the donor agencies?
- Can accountants have and if so what is the nature of involvement in ensuring faster and inclusive growth that is sustainable?
- To what extent can consulting professional accountants identify and assess the degree of corruption risk for specific programmes?

The search for answers would be very revealing and the more we read about the strategies of the funding agencies and the specific programmes/projects that they envisage, a whole new world of opportunities will emerge. While the specific role that accountants would be expected to perform would depend on the project objectives and scope which in turn are aligned with the strategic objectives of the county programme, a study of project documents and practical working experience shows that the requirements for our services are indeed diverse and challenging. However, at the outset, it needs to be understood that the terms of reference for the assignments do not necessarily use the word CA for the key team positions and more often the qualifications required are interchangeable with other categories of finance professionals such as MBAs. A general perusal of eligibility criteria for team personnel required to be proposed for a project with strong inputs in areas of finance shows that the criteria is defined mostly in terms of the functional expertise (Public finance expert, public expenditure management expert, Accounting specialist, Revenue Administration specialist and so on) rather than pure academic qualifications only. Thus, barring team positions which sometimes clearly call for membership of professional institutes such as ours, the skills profile required on donor funded projects, in general, lay more emphasis on the expertise as demonstrated by years of experience in those specific skill areas as well as direct hands-on functional exposure in service areas demanded by that project. This also implies that for such key team positions, members of our profession may have to compete with other finance professionals to clinch consulting berths offered by such projects. Since CVs generally carry a very high weightage of marks for the technical evaluation, firms selecting or offering your profile would always like to go for the best available choice, to maximise their chances of winning assignments.

Some of the key areas of opportunities available to CAs in areas of public finance and associated government reforms include the following:

- Project Preparation & Design
- Public Resource Mobilisation
- Public Expenditure Management
- Service delivery frameworks
- Public Sector Enterprise (PSE) reforms

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[1] India Partnership Country Strategy (2009-12) Abridged version July 2009 at www.adb.org
[2] Country Operations Business Plan (2012-14) September 2011 at www.adb.org
[3] Country Strategy for the Republic of India for the period FY 2009-12 at www.worldbank.org
[4] India: Country Strategy Paper 2007-13 at www.dfid.gov.uk/india

- Fiduciary Risk assessments
- Due diligence reviews
- Project/Programme management
- Capacity building/Training

It should be noted that the above areas are not exhaustive and with changes in the degree of development of various economies and countries, the strategy and operational plans of donor agencies are changing over time to align their activities with the requirements of the nations. Consequently, finance and accounting professionals are increasingly being called upon to play innovative and challenging roles in the design and delivery of funded projects.

We would now broadly discuss the nature of work that may be demanded from professional accountants for each of the key opportunity areas referred to earlier.

Project Preparation

Planned project design is central to the process of financial and technical assistance by the funding agencies. This is generally conducted prior to the visit of the formal donor mission which leads to the eventual conclusion of the loan negotiations. Project preparation involves detailed studies on the existing systems and practices, identification of the key deficiencies and recommending on actions necessary. In case of assignments related to public finance reforms depending on the focus or thrust areas determined by the funding agencies in consultation with the government, the initial studies for project design may cover one or more of the following (a) present state of finances (b) resource mobilisation avenues (c) traits in expenditure management (d) status of the Public enterprises (e) capacity building needs and others. Finance professionals including CAs are playing a significant role in many of these components as part of a multi skilled project team. Their role may extend to assisting the agencies in formulating tranche conditions for the loan/technical assistance and hand holding the government/agencies in preparing for their compliance.

With resource constraints on the one hand and the burgeoning demands of urbanisation and a growing population, innovative approaches in service delivery have become important. The design of self sustaining models based on revenue streams, private/community participation and accountability frameworks require a range of services from finance professionals such as CAs in donor funded engagements.

Public Resource Mobilisation

Finding avenues to enhance resource mobilisation forms the cornerstone for turnaround of the fiscal health of the government and its agencies. Since the components of resources are diverse and based on legal provisions for tax and non tax items, the team positions are often highly specialised and include experts in designated areas such as VAT, Excise, Stamp duties etc. In general, the flavour of the tasks to be performed can include one of more of the following -

- Review of current tax structures and organisation of revenue departments
- Study of structure and buoyancy of specific taxes such as stamp duty, registration charges, land revenue, excise duty , VAT etc.
- Suggest ways to expand the tax base and improve administration
- Updating Tax Information Management Systems keeping in mind the introduction of GST
- Detailed studies of individual components of non tax revenues
- Study of the present avenues of resource mobilisation for urban/rural local bodies with a view to make them less dependent on budgetary resources.

Public Expenditure Management

Conventional budgeting which focuses only on inputs and outputs cannot answer basic questions as to why in spite of following rules and instructions and also producing outputs, the governance system can fail to produce socially desirable outcomes. Public expenditure management emphasises on outcomes and sees expenditure only as a means to achieve them. With the strain on budgetary resources, expertise on PEM is being increasingly sought from finance and business professionals to analyse expenditure trends and seek answers on results of allocation of resources. Some of the key areas where expertise can be offered by us include:

- Introduce systems for Outcome based Budgeting and test proposed systems through pilots
- Develop processes for data capture and its monitoring and reporting
- Develop strategies to control Operations and Maintenance expenditure in key departments
- Assist in designing a mechanism to settle dues under the Defined Contribution Pension scheme
- Analyse trends in public expenditure and identify

key causes for major items with expenditure rationalisation measures
- Study the inter and intra sector budgetary allocations and how far they are in line with the economic and social objectives
- Assist in conducting Public Expenditure Tracking Surveys including design of interview questionnaires, conduct of interviews and analysis of results.
- Prepare guidelines for maintenance of Fixed Asset Registers

Service Delivery Frameworks

The role of the government in providing cost effective and timely services in areas such as health, education, and key municipal services is well understood. However, with resource constraints on the one hand and the burgeoning demands of urbanisation and a growing population, innovative approaches in service delivery have become important. The design of self sustaining models based on revenue streams, private/community participation and accountability frameworks require a range of services from finance professionals such as CAs in donor funded engagements in areas that include:

- Design of costing and cost recovery frameworks for utilities/services such as water, solid waste management, transportation etc.
- Design and structuring of Public Private partnership projects that are bankable and hand holding implementation processes
- Financial viability studies of providing certain services or for select local bodies/agencies delivering such services

Public Sector Enterprise Reforms

Restructuring of public enterprises and their comprehensive reforms constitute a critical area with a view to improve financial and corporate governance of such entities, usher in appropriate sector strategies that stimulate investments and growth and identify those that have outlived their economic and social purposes to wind up and for closure. CAs based on their financial expertise are playing a stellar role in several functions in this area that include:

- Study of the enterprises and classification into those that need to be (a) fully/partially divested (b) turned around for sustained profitability and (c) closed.
- Drawing up a strategy for restructuring/closure for such enterprises
- Conduct studies for transfer of departmental entities into separate stand alone companies and/or PPP ventures
- Assist the government in reorganising the department/ministry of public enterprises to make it an effective instrument of PSE monitoring and control
- Prepare guidelines for closure, voluntary separation of employees, transfer of assets, disposal/write off of liabilities, a suitable transition plan and render assistance in implementation

Fiduciary Risk Assessments (FRA)

Some of the donor agencies such as the DFID require FRAs to be conducted as per laid down methodology and processes to assess the level of fiduciary risks associated with their financing of activities. Such assessments may be carried out at country level or sub national levels covering states, sectors and programmes. CAs often play a leading role in studies to understand the risk environment including the susceptibility to corruption, assess the deficiencies, design the mitigating framework and assist in annual monitoring of the progress on an on-going basis.

Due Diligence Reviews

Due diligence skills are an integral part of a CA's profile. Public finance related assignments for proposed funding through established entities (partners) often require the donor agencies to approach for professional expertise in evaluating the institutional robustness of such partners. The objective is to have an assessment of the partners on several parameters such as corporate governance, financial management and reporting, audit coverage, environment and social aspects of performance, organisational readiness, mission/vision etc. The results of such findings in which CAs can play a key part provide answers to the expected comfort levels for such lending initiatives.

Due diligence skills are an integral part of a CA's profile. Public finance related assignments for proposed funding through established entities (partners) often require the donor agencies to approach for professional expertise in evaluating the institutional robustness of such partners.

Project/Programme Management

CAs as Financial experts are often called upon to play a significant role in the financial supervision, evaluation, monitoring and reporting functions. Their expertise would either form part of a Project Management Unit (PMU) set up in a project or individual areas such as project appraisal and evaluation be earmarked as an identified role. The roles would include one or more of the following:

- Project screening keeping in mind overall objectives of the assignment
- Computation of internal/economic rates of return
- Risk and sensitivity analysis
- Guidance in preparation of projected financial statements and financial structuring
- Design of financial management and reporting systems, monitoring frameworks and reporting requirements with milestones.

Capacity Building/Training

Many of the funded engagements relate to capacity building of the beneficiaries in areas of financial management. The staff who would be the change drivers for the improved initiatives need to be trained on the skills expected of them. CAs as finance and accounting experts often play a leading role in conducting a training needs analysis, design of the course *curricula,* development of training materials (in conjunction with training experts) and also participate in delivery of training through pilots in areas such as (a) Double entry Accounting (b) Output based budgeting (c) Risk based audit systems (d) Project structuring, appraisal, and evaluation (e) Financial MIS (f) Costing/Pricing of utilities.

Public Finance throws open an exciting world of opportunities for members of our profession. The economic downturn witnessed in recent years and the continuing challenges of nations to cope with the ever increasing demand for resources requires innovative approaches in economic and financial management of resources. Now is the time to consider public finance as an area of focussed attention by particularly the younger members of our profession and leverage the challenges by developing our skills so as to be able to offer our services to promote sustainable economic development. ■

A Brief Commentary on RBI guidelines for Rehabilitation of Sick MSEs

The current economic scenario with stagnating demands and increasing costs has been affecting the profitability of most business ventures. SMEs, owing to their low scale of operations and limited financial muscle, are more susceptible to down cycles in the business environments. Given the large number of enterprises, their role in employment generation and contribution to the country's production and exports, their financial health and sustainability is very important for the economy. As such, there is a strong need to address the problem relating to sickness in the sector and to proactively support SMEs at the incipient stage itself, to avoid them from becoming sick and also rehabilitate potentially viable sick SMEs before it is too late. Past studies and efforts to rehabilitate sick but potentially SMEs have not been very successful, as statistically visible from the RBI mandated study carried out by a working Group in 2007. The RBI constituted Working Group recommended measures to avoid sickness at the incipient stage itself and rehabilitate the potentially viable sick Micro and Small Enterprises (MSEs). RBI has come out with guidelines for banks aimed to address the problem. The measures suggested, *inter alia*, include recognising sickness at an early stage, faster decision with regard to potentially viable MSEs, and nature of facility that can and should be provided. While the measures are welcome, there are some areas which have not been touched, like not addressing similar problems for the medium sector and nature of handholding at the incipient stage itself.

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Background

Rehabilitation schemes for SMEs from RBI can be traced since 1987-89 period when the restructuring of loans along with some concessions on the debt servicing formed the basis of the rehabilitation efforts. The first study report on the subject was submitted by a Committee constituted by RBI in February 1987 under the Chairmanship of Shri A. Hasib, the then ED of RBI. The era is remembered as one of protected environment not only for the SMEs but also for the banks. Banks were directed to disburse loans through loan melas dictated out of a desire for gaining political dividends for the party in power. Also, the banks' financial statements did not reveal much on their financial health as provisions were hidden under net income and net assets. The recognition of loans as 'bad' or 'non-performing' could be delayed as much as possible as there was no direct involvement of public investors. Banks were owned by GOI, either through direct holding of shares or through RBI. The norms for greater disclosures and capital adequacy for the banks were introduced in 1992. With the introduction of these norms for banks, SMEs found it difficult to access debt from the banks as SMEs were perceived to be riskier than loans to large entities. The perception of the banks' has also to do with the low recoveries made out of loans granted during the loan melas where loans were disbursed to 'SMEs' without giving regard to the genuineness of the borrowers and thus was not inherently linked with the risk characteristics in the SME sector alone.

In the recent past, a Working Group (WG) was constituted to look into the issues of sickness in the SME sector and suggest remedial measures so that potentially viable sick units can be rehabilitated at the earliest. The WG was set up under the Chairmanship of Dr. K. C. Chakraborty, the then CMD of Punjab National Bank and currently Dy. Governor of RBI, with representatives from SIDBI and SBI as its members. The WG reviewed the data of sick SSI and medium units as at March 2007 and found that only 4.7% of the identified sick SME units were considered as potentially viable by the banks and only about 0.53% of the SMEs were considered for rehabilitation and nursing plan. It, *inter alia*, suggested:

a) Changing the definition of sick micro and small enterprises (MSEs) to include MSEs who have become NPA for 3 months or more, or erosion in the net worth due to accumulated losses to the extent of 50%. It also recognised insipient sickness in the MSE sector as, wherever
   (i) There is a delay in commencement of commercial production for more than 6 months or
   (ii) The enterprise has incurred losses in the past 2 consequent years or cash loss for one year or during the period for which such losses were anticipated in the financial projections while evaluating the project, or
   (iii) The capacity utilisation in terms of quantity or sales value is less than 50% of the projected level;

b) Early commencement of rehabilitation process, preferably at the incipient sickness stage itself and in any case not later than 3 months from the date when the enterprise becomes sick, in order to avoid a scenario where it is too late for rehabilitation;

c) Decision regarding viability/rehabilitation or decision that the enterprise is not viable should have the approval of the next higher authority. The next higher authority should take decision with regard to unviability of an enterprise after giving an opportunity to the promoters to present their case. Also the decision regarding unviable projects should be communicated within 7 days from the date of such decision;

d) Rehabilitation package to provide for -
   a. Waiver of penal interest from the beginning of the accounting year in which the account is classified as NPA,
   b. Nil interest on funded interest term loans (or FITL in short – that portion of interest on loans which have not been paid by the borrower and is converted into a separate loan account with a repayment schedule drawn to enable payment in the future assessed on the future cash flow generating capacity of the enterprise),
   c. Allowing for staggered or ballooned repayment/payment of principal/interest matching the cash flows of the enterprise,
   d. Margin of 40% for funding of losses,
   e. Clauses for 'recompense' in favour of lenders to enable them recover the sacrifice after the unit turns-around. Even new lenders stepping-in be permitted to convert debt into equity or mezzanine capital, etc.

In the recent past, a Working Group (WG) was constituted to look into the issues of sickness in the SME sector and suggest remedial measures so that potentially viable sick units can be rehabilitated at the earliest. The WG was set up under the Chairmanship of Dr. K. C. Chakraborty, the then CMD of Punjab National Bank and currently Dy. Governor of RBI with representatives from SIDBI and SBI as its members. The WG reviewed the data of sick SSI and medium units as at March 2007 and found that only 4.7% of the identified sick SME units were considered as potentially viable by the banks and only about 0.53% of the SMEs were considered for rehabilitation and nursing plan.

e) Where rehabilitation is not possible, early exits through one-time settlement (OTS) providing for haircuts on principal amount as well could be considered.
f) All loans below ₹2 lakh given for self-employment should be excluded from the data relating to sickness and incipient sickness in the SME sector, as the riskiness of such loans is higher and the same can distort the overall picture with regard to riskiness in the SME sector.
g) Setting up of a Rehabilitation Fund with a corpus of ₹1,000 crore with an intention for rehabilitation of sick MSMEs, to provide support in the nature of promoters' contribution wherein soft loan at concessional rates of interest, say 5-6% or quasi equity up to 50% of the required promoters' contribution subject to a maximum of ₹75 lakh can be provided.

In addition to suggestion on rehabilitation of sick MSEs or insipiently sick MSEs, the WG also made other recommendations relating to improving the ecosystem and support mechanism for the SME sector, ranging from training to banks in credit assessment, development of model projects with a cluster approach, reintroduction of national equity fund, capitalisation of SFCs, improving market access to the SMEs, etc. aimed at reducing chances of sickness in the SME sector, which have been forwarded by RBI to GOI, State Level Inter Institutional Coordination Committees, SIDBI for consideration and necessary implementation as they deem fit.

Guidelines for Rehabilitation of Sick MSEs

The Reserve Bank of India's Governor, in his II Quarter Review of Monetary Policy of 2012-13, mentioned that guidelines would be issued, laying down procedures for assessing the viability of sick units. Accordingly, RBI issued guidelines on the subject on 1st November, 2012. RBI has accepted some of the suggestions made by the Dr. Chakraborty Working Group and the guidelines issued have the following welcome features:

1. Handholding stage has been defined as scenarios where –
   a. The commencement of commercial production is delayed by 6 months, for reasons beyond the control of promoters (relevant for new projects or expansion/diversification projects of MSEs), or
   b. The MSE unit incurs cash loss for 1 year or losses for 2 years beyond the accepted timeframe, (mostly relevant for new projects or expansion/diversification projects of MSEs), or
   c. The capacity utilisation is less than 50% of the projected level in terms of quantity or value.

   The guidelines provide for timely and adequate assistance, stating that the same should commence at the handholding stage, viz., within 2 months from the time when MSE is identified as one which would require a handholding support.

   During holding operation i.e. when the rehabilitation or nursing package is being drawn and finalised, MSEs be allowed to draw from their cash credit account, amounts equivalent to the sales proceeds credited/deposited to the account.
2. The Sickness definition has been widened to cover
   a. All MSEs that become and remain NPA for more than 3 months (as against 9 months stipulated earlier), or the net worth is eroded to the extent of 50% on account of accumulated losses (as against the earlier stipulation that the net worth erosion should be on account of cash losses)
   b. All MSEs, irrespective of whether they have commenced commercial operations or not (as against earlier stipulation that the unit should have been commercially operating for a minimum period of 2 years).
3. A maximum timeframe of 3 months from the date when the unit becomes sick, has been stipulated to decide on the viability or otherwise of the MSE unit (the earlier guidelines were silent on this).
4. The decision of identification of viable or unviable units would have to be undertaken by
   a. Branch Manager without viability study for: micro (manufacturing) enterprises with investment in plant and machinery ≤ ₹5 lakh,

RBI issued guidelines on 1st November, 2012 wherein it has accepted some of the suggestions made by the Dr. Chakraborty Working Group. However, while the changes to guidelines are welcome, there a few issues which still remain to be addressed for the scheme to be more successful in the present economic scenario. One point is that the guidelines address sickness or insipient sickness and rehabilitation in MSE sector only; the sickness malaise in medium enterprises has not been addressed.

micro (service) enterprises with investment in equipments ≤ ₹2 lakh.

b. Sanctioning authority and next higher authority with the support of viability study for all other entities.

A procedure for declaring a unit as unviable has been stipulated, including giving a chance to the promoter of the unit to present his case before the decision making authority has been stipulated (the earlier guidelines were silent on this).

5. The nature and extent of reliefs that can be provided to viable/potentially viable units can be decided by the respective Boards of the banks. Similarly, the OTS for non-performing loans can be decided by the banks, duly approved by their Boards.

Comments and Observations

While the changes to guidelines are welcome, there a few issues which still remain to be addressed for the scheme to be more successful in the present economic scenario:

1. The guidelines address sickness or insipient sickness and rehabilitation in MSE sector only; the sickness malaise in medium enterprises has not been addressed.
2. The requirement of a viability study has been done away with, only in the case of micro (manufacturing) and micro (service) enterprises having investment in plant and machinery not exceeding ₹5 lakh and equipment not exceeding ₹2 lakh, respectively. It could have been suggested for credit exposures of up to ₹2 crore to speed up the process for a large portion of enterprises. The past experience of viability study is not available and especially when the exclusion rate for consideration for rehabilitation rate being very high, need for adopting a different approach is very much warranted.
3. The guidelines are not very clear on the nature of financial support that can be provided during the handholding period i.e. during the stage of insipient sickness. The same has been left for the respective banks to decide. It could be clarified that it could be on similar lines as for the nursing packages such as rescheduling the loans to match the cash flows, staggering or ballooning the loan repayments, funding of interest, relaxation in margin requirements for operating on cash credit accounts, etc.
4. The number of potentially viable MSEs identified from the sick MSEs has been very small in the past, as also observed by Dr. Chakraborty Working Group. The reasons of low recognition have not been ascertained even after 4½ years since the WG submitted its report. The main reasons that can be attributed for the low recognition are-

a. Coverage of less than ₹2 lakh loan given for self-employment generation where the delinquency rate is much higher, making the overall picture distorted. RBI could consider disclosing separate statistics excluding the loans up to ₹2 lakh to assess accepting MSE accounts as viable/potentially viable.

b. Inability of promoters in bringing the margin money of about 40 – 50% required from the banks' point of view for turning around the business,

c. Conservative outlook of the lenders for assisting units in sickness/insipient sickness stage; as it requires an additionally proactive outlook and approach compared to while taking other credit decisions,

d. Relatively safe approach of OTS or recovery through invoking security in case the credit exposure is adequately collaterally secured with fixed assets.

Dr. Chakraborty Working Group suggested setting up a rehabilitation fund with a minimum corpus of ₹1,000 crore. There couldn't be a better time for the introduction of the rehabilitation fund than now for a revival of the SME sector and possibly making the growth in economy more sustainable and to withstand even severe shocks.

5. While speed of decision-making in terms of recognising the MSE units as insipiently sick/ sick and the communication of the decision has been addressed, the possibility of recognising potentially viable units as unviable, has not been addressed. The same could have been addressed by adding a check in the form of taking up at least 10% of the MSE units identified as unviable by an independent Committee comprising of representatives of banks and industry representatives. The existing District Consultative Committees can be broad-based to include industry representatives and the same can be considered as a check-body for the purpose. Bank officials who have identified the units as unviable and the respective affected units' promoters may also be called to separately present the case before the Committee. This process can act as a check on the selection or identification process adopted by the banks in identifying the potentially viable MSE units. Wherever banks are found to be very conservative, necessary guidance and training can be provided. The objective of the exercise should not be considered as an effort to castigate the banks but to enhance their capability in assessing potentially viable units. If need be, the findings in respect of individual banks need not be disclosed. Only aggregate data for all banks should be disclosed to assess the fruitfulness and effectiveness of the selection exercise adopted by the banks.
6. The rehabilitation or nursing packages call for additional funds' infusion from the promoters and the lenders. Even though the amount of promoters' contribution is lower than the funds infused by the banks, many a times it is difficult for the promoters to bring in his contribution. Many potentially viable projects are not considered favourably by the lenders in the absence of promoters' capability towards adequate infusion of funds. It is a rather uneasy situation for the insipient or sick SMEs, as most of the SMEs are trapped into sickness for want of risk capital, an essential bloodline when the business is tagnating or where the pressure is high on the bottom-line due to increased costs or falling revenues. The current economic scenario reflects all these symptoms. Dr. Chakraborty Working Group suggested setting up a rehabilitation fund with a minimum corpus of ₹1,000 crore. There couldn't be a better time for the introduction of the rehabilitation fund than now for a revival of the SME sector and possibly making the growth in economy more sustainable and to withstand even severe shocks. ■

Wherever banks are found to be very conservative, necessary guidance and training can be provided. The objective of the exercise should not be considered as an effort to castigate the banks but to enhance their capability in assessing potentially viable units. If need be, the findings in respect of individual banks need not be disclosed. Only aggregate data for all banks should be disclosed to assess the fruitfulness and effectiveness of the selection exercise adopted by the banks.

Relevance of Financial Budgeting (Cost Estimation) for Projects in Construction Sector

When CAs as Project Auditors and Consultants ask the Top Management and the Project Manager (PM) in medium and small scale organisations to make a project budget or in simple words, a Cost Estimate before commencing the work, on most occasions, the reply is in the negative. The management feels that there is no need for a budget as the job has very good profit margins. When we ask for some working on these profit margins, we find them taking out some rough piece of paper carrying the working. The most crucial part when it comes to execution is that any delay can seriously damage the margin calculations. This becomes more critical when the organisation is executing several projects simultaneously. In such circumstances, there is no better way than making a project budget to monitor the performance. Read on to know more…

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What is the Budget

Budget is a mirror of a Project – a Mirror shows how we look, what improvement is required and to correct the same before we leave the mirror. It's a Clock of the project and a Control document on the basis of which one can control the cost.

Why is the Budget Important for the Construction Sector

For a construction site, the budget can answer various questions.

Before Execution

- ✓ Assessment of what is expected in terms of Net Profit and Net Cash Inflow (It is important to realise the difference between the two terms for understanding the budgeting in real sense)
- ✓ Assessment of how far the project would be able to finance the fresh equipment purchases/heavy rentals in case the organisation wishes to avoid the purchases.
- ✓ Planning the demobilisation of manpower and resources from other projects which are in completion stages to the new project and in case of any shortage, planning fresh recruitment/purchases.

- ✓ Freezing the BOM for major project items to ascertain the total requirement based on which commercial purchase policy can be decided.
- ✓ Identification of project items where organisation would incur profit or loss, to know clearly where to pitch hard in front of the client. This would also help in identification of right sub-contractors for any given project item.
- ✓ Division of costs into Fixed and Variable and fixing the limits for fixed costs to achieve the profitability targets.
- ✓ Develop the forecasting skills of Site Project Manager/Staff as budgeting is a continuous learning exercise giving a good project insight before execution.
- ✓ Raise Cost consciousness amongst the Project Team members.
- ✓ Planning an incentive package for the project execution team based on the achievement of budgeted targets.
- ✓ Plan the scheme of Indirect Taxation mainly VAT and Service Tax, that is whether to go for composition or regular schemes looking at the exact element of material and labour involved. A bad decision here can adversely affect the project margins.
- ✓ Freezing the project mobilisation costs and to hard press the need for mobilisation advance from the client.
- ✓ Cost of medical, health, safety articles, and specialised agencies may be envisaged before starting.
- ✓ Read the contract for even making labour camp and other facilities.

During Execution

a) Clear Assessment of Project Performance.
b) Quantity reconciliation of Client *vis-a-vis* sub-contractor to ascertain unbilled quantities.
c) Assessment of exact time required for completion of the balance project at any stage and the impact of project delay on the profitability.
d) Comparison of budgeted costs verses actual costs and identifying deviations on a monthly basis with a view to plug the loopholes, if any.
e) Ascertaining the future cash flows of the project and planning of bank finances accordingly.
f) Resource optimisation in a way that it ensures that the Project Manager doesn't go all out in achieving his production target, so to keep a check on him.

These and many more questions can be answered properly only with the help of the budget. The idea is to set up a base document, which can then be compared with the actual results on a periodic basis so as to give the first feel of where the project is heading.

Monthly Quantitative Breakup

Budget not only contains the cost estimate for work completion, but also monthly targets for the quantities to be executed. This is to ensure that the project gets completed within the schedule. Monthly targets should not be set without taking concurrence from the Project Manager as he may also keep the achievement subject to availability of proper staff, equipments and other resources by top management. Delay in availability of resources under client scope needs to be documented and regularly communicated to the client. Monthly targets should be set keeping in mind festivals (say Holi, Vishwakarma, Diwali) and seasons (say monsoon).

Concept of Fixed Cost

Monitoring of Costs is possible only by bifurcating them into fixed and variable costs. It is a general concept that without any standard, it is not possible to monitor and control the time & cost. To explain with an example, let's say that the cost of cement or cost of measurement labour can be directly linked with actual client billing and hence, there is a better control. But costs like staff salary, staff accommodation, finance costs cannot be directly linked with the project and hence are fixed costs. These are to be incurred even if there is no actual production at site.

Following are some fixed costs which need careful monitoring especially in project delays: -

S. N.	Fixed Cost
1	Equipment Cost (Depreciation, Rent, Maintenance, Operation Team)
2	Salary Expense (Project Manager, Billing Engineer, Junior Engineer, Supervisor, Safety officer, Store staff etc.)
3	Other staff expenses like Staff Accommodation & Employer PF contribution
4	Vehicles for staff movement
5	Fuel Cost
6	Cost of Other Misc. Admin. Assets like portacabin, computers, air conditioner, furniture & fixtures etc.

S. N.	Fixed Cost
7	Security Expense
8	Internet & Telephone expense
9	Bank Guarantee Commission
10	Interest Cost of Cash Credit and Term Loan facilities being used for the project
11	Estimated cost during the Defect Liability period

One thing is very clear that, if the project duration increases due to slow execution, it is sure to impact the profit margins by way of increase in the fixed costs, both visible and invisible. The increase is not only on account of the fixed costs but may also attract Liquidity Damages (LD) from Client. The invisible cost is by way of not getting repeat work from the same client in future. So the big question to be asked is how best to monitor and control these fixed costs.

a. Fixing the monetary limits for each of the fixed cost element. The limits need to be different for both peak and non-peak months. The first and the last couple of months may be considered as non-peak months depending on the total duration of the project.
b. As far as possible, efforts should be made to link the elements of fixed cost to project items to keep an overall control. For e.g., let's say a construction site has various equipments like Batching Plant, Millers, Vibrators etc. which consume diesel. One way is to define standard diesel consumption per cubic metre of concrete poured at the site. This way it makes more sense to study the variance with meaningful analysis and monitoring on cost.
c. Monitoring the execution backlog and impact that the fixed costs can create by delay of single week/fortnight/month also needs to be worked out. And if the delay can be attributed to client, then necessary correspondence is to be initiated to raise the necessary debit notes to the client.

Who Should be Involved in Budget Preparation and at What Stage

Project Director/Project Manager/Accounts Manager should be the ones primarily to be entrusted with the task of making the budget.

Budget should be prepared at the tender stage and then needs to be fine-tuned once the project is received. Normally, Site Mobilisation activity should not be initiated before signing off the draft budget documents. It may be finalised after one month of mobilisation after a proper understanding of the local conditions.

Basic Approach towards Making a Budget

These days, softwares are available where the BOQ can be fed with all the factors of production to prepare a budget. But even otherwise an organisation may resort to preparation of a budget, by simple tools like MS Access or MS Excel. Hence "where there is a will, there is a way".

The budget for the construction site has to primarily break up the Project Cost into the following broad heads:-

1. **Direct Labour Cost** – Against all the project items, an organisation has to identify a variable labour cost depending on how they plan the scope of the sub-contractor for each item. Even when sub-contractors are not willing to work on measurement basis, the budget still needs to be made assuming some piece rate. This would also help benchmarking the cost of supply labour.
2. **Indirect Labour Cost** – Additionally, some labour may also be kept for housekeeping, loading/ unloading, stores and hence, their cost needs to be estimated on a monthly basis.
3. **Direct Material Cost** – IS Norms and management with good engineering experience can set the standards for each unit of execution of a project item. But as discussed earlier, the closing monthly inventory needs to be physically checked to arrive at the figure of actual consumption for compliance with the budgeted consumption.
4. **Indirect Material Cost** – Total Project quantities can be freezed for safety, hardware and other materials not directly proportionate to the construction activity to keep an overall purchase cap.
5. **Equipment whether on hire or owned** – For Hired equipment, the prevailing rentals may be assumed for budgeting. However for the own equipment, the management may estimate the useful life and arrive at cost per month multiplied by an under utilisation factor of say 1.25 to 1.5 to arrive at the cost. Under utilisation factor is a cost mark up denoting that the management may not be able to utilise the equipment at all times throughout its useful life.
6. **Fuel** – As discussed, the same may be bifurcated into a fixed (for vehicle) and a variable component (for equipment). Variable component can be linked to execution of items like concrete, masonry etc.

7. **Salary and Site Overheads** – These can be fixed as a proportion to the monthly expected turnover to define the total limit which can then be suitably broken down into actual cost heads.
8. **Taxes** – It is critical to identify the manner in which VAT and Service Tax has to be paid, if the same is in the scope of the contractor.
9. **Allocation from Head office for common expenses** – Standard allocation policy may be fixed for the same and proper accounting effect is required to be given for the same on a monthly basis. Here it is most important to see that all cost from Head office stand allocated whichever mode of allocation is selected.

Once the above cost estimates are made, it is important to lay down the targets for each month in terms of engineering quantities in the following manner:-

		Month wise Targets in Project Units					
Item	**Project Qty**	**I**	**II**	**III**	**IV**	**V**	**VI**
Excavation Cum	1,000	500	400	100			
Reinforcement MT	50	5	10	15	12	10	3
Shuttering sq.ft.	250	25	50	75	60	50	15

Once month-wise targets are defined, it is then important to break up the master budget into monthly budgets for monitoring the cost on a monthly basis.

In addition, the organisation may also do a cash budgeting exercise keeping in mind the payment terms (billing cycle, mobilisation policy, retention policy) with the client. A project may need some support from the Head office at the start, but once it is running at its peak, it can then be self-sufficient in terms of the cash requirements. The HO should avoid the tendency of using the cash flows from one project to feed the other on a regular basis. One of the ways of maintaining this discipline could be by keeping separate bank accounts for each site.

Precautions for Monitoring of Budget

Following are some of the critical issues to be kept in mind when the budget is to be compared with the actual results. A good homework here can make the task of monitoring the costs based on budget a simple exercise.

a) Sub-contractor work orders – Here the item codes and language should be same as client work order so that reconciliation becomes easy. If sub-contractor rates are revised, amendment paper should be prepared for proper controls.

Example of how the item codes are required to be given:

Item Code	**As per**	**Item description**	**UOM**	**Rate ₹**
1234	Client	Providing reinforcement including cutting, bending, binding, fixing in position including the cost of channels, bars (Binding Wire is in your scope).	MT	4,500
Even if a single item is broken up, its identity can still be maintained as below :-				
1234-A	Contractor	Reinforcement Cutting	MT	700
1234-B	Contractor	Reinforcement Bending	MT	800
1234-C	Contractor	Reinforcement Fixing	MT	1,200
	Contractor	**Total Rate of item code-1234 is ---->**	**MT**	**2,700**

b) Physical stock Sheet as certified by PM of major items required on the last day of each month along with details of unbilled items.
c) Following Deadlines need to be strictly adhered to:-
   a. Client Bill Preparation – say by 5th of every month
   b. Sub-contractor Bill Preparation – say by 10th of every month
   c. Monthly Accounts Closure by all means – say by 15th of every month
d) Set standards of material consumption, preferably certified by client for major Project items.
e) Passing the taxation effect for VAT and Service Tax on a monthly basis in the books of accounts project wise with a clear understanding of amounts required to be deducted and paid from sub-contractors under Income Tax (TDS)/VAT (WCT) and Service Tax (Reverse Charge).
f) Maintain Computerised/Manual Stock Register at Site with timely entries for cross-verification.
g) Ensure that purchases are booked in accounting

system with complete break up of quantities purchased. This may take some time but serves a lot of purpose at the time of monitoring the costs.

h) Accounts department should maintain the accounting books in a manner which helps generate following :-

   a. Project Profit and Loss Account and Trial Balance. The same is required to be compared with Profit and Loss Account based on budgeted rates but with Actual quantities. Only thing to be taken care is that the budgeted fixed cost although based on project months but should take into consideration the difference between budgeted quantity and actual quantity.
   b. Difference between quantities billed to client and billed by the sub-contractor.
   c. Material cost comparison between actual & with standard budgeted quantity & value.
   d. Useful life of the own equipments and calculation of monthly depreciation charge to be debited to the project.
   e. Ensuring proper financial effect of Inter-site transfer of any of the resources say man, machine and materials.
   f. Working of allocation of common costs to all the projects.

Overcoming the Challenges Involved in Tracking Budget

S. No.	Issue Faced	Action required
1	Delay in Client Bill Preparation and Certification	a. Site should only get the funds generated by its billing. This gives a clear signal to PM to ensure timely billing. b. If client's certification takes a long time, then instead of waiting till month end, a cut-off date of say 25th can be decided for quantity certification.
2	Delay in sub-contractor bill preparation	a. Non-payment of advances to sub-contractors without receiving the regular bills. b. Common errors like not containing Item Codes same as client, not containing cumulative project quantities to be avoided.
3	Revision of sub-contractor rates number of times in short period and different rates for different sub-contractors	a. If the actual rates significantly differ from the budgeted rates, one may have to revise the budget. b. Further, total cost of executing a particular item after summation of all the sub-contractor bills needs to be compared with the budgeted cost.
4	Quantities executed by supply labour	a. As far as possible, avoid usage of supply labour. b. Supply gangs need to be divided activity wise and a single gang not to be given multiple tasks. c. Daily Supply report to contain the estimate of quantity executed by supply labour. d. Getting both supply and measurement gangs from the same sub-contractor also needs to be avoided
5	Numbers of work orders issued by client for same job	a. All the work orders need to be combined for comparison with cost as it may not be possible to maintain the costs separately for each order. b. Care needs to be taken if there are any specification changes for the same item codes in two different orders. If yes, client may be requested to issue separate item code for the same.
6	No track record for material purchased and bills pending to be raised by supplier	a. Stock Inward Register maintained at site needs to be checked with the Purchase Register in accounts once in a month.

S. No.	Issue Faced	Action required
7	Sub-contractors having taken the advance exit during the project before desired execution	a. Since the same is a cost, accounts may choose to debit the same against the project item for which the sub-contractors were appointed. b. But at each month end, all such advances need to be closed with management approval.
8	Difficulty in tracking quantities in case of finishing items due to small, various make and various sizes.	a. Materiality says that only major items need to be controlled. All small items can be clubbed together under one head for the sake of simplicity.
9	Lack of clarity over asset capitalisation policy	a. Management needs to adopt recognised accounting policies uniformly for all expenses like labour and site establishment, shuttering, scaffolding depending on the useful life of the asset.
10	Mismatch in equipment time allotted in budget for a project vis-à-vis actual utilisation	a. This needs to be documented so that it serves as learning for future projects.
11	Tracking the Employee Cost	a. Normally employee cost should be in the range of 4-8% depending on nature of project, but if the same exceeds, then proper scrutiny is required.
12	Assessment of Physical stock quantity for bulk items like Sand/ Aggregate/ Loose Cement	a. Experienced Site supervisor needs to be given the task of stock taking along with the stores and audit personnel for the same. b. This assessment is important to track any ill practices prevailing at the point of procurement/ material inward.
13	Assessment of Physical stock of Items issued at Site but with repetitive usage like shuttering/ hardware	a. Top management needs to lay down its own internal standards for different items. For e.g. a repetition policy of 6 times for wooden shuttering may mean a life of 2-3 months during peak and thus the valuation needs to be done accordingly.
14	Varying HO overhead every month and the allocation policy	a. Standard HO overheads need to be certified by top management for the purpose of site allocation every six months. b. It should also be ensured that there is no material deviation between the actual and standard on a quarterly basis. c. HO overheads should be distributed across projects based on expected site turnover as budgeted. However, to avoid the complexities, the same is normally also done on actual turnover basis.
15	WIP assessment	a. Best left to the Project Manager. However the accuracy of the same should be monitored in the subsequent months by tracking actual realisation against the WIP, to curb the tendency of Project Manager to overstate the WIP.
16	Uncertified Extra Items	a. If material, the same may be considered but needs to be overlooked if outstanding for more than 3-4 months with proper management approval

Budget Findings and Corrective Actions by Management

Once actual data comparison takes place with budget document, management can then prepare a Project Progress Card containing the various exceptional reports as desired by the management. It should normally contain:-

a. Comparison of Budget Summary with the actual results
b. Areas where the budget rates needs to revisited
c. Material Deviation between budget costs *vis-a-vis* actual costs against each Project Item
d. Expected increase in Fixed Costs due to expected Project Delay
e. Proposed corrective actions against critical findings

The major worry that the management wishes to avoid by preparing and monitoring the budget is by avoiding cost overruns which is normally experienced on account of following common reasons :-

a. Execution with supply labour
b. Lot of equipments on rental
c. Delay in project execution
d. Lack of control over Site Fixed Costs
e. Weak monitoring of items with repetitive use such as shuttering, scaffolding leading to less than standard utilisation
f. Fraud/Pilferage by PM/Employees in conjunction with the vendors

In addition, actual comparisons with the budget makes one discover new ways to improving the operations in various ways in order to achieve the budgeted surplus:-

a. Value addition to process using local material
b. using local market rather than purchase from H.Q (limited items where year contract price is fixed and available at local market or even less.)
c. try various options of tax/indirect measures for procurement
d. alternative agency from the pool of sub-contractor agencies
e. manufacture certain item at site to avoid market domination
f. access better supplier and agreed terms for long duration supply

Hence, utmost care is required to take care of the above issues and a budget is the best document for the same. But we again wish to emphasise, that a budget would do no good if not compared on a monthly basis.

We hope, with the above, we have been able to touch upon some of the aspects of Budgeting in the construction sector, although it is undoubtedly a very vast subject where one always tends to remain in the learning process as the project size and complexities increase. ■

Insider Trading: Crime without Victims

Insider trading is rampant in developing and even developed countries. Many high profile people are now behind bars or in the process of facing suits from the regulators. The impact of insider trading is very serious on the reputation of company and investors at large. Insider trading is detrimental to market integrity. The rule enunciated by courts in the US is that "no one should be allowed to trade with the benefit of inside information because it operates as a fraud on all other buyers and sellers in the market". The undisclosed misappropriation of confidential information in violation of a fiduciary duty constitutes fraud akin to embezzlement. Read on to know more…

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Regulators have been trying their best to control the occurrence of insider trade and evolving existing processes and systems to grab people involved in this economic crime. Insider trading is very difficult to detect and prove with strong evidences and hence called *Crime without Victim.*

What is Insider Trading?

In simple terms, insider trading is a trade executed directly/indirectly through other persons, by persons privy to the information, which is not in public domain, and can impact pricing of the securities once that information is published.

In other words, it is a deal conducted by a person either on his own behalf or on behalf of any other person, in the securities of a company listed on any stock exchange when such person is in possession of unpublished price sensitive information. It also includes conveying/obtaining (directly or indirectly) any unpublished price sensitive information to/from any person and deals in securities of company listed on any stock exchange.

In most countries, trading by corporate insiders such as officers, key employees, directors, and large shareholders may be legal, if this trading is done in a way that does not take advantage of non-public information. However, the term is frequently used to refer to a practice in which an insider or a related party trades based on material non-public information obtained during the performance of the insider's duties at the corporation, or otherwise, in breach of a fiduciary or other relationship of trust and confidence or where the non-public information was misappropriated from the company.

How Does it Occur?

Insider trading can prevail through various players of capital market e.g. listed companies, broking house, investment bankers, asset management companies/ mutual funds, fund accountant, custodian, media agencies etc. It is considered a very serious matter even if a single incident occurs and caught by the regulator.

Inside information which can affect price of the listed securities includes management meeting of buying stake in specific company, proposing rating downgrade/upgrade by rating agencies, fund managers plan buying/selling stocks, company is going to declare positive/negative numbers in quarterly/annual results, company is planning to raise fund or going to be declared default for non-payment of debt on due date etc., are very sensitive when unpublished. Various stakeholders viz. Key Management Personnel, Directors, Auditors, Lawyers, Advisors/Consultants etc. know these information before it comes into public domain. Confidential information can be leaked through:

— Call
— Personal meeting
— Email/Chatting
— Through another person
— Piggybacking (following person going to discuss a deal or key matters with another)

These people have a chance to trade in security through themselves or through relatives/friends before the information comes in public domain. Once the information comes in public domain, price of security goes up/down and those guys will square off their position, earning a significant profit at the cost of other investors.

Example:

Recently Mr. Rajat Gupta, the former Goldman Sachs Director and McKinsey and Company Managing Partner, convicted of supplying confidential information to Raj Rajaratnam (Hedge Fund Manager of Galleon Capital-now in jail), received a two-year jail term and fine of $ 5 million from the US court. In this case, the insider trade occurred, as pictured below:

Insider trading mostly happens in the equity market because of the ease to trade, highly liquid and large-scale. In debt market, chances are very minimal unless someone holding listed debt securities e.g. debentures etc., come to know about potential default in repayment. Thus he can sell the security in the market before the news becomes public.

Regulatory Framework

Securities and Exchange Board of India (SEBI) has defined Prohibition of Insider Trading Regulation 1992 which also contains a model code of conduct applicable to listed companies and for other intermediaries. SEBI Act prescribes a penalty of ₹25 crore or three times the amount of profits made out of insider trading, whichever is higher.

Regulation defines insider trading and powers of regulator to initiate proceedings in case of potential suspicion on any person. Penalty, consent mechanism and appellate proceedings have also been mentioned in the code.

Controls to Prevent/Detect Insider Trading

A. ***Defining employees dealing code:***
Employees dealing code is a policy document enumerating the process of dealing in securities

by the Board of Directors and employees of the organisation. It should include:

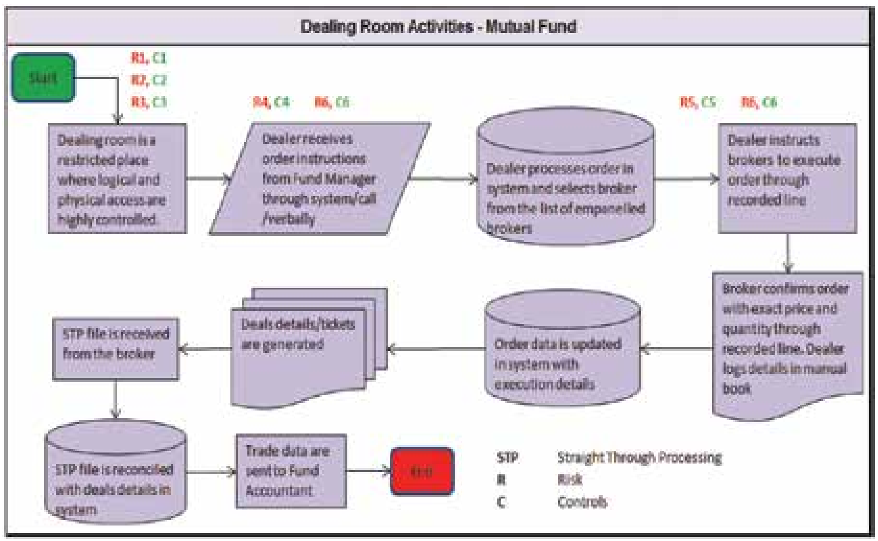
- defining key personnel to whom policy applies
- defining the grey list (it is a list of securities where the organisation is going to buy/sale securities in the near future or investment banker working on mandate etc.) of securities
- defining the structure of approving trade/ investment by employees, board of directors (generally by compliance team) and approval of trade of compliance team (generally by Managing Director/CEO).
- pre-approval process and tracking mechanism
- confirmation of trade and tracking mechanism
- periodical declaration by all concerned people
- process of periodical reporting to the Board/ Senior Management about compliances as well as exceptions and actions thereon.

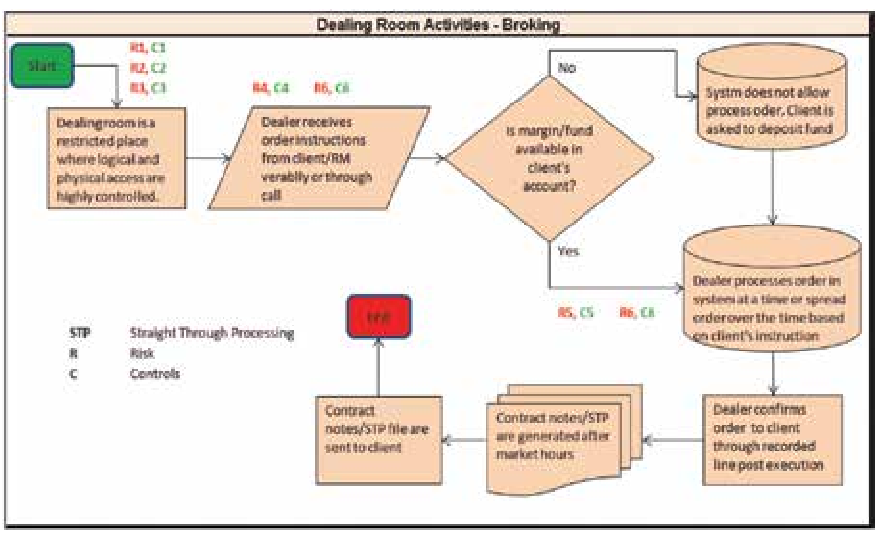
From an audit perspective, one may perform walkthrough to understand the effective implementation of policy and ensure whether the designed of the controls are through a system or manual.

a. List of key employees should be obtained to understand its coverage of all concerned people likely to have access to price sensitive information.
b. Obtain the list of personnel authorised to approve trade from system and reconcile with policy.
c. Transaction in trade declaration should be reconciled with trade of the company and/or Grey List to ascertain whether there is any common security.
d. Ensure completeness of declaration submitted for all quarters and for the year by employees and board of directors.
e. Review integrity of database in the system and functioning of the system by way of performing walkthrough. One may also like to obtain signed off from data owner and IT regarding the integrity of the system and database.
f. Review exception reports, if any.

B. *Dealing Room Facilities:*

The Dealing room is the most sensitive place where chances of leaking information are the highest. To understand risk and controls around the dealing room, one needs to understand the process of transaction as illustrated for Mutual Fund and Broking Firm below:





Risk Controls and Testing Scripts:

Risk	Description	Controls	Description	Testing methodology
R1	Unauthorised personnel can enter in dealing room to know order before dealer executes	C1	Access to dealing room is given to authorised personnel only. Access is controlled through access card reader installed at door.	• Obtain list of authorised person and review whether mentioned persons are actually needed access. • Reconcile list of authorised persons with list exported from system controlling access. Deviations have to be discussed and resolved with satisfaction of the auditor. • Reconcile attendance logs of the access card system with list of authorised person.
			CCTV is installed inside dealing room	• Review CCTV recording on sample basis and ensures that there is no piggybacking or suspicious activities e.g. giving piece of paper to pass information outside. • Also review maintenance, archival and review process of CCTV recordings.
R2	Order information is passed outside and within company through calls	C2	All lines installed in dealing room are recorded including intercom	• Visit dealing room and note down number of lines installed. • Verify list of numbers including extension connected with dealing room. • Reconcile these records with call recording systems to ascertain all calls are recorded.
R3	Systems used by dealer has full access of internet	C3	Access to only specified websites is allowed on dealers' terminal	• Perform walkthrough during market hours on systems being used by dealer and try opening internet e.g. Gmail, Yahoo, Gmail through Google etc. Also review history of the website visited during market hours. • Discuss with IT head regarding admin access on these systems to ascertain that it is independently controlled.
			Outside mails from workstations cannot be deleted by dealer	• Review mails sent by dealers during market hours and reconcile with trade executed vs. timing of mails and content where buy/sale of securities is conveyed in mail.
R4	Persons originating orders leaks information to other before instructing dealers	C4	Process is defined that dealer will execute orders received through system, mails or recorded lines only	• Obtain log of executed orders and mode of execution (e.g. calls, mails). • Review whether any order executed with instruction otherwise than system, recorded calls or mails.

Risk	Description	Controls	Description	Testing methodology
				• Obtain call records and hear out interaction of persons originating orders. • Review whether call recording system has identification against each number and contains time of call, integrity of interaction, archival and maintenance. • In case of information being passed out, review timing of calls and timing of instruction given to dealer for order execution. One may prefer select order with large value and cross connect call records to get adequate comfort.
R5	Dealer leaks information before execution of order.	C5	Dealer has to execute order within x amount of time based on price and volume discovery in market as per the process defined.	• Review process defined by the company and ascertain adherence to it. • Review calls recording in/out from dealer's room to ascertain that information are not passed outside. Also check that cell phones are not allowed inside dealing room during market hours. One may review process and randomly try dialing one of the dealers cell number to get comfort over the process. • Mobile jammer inside dealing room is the best control preventing usage of it.
R6	Order details are passed out at cafeteria, wash room, personal visit at colleague desk outside dealing room.	C6	Basic facilities are provided to the personnel connected with real-time trade and not allowed to go outside that area.	• Review facility structure and its working condition. • One may like to ascertain whether that area is restricted with access card.

C. *Whistle Blower:*

The Whistle Blower policy can also help catch insider traders. A company should have in place a Whistle Blower policy and its effective dissemination process to the employees. It should be available at local server and periodical mails should be sent to all employees. It should comprise of a structured committee, confidentiality, protection and reward to the employee, mechanism of action plans and way of communication inside the origination and external stakeholders, as applicable. Board of directors and Audit Committee should also review efficiency of the policy implementation and outcomes at least quarterly.

Conclusion

In India, it is very difficult to catch people involved in insider trading due to the accessibility of technology and infrastructure availability to SEBI. For instance, as per a report, the market regulator has been seeking powers to have access to call records and it has sought permission to tap phones to strengthen its insider trading investigations but SEBI is yet to get permission in this regard. ■

Appeal: Donate for Uttarakhand Flood Relief

Appeal to All members and students of ICAI

The recent landslide and floods in Uttarakhand have caused extensive devastation. A large number of people have died and thousands have been rendered homeless.

At this moment, the affected people in Uttarakhand need help to tide over the calamity that has fallen upon them, to survive and to rebuild their lives. In this scenario, ICAI has decided to stand with our distressed fellow countrymen, and actively participate in the national effort to support them at this difficult time. The employees of ICAI have offered to contribute in kind and on 26th June, 2013, we are flagging off truck load of relief material containing clothes, groceries and other necessities to Uttarakhand.

Besides the above, ICAI has opened a bank account exclusively for the purpose of collecting donations from members, students and others so that the same can be paid to Prime Minister's National Relief Fund (PMNRF).

We hereby appeal to all members, students and others to donate generously towards this noble cause. The details of bank account are as under:

ICAI Uttarakhand Flood Relief Account – 33079969989
State Bank of India, IFSC Code - **SBIN0001187**
I.P. Estate Branch, New Delhi – 110 002

The collected amount will be given to PMNRF. All contributions towards the PMNRF are exempted from Income-tax under Section 80(G). The donors are requested to follow up their donations with a letter/email to the Institute giving their name, address, amount and date of contribution, so that receipts could be obtained from PMNRF for onward transmission to the donors. The letter/email can be sent to:

The Additional Secretary (Accounts)
The Institute of Chartered Accountants of India
ICAI Bhawan
A-29, Sector-62
Noida – 201 309.
e-Mail: accounts@icai.in

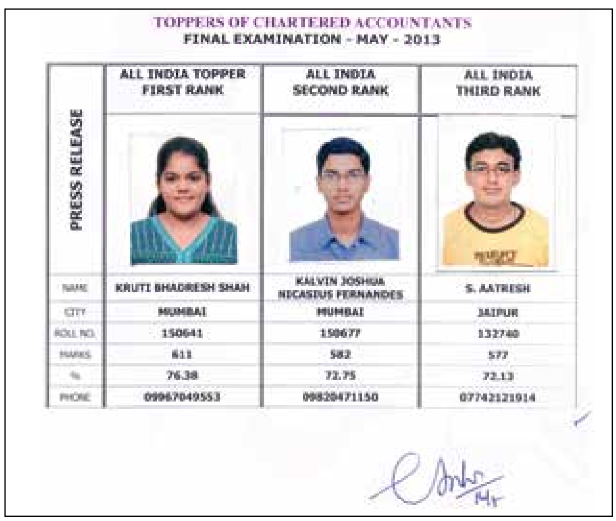
Result: CA Final Examination May 2013

**TOPPERS IN
CHARTERED ACCOUNTANTS FINAL EXAMINATION HELD IN
MAY - 2013**

The results of the Chartered Accountants Final Examination was declared recently.
The details of percentage of candidates passed in the above said examinations are given below:

EXAMINATION	GROUP	No. of candidates appeared	No. of candidates passed	% of pass
FINAL	Both Group	27556	2764	10.03
	Group– I	45822	6319	13.79
	Group–II	50354	9389	18.65

The details of top three rank holders on the all India basis for the FINAL Examination held in May - 2013 with the marks secured by them are also given herewith.


TOPPERS OF CHARTERED ACCOUNTANTS
FINAL EXAMINATION - MAY - 2013

PRESS RELEASE

	ALL INDIA TOPPER FIRST RANK	ALL INDIA SECOND RANK	ALL INDIA THIRD RANK
NAME	KRUTI BHADRESH SHAH	KALVIN JOSHUA NICASIUS FERNANDES	S. AATRESH
CITY	MUMBAI	MUMBAI	JAIPUR
ROLL NO.	150641	150677	132740
MARKS	611	582	577
%	76.38	72.75	72.13
PHONE	09967049553	09820471150	07742121914

Result: CPT Examination June 2013

TOPPERS IN
COMMON PROFICIENCY TEST (CPT)
JUNE- 2013

The result of the Common Proficiency Test held in **June 2013** was declared recently.
The details of percentage of candidates passed in the above said examinations are given below:

GENDER	No. of candidates appeared	No. of candidates passed	% of pass	Exam. Centres
MALE	86109	21906	25.44	**376**
FEMALE	52637	15583	29.60	
TOTAL	138746	37489	27.02	

The details of top Three Rank holders on the all India basis for the Common Proficiency Test (CPT) with the marks secured by them is also given herewith.

TOPPERS OF CHARTERED ACCOUNTANTS
COMMON PROFICIENCY TEST JUNE , 2013

	ALL INDIA TOPPER FIRST	ALL INDIA TOPPER SECOND	ALL INDIA TOPPER THIRD	ALL INDIA TOPPER THIRD	ALL INDIA TOPPER THIRD
					
NAME	KANDUKURI SHARATH	NARRA VENKATA SIVA SAI RAVI TEJA	YELLA ABHILASH REDDY	ERANTI SRAVYA	SRIPADA SRIRAMA GOVINDA PAVAN KUMAR
CITY	HYDERABAD	VIJAYAWADA	GUNTUR	HYDERABAD	HYDERABAD
ROLL	204496	215237	195739	198427	201805
MARKS	194	193	192	192	192
%AGE	97.00	96.50	96.00	96.00	96.00
PH	9441531222	9494758683	7382136952	9848383164	9391317731

Examination Notification: Final/MAC/CMC/TMC/IRM/ITLWTO-November 2013

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

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

5th July, 2013

No. 13-CA (EXAM)/N/2013: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Intermediate (IPC) and Final examinations will be held on the dates given below at the following places provided that sufficient number of candidates offer themselves to appear from each centre.

Similarly, Examinations in Post Qualification Courses under Regulations 204, viz.: Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM), and International Trade Laws and World Trade Organisation (ITL & WTO) examinations (which are open to the members of the Institute) will be held on the dates given below at the above places (centres in India only) provided that sufficient number of candidates offer themselves to appear from each of the above places.

INTERMEDIATE (IPC) EXAMINATION
[As per syllabus contained in the scheme notified by the Council under Regulation 28 E (3) of the Chartered Accountants Regulations, 1988]

Group-I:	6th, 8th, 10th & 12th November 2013
Group-II:	15th, 18th & 20th November 2013

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

FINAL EXAMINATION
[As per syllabus contained in the scheme notified by the Council under Regulation 31 (iii) of the Chartered Accountants Regulations, 1988.]

Group -I: 5th, 7th, 9th & 11th November 2013
Group -II: 13th, 16th, 19th & 21st November 2013

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

MANAGEMENT ACCOUNTANCY COURSE (MAC) PART - I, CORPORATE MANAGEMENT COURSE (CMC) PART – I, TAX MANAGEMENT COURSE (TMC) PART – I EXAMINATIONS

Group-I: 13th & 16th November 2013
Group-II:19th & 21st November 2013

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INSURANCE AND RISK MANAGEMENT (IRM) EXAMINATION

Modules I to IV	13th, 16th, 19th & 21st November 2013

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL&WTO) EXAMINATION

Group A	6th, 8th & 10th November 2013
Group B	12th, 15th & 18th November 2013

(Afternoon Session: 2.00 PM to 5.00 PM) (IST)

PLACES OF EXAMINATION CENTRES IN INDIA: (FOR ALL EXAMINATIONS)

1	AGRA	2	AHMEDABAD	3	AHMEDNAGAR
4	AJMER	5	AKOLA	6	ALAPPUZHA
7	ALIGARH	8	ALLAHABAD	9	ALWAR
10	AMBALA	11	AMRAVATI	12	AMRITSAR
13	ANAND	14	ASANSOL	15	AURANGABAD
16	BANGALORE	17	BAREILLY	18	BATHINDA
19	BEAWAR	20	BELGAUM	21	BELLARY
22	BERHAMPORE	23	BHARAUCH	24	BHARATPUR
25	BHAVNAGAR	26	BHILWARA	27	BHIWANI
28	BHOPAL	29	BHUBANESWAR	30	BHUJ
31	BIKANER	32	BILASPUR	33	CHANDIGARH
34	CHENNAI	35	COIMBATORE	36	CUTTACK
37	DEHRADUN	38	DELHI/NEW DELHI	39	DHANBAD
40	DURG	41	DURGAPUR	42	ERNAKULAM
43	ERODE	44	FARIDABAD	45	GANDHIDHAM
46	GHAZIABAD	47	GORAKHPUR	48	GUNTUR
49	GURGAON	50	GUWAHATI	51	GWALIOR
52	HISAR	53	HUBLI	54	HYDERABAD
55	INDORE	56	JABALPUR	57	JAIPUR
58	JALANDHAR	59	JALGAON	60	JAMMU
61	JAMNAGAR	62	JAMSHEDPUR	63	JIND
64	JODHPUR	65	KAITHAL	66	KAKINADA
67	KANNUAR	68	KANPUR	69	KARNAL
70	KISHANGARH	71	KOLHAPUR	72	KOLKATA

73	KOLLAM	74	KOTA	75	KOTTAYAM
76	KOZHIKODE	77	KUMBAKONAM	78	LATUR
79	LUCKNOW	80	LUDHIANA	81	MADURAI
82	MANGALORE	83	MAPUSA (GOA)	84	MARGAO (GOA)
85	MATHURA	86	MEERUT	87	MORADABAD
88	MUMBAI	89	MUZAFFARNAGAR	90	MYSORE
91	NAGPUR	92	NANDED	93	NASHIK
94	NAVSARI	95	NELLORE	96	NOIDA
97	PALGHAT	98	PALI MARWAR	99	PANIPAT
100	PANVEL	101	PATNA	102	PATIALA
103	PIMPRI-CHINCHWAD	104	PONDICHERRY	105	PUNE
106	RAIPUR	107	RAJAMAHENDRAVARAM	108	RAJKOT
109	RANCHI	110	RATLAM	111	REWARI
112	ROHTAK	113	ROURKELA	114	SAHARANPUR
115	SALEM	116	SAMBALPUR	117	SANGLI
118	SANGRUR	119	SATARA	120	SHIMLA
121	SIKAR	122	SILIGURI	123	SIRSA
124	SIVAKASI	125	SOLAPUR	126	SONEPAT
127	SRI GANGANAGAR	128	SRINAGAR	129	SURAT
130	SURENDRANAGAR	131	THANE	132	THIRUVANANTHAPURAM
133	THRISSUR	134	TINSUKIA	135	TIRUCHIRAPALLI
136	TIRUPATI	137	TIRUPUR	138	TUTICORIN
139	UDAIPUR	140	UDUPI	141	UJJAIN
142	VADODARA	143	VAPI	144	VARANASI
145	VELLORE	146	VIJAYAWADA	147	VISAKHAPATNAM
148	WARANGAL	149	YAMUNA NAGAR		

PLACES OF EXAMINATION CENTRES OVERSEAS:
(FOR INTERMEDIATE (IPC) AND FINAL EXAMINATIONS ONLY)

1) ABU DHABI	**2) DUBAI**	**3) KATHMANDU**	**4) MUSCAT**

Payment of fees for the examinations should be made by Demand Draft only. The Demand Drafts may be of any Scheduled Bank and should be drawn in favour of The Secretary, **The Institute of Chartered Accountants of India, payable at New Delhi only.**

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to these examinations are required to be made either online at http://icaiexam.icai.org **free of cost (i.e.₹500/- for Intermediate (IPC) & Final candidates for the cost of application form shall not be charged if applications are filled in online)** or in the relevant prescribed form, copies of which may be obtained from the **Additional Secretary (Examinations), The Institute of Chartered Accountants of India,** 'ICAI BHAWAN', Indraprastha Marg, New Delhi – 110002 on payment of ₹500/- per application form in respect of Intermediate (IPC) and Final Examination candidates. The cost of Examination application forms for Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM), International Trade

Laws and World Trade Organisation (ITL & WTO) examination is ₹100/- per application form. The forms shall also be made available in the Regional and Branch Offices of the Institute and can be obtained there from on cash payment on or from **5th August, 2013.**

Applications together with the prescribed fee by Demand Draft of any Scheduled Bank may be sent so as to reach the Additional Secretary (Examinations) at New Delhi not later than **26th August, 2013.** However, applications will also be received at Delhi Office after **26th August, 2013** and upto **2nd September, 2013** with late fee of **₹500/-**. Applications for the students' examinations only duly filled in will also be received by hand delivery at the office of Institute at New Delhi and at the Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Delhi, Ahmedabad, Bangalore, Hyderabad, Jaipur and Pune upto **2nd September, 2013**. Candidates residing in these cities are advised to take advantage of this facility. Applications received after **2nd September, 2013** shall not be entertained under any circumstances.

However, application forms duly completed for the Post Qualification Course Examinations i.e. Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM), International Trade Laws and World Trade Organisation (ITL & WTO) will be received **only** at the New Delhi office of the Institute.

The candidates who apply online at http://icaiexam.icai.org from 5th August, 2013 to 26th August, 2013 and remit the fee online by using either VISA or MASTER Credit/ Debit Card shall not be charged ₹500/- in case of Intermediate (IPC) & Final examination (i.e. cost of application form fee). They shall however, be required to remit additional ₹500/- towards late fee in case the application online is made after 26th August 2013 and upto 2nd September, 2013.

The fees payable for the various examinations are as under:

INTERMEDIATE (IPC)	
For Both the Groups / Unit - 9	₹1,600/-
For one of the Groups / Unit 1 to 8	₹1,000/-
FINAL EXAMINATION	
For Both the Groups	₹2,250/-
For one of the Groups	₹1,250/-

MANAGEMENT ACCOUNTANCY COURSE (MAC) PART - 1, CORPORATE MANAGEMENT COURSE (CMC) PART – I, TAX MANAGEMENT COURSE (TMC) PART – I EXAMINATIONS	
For Both the Groups	₹400/-
For one of the Groups	₹200/-

INSURANCE & RISK MANAGEMENT (IRM) EXAMINATION	₹1,000/-

INTERNATIONAL TRADE LAWS AND WORLD TRADE ORGANISATION (ITL & WTO) EXAMINATION:	
For Both the Groups	₹2,000/-
For one of the Groups	₹1,000/-

Candidates of Intermediate (IPC) and Final examination opting for Dubai /Abu Dhabi / Muscat are required to remit, US$ 350 and US$ 400 respectively or their equivalent Indian Currency irrespective of whether a candidates appears in a group or in both the groups or in a unit .

Candidates of Intermediate (IPC) and Final Examinations opting for Examination Centre at Kathmandu are required to remit Indian ₹2,250/- and Indian ₹3,000/- respectively or their equivalent relevant foreign currency irrespective of whether the candidates appear in a group or in both the groups or in a unit.

OPTION TO ANSWER PAPERS IN HINDI:

Candidates of Intermediate (IPC) and Final Examinations will be allowed to opt for Hindi medium for answering papers. Detailed information will be found printed in the Information Sheets attached to the relevant application form. However the medium of Examinations will be only English in respect of Post Qualification Courses viz.: Management Accountancy Course (MAC) Part – I, Corporate Management Course (CMC) Part – I, Tax Management Course (TMC) Part – I, Insurance and Risk Management (IRM) Examination and International Trade Laws and World Trade Organisation (ITL & WTO) Examinations.

(G. SOMASEKHAR)
ADDITIONAL SECRETARY (EXAMS)

Examination Notification: CPT – December 2013

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

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

5th July, 2013

No.13-CA (EXAM)/CPT/December/2013: In pursuance of Regulation 22 of the Chartered Accountants Regulations, 1988, the Council of the Institute of Chartered Accountants of India is pleased to notify that the Common Proficiency Test will be held on Sunday, 15th December, 2013 in two sessions as below, at the following centres provided that sufficient number of candidates offer themselves to appear from each centre.

[This Common Proficiency Test will be conducted as per provisions of Regulation 25 D (3) of the Chartered Accountants Regulations, 1988 and the syllabus as published in the pages 291-293 of the Journal 'The Chartered Accountant' August 2006 issue and pages 12-13 of Chartered Accountants Students' Newsletter August 2006 issue.]

First Session (i.e. Morning Session)	**10.30 AM to 12.30 PM (IST)** Section - A Fundamentals of Accounting Section - B Mercantile Laws
Second Session (i.e. Afternoon Session)	**2.00 PM to 4.00 PM (IST)** Section - C General Economics Section - D Quantitative Aptitude

PLACES OF EXAMINATION CENTRES IN INDIA:

1	AGRA	2	AHMEDABAD	3	AHMEDNAGAR
4	AJMER	5	AKOLA	6	ALAPPUZHA
7	ALIGARH	8	ALLAHABAD	9	ALWAR
10	AMBALA	11	AMRAVATI	12	AMRITSAR
13	ANAND	14	ASANSOL	15	AURANGABAD
16	BANGALORE	17	BAREILLY	18	BATHINDA
19	BEAWAR	20	BELGAUM	21	BELLARY
22	BERHAMPORE	23	BHAGALPUR	24	BHARAUCH
25	BHARATPUR	26	BHAVNAGAR	27	BHILWARA
28	BHIWANI	29	BHOPAL	30	BHUBANESWAR
31	BHUJ	32	BIKANER	33	BILASPUR
34	CHANDIGARH	35	CHENNAI	36	COIMBATORE
37	CUTTACK	38	DEHRADUN	39	DELHI/NEW DELHI
40	DHANBAD	41	DUNDLOD	42	DURG
43	DURGAPUR	44	ERNAKULAM	45	ERODE
46	FARIDABAD	47	GANDHIDHAM	48	GHAZIABAD
49	GORAKHPUR	50	GUNTUR	51	GURGAON
52	GUWAHATI	53	GWALIOR	54	HISAR
55	HUBLI	56	HYDERABAD	57	INDORE
58	JABALPUR	59	JAIPUR	60	JALANDHAR

61	JALGAON	62	JAMMU	63	JAMNAGAR
64	JAMSHEDPUR	65	JODHPUR	66	KAITHAL
67	KAKINADA	68	KANNUAR	69	KANPUR
70	KARNAL	71	KISHANGARH	72	KOLLAM
73	KOLHAPUR	74	KOLKATA	75	KOTA
76	KOTTAYAM	77	KOZHIKODE	78	KUMBAKONAM
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82	MADURAI	83	MANGALORE	84	MAPUSA (GOA)
85	MARGAO (GOA)	86	MATHURA	87	MEERUT
88	MORADABAD	89	MUMBAI	90	MUZAFFARNAGAR
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142	VADODARA	143	VAPI	144	VARANASI
145	VELLORE	146	VIJAYAWADA	147	VISAKHAPATNAM
148	WARANGAL	149	YAMUNA NAGAR		

PLACES OF EXAMINATION CENTRES OVERSEAS:

1) ABU DHABI	**2) DUBAI**	**(3) BAHRAIN**	**(4) DOHA**	**(5) KATHMANDU**

The Council reserves the right to withdraw any centre at any stage without assigning any reason.

Applications for admission to Common Proficiency Test is required to be made in the relevant prescribed form as contained in the Information Brochure, which may be obtained from the **Additional Secretary (Examinations)**, The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi – 110002 on payment of ₹1,000/- (₹500/- towards examination fee and ₹500/- towards cost of application form and Information brochure) per application form. The fee for candidates opting for Abu Dhabi, Dubai, Doha and Bahrain centres will be US $160 (US $ 150 towards examination fee and US $ 10 towards cost of application form and information brochure) or its equivalent Indian Currency. The fee for the candidates opting for Kathmandu centre are required to remit ₹ 1350/- (₹ 850/- towards examination fee and ₹ 500/- towards the cost of application form and information brochure) or its equivalent foreign Currency. Since the cost of Information brochure containing Common Proficiency Test application form includes the examination fee, no separate fee is required to be remitted at the time of submitting the filled in application form. The Information brochure containing Common Proficiency Test application form will also be available in the Regional and Branch Offices of the Institute and can be obtained there from on cash payment on or from **7th October, 2013.**

Common Proficiency Test application forms duly filled in may be sent so as to reach the **Additional Secretary (Examinations)** at New Delhi not later than **28th October, 2013.** Applications received after **28th October, 2013** shall not be entertained under any circumstances. Applications duly filled in will be received by hand delivery at the offices of Institute at New Delhi and at the Decentralised Offices of the Institute at Mumbai, Chennai, Kolkata, Kanpur, Ahmedabad, Bangalore, Hyderabad, Jaipur and Pune upto **28th October, 2013**. Candidates residing in these cities are advised to take advantage of this facility. **It may be noted that there is no provision for acceptance of application forms after 28th October, 2013 with late fee.**

The candidates who fill up the examination application form online at **http://icaiexam.icai.org** from **7th October, 2013** (10.00 hrs) to **28th October, 2013** (17.30 hrs) and remit the fee online by using either VISA or MASTER Credit/ Debit Card shall not be charged ₹ 500/- (i.e. cost of application form fee).

The aforesaid Common Proficiency Test (CPT) is open only to students registered with the Institute of Chartered Accountants of India for the Common Proficiency Course on or before 1st October, 2013 and fulfill the requisite eligibility conditions.

QUESTION PAPER BOOKLET LANGUAGE:

Common Proficiency Test is an objective type multiple choice questions based examination. Candidates will be allowed to opt for Hindi medium Question Paper Booklet for answering the questions. Detailed information will be found given in the Information brochure.

(G. SOMASEKHAR)
ADDITIONAL SECRETARY (EXAMINATIONS)

ICAI Awards for Excellence in Financial Reporting

ICAI AWARDS FOR EXCELLENCE IN FINANCIAL REPORTING
Invitation to Participate in the Competition for the year 2012-13

Last date for receipt of entries: 30th September, 2013

Objective

To recognise and encourage excellence in preparation and presentation of financial information.

Award Categories of the Competition 'ICAI Awards for Excellence in Financial Reporting' for the year 2012-13

Category I :	*Public Sector Banks*
Category II :	*Private Sector Banks (including Co-operative Banks & Foreign Banks)*
Category III :	*Insurance Sector*
Category IV :	*Financial Services Sector (Other than Banking and Insurance)*
Category V :	*Manufacturing Sector – (Turnover equal to or more than ₹ 500 crore)*
Category VI :	*Manufacturing Sector – (Turnover less than ₹ 500 crore)*
Category VII :	*Infrastructure and Construction Sector (Turnover equal to or more than ₹ 500 crore)*
Category VIII :	*Infrastructure and Construction Sector (Turnover less than ₹ 500 crore)*
Category IX :	*Service Sector (Other than financial services sector) – (Turnover equal to or more than ₹ 500 crore)*

Category X :	*Service Sector (Other than financial services sector) (Turnover less than ₹ 500 crore)*
Category XI :	*Not-for-Profit Sector*
Category XII	*Local Bodies*
Category XIII :	*Agricultural Sector (includes entities engaged in direct agriculture, horticulture, tea & coffee, plantations, dairies, poultry etc. but excludes entities engaged in food processing etc. which are covered by Manufacturing Sector).*

In a case, where an organisation is engaged in more than one business, the dominant source of revenue will determine the category to which the organisation belongs.
Turnover will be determined on the basis of standalone financial accounts.

Awards to be distributed
Hall of Fame to be awarded to the entity that has been winning the first prize under the same category continuously in the last five years. One Gold Shield and one Silver Shield in each category for the best entry and the next best entry, respectively. Plaques to be awarded to the entities who are following better financial reporting practices amongst the enterprises that are left in each category after conferring Hall of Fame, Gold Shield and Silver Shield.

Procedure for Participation
1. There is no fee for participation in the competition.
2. Annual Report relating to the financial year ending on any day between 1st April, 2012 and 31st March, 2013 (both days inclusive) is eligible for participation in this competition.
3. Decisions of the Panel of Judges in all the matters relating to the Competition will be final.
4. An entity awarded 'Hall of Fame' may again participate in the competition after three years of getting the award of 'Hall of Fame'.
5. Fill in the Entry Form (http://220.227.161.86/30415entryform2013-20058.pdf) and submit with requisite documents on or before 30th September, 2013 to:

The Secretary
Research Committee, Technical Directorate,
The Institute of Chartered Accountants of India,
ICAI Bhawan, Indraprastha Marg,
New Delhi – 110 002

For any further information please write to research@icai.in or visit our website www.icai.org.

Study Tour: Sydney & Melbourne

ICAI STUDY TOUR TO SYDNEY AND MELBOURNE
SEPTEMBER 18-23, 2013

In order to promote member to member and firm to firm contact so as to understand the economic and regulatory environment and better understanding of the economic opportunities and to tap the vast market existing for Chartered Accountants in Australia; the International Affairs Committee of ICAI will be undertaking the tour to selected cities of Australia during **18-23 September, 2013** for members, on self financing basis. The Study Tour is a mix of business meetings and networking.

The cost of study tour to Australia is ₹ 1,60,000 per person (on twin sharing basis). The package would include the following:

- Economy Class Airfare with applicable taxes Ex-New Delhi
- Visa cost
- All accommodation on twin sharing basis in 4 star hotels or similar to cut down on costs
- All meals (Indian): Breakfast, Lunch and Dinner.
- All transfers by private A/C coach
- Sight seeing activities in Sydney and Melbourne
- Cost of all entrance tickets / fees for the above mentioned sightseeing tours.
- Services of local tour guide and/or tour escort
- All current applicable Hotel & Government Taxes

The delegation size would be limited to 50, registration for the study tour would be on first-come-first-serve basis and ICAI reserves the right to finalise the composition of the delegation.

The Registration form and the other details of the study tour are available at the link http://icai.org/new_post.html?post_id=9522&c_id=240.

The interested members (spouses are allowed, however children are not allowed) may write to us at ia@icai.in for any further information. **The interested members are requested to send the Registration form along with the demand draft latest by 10th August, 2013.**

For further details, please contact:
Secretariat of the International Affairs Committee, The Institute of Chartered Accountants of India, ICAI Bhawan, PB No. 7100, Indraprastha Marg, New Delhi – 110 002, India. Ph +91 11 30110443,448, 39893989 (Extn. 443, 448).

CIRC Students' Association: Moradabad

June 21, 2013

Announcement
The Institute of Chartered Accountants of India,
New Delhi-110 002

In pursuance of Regulation 81(5) of the Chartered Accountants Regulations, 1988, read with Rule 4 of the Chartered Accountants Students' Association Rules (as contained in Appendix No. (5) to the Chartered Accountants Regulation 1988), the Council of the Institute of Chartered Accountants of India is pleased to announce the setting up of a Branch of Central India Chartered Accountants Students' Association at Moradabad with effect from 15th June, 2013.

The Branch shall be known as Moradabad Branch of CICASA.

As prescribed under Rule 4(b) of the Chartered Accountants Students' Association Rules, the Branch shall, at all time function subject to the control, supervision and direction of the Central Council, exercised through the Regional Council or the Regional Students' Association and shall be governed by the directions issued by the Central Council from time to time, for the functioning of the Branches of Students' Association or such other directions that may be issued from time to time.

Sd/-
(T. Karthikeyan)
Secretary

Online Articles Placement Portal: CA Firms and students

Online Articles Placement Portal for selection of Articled Assistants by CA Firms

The Board of Studies of the ICAI has been providing optional Online Articles Placement facility for selection of Articled Assistants by CA Firms through its Articles Placement Portal on pan India basis. It provides a platform to the firms of Chartered Accountants having vacancies for Articled Assistants to shortlist eligible students for selection of articled assistants, and call them for Interview at their offices, as per date and time convenient to them. The eligible candidates who have passed Group-I or both Groups of the Intermediate (Integrated Professional Competence) Course or have been admitted under the Direct Entry Scheme and are willing to join articled training can register themselves on the portal. **The services to the Online Placement Portal are available free of charge for both CA Firms and students and they can register themselves online through the Portal at http://bosapp.icai.org.**

The services on the Portal would be available for two months, twice a year from the date of registration by the firms. Similarly, the bio-data of a student will also be available on the portal for a maximum period of 2 months from student's registration. The candidates shortlisted by CA Firms would be informed by e-mails through the Portal, to appear for interview at their respective Offices, at the designated date and time.

Detailed guidelines are available at the institutes' website www.icai.org and on the Portal. In case of any further clarification, please contact the Board of Studies, ICAI Bhawan, A-29, Sector-62, Noida-201309, Tel. No. 0120-3045930/931; E-mail: bosapp@icai.org.

Chairman, Board of Studies

"Search Mantra"

For Accounting and Finance Professionals

ICAI JOB PORTAL

http://jobs4CAs.icai.org

Committee for Members in Industry (CMII)

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

The Committee for Members in Industry (CMII) of The Institute of Chartered Accountants of India (ICAI) is, inter-alia, the one stop destination for providing the placement services to the members of the Institute. The CMII organizes Campus Placement Programmes to provide placement assistance to the Members twice a year. CMII augments the venture of getting the Chartered Accountants placed in apex industries through the ICAI Job Portal.

We are extremely happy to inform that the ICAI Job Portal supplements the existing placement assistance provided by the Committee for Members in Industry to the Newly qualified Chartered Accountants and Experienced Members, by providing a converging platform for the potential employers as well as the Members of the Institute.

Welcome to the ICAI Job Portal

The ICAI Job Portal has been designed on the lines of the premium Job Sites and aims to provide world- class services free of cost to our Members. This Job Portal is unique in the sense that it serves as one stop destination to Chartered Accountants as they don't need to visit other Job sites for Job Search.

The Prominent Features of this portal are as follows:

For Employers:

- Hot Vacancy-Premium Job Posting Services
- Advanced Search Tools
- Reach through Job Alerts
- Resume Database Access Subscription
- Unlimited writing for Job Advertisement
- Extremely fast display of Job Advertisement
- Facility to monitor the activities such as a 'MIS' on the number of logins, duration of logins, candidates contacted etc done through the Account.

For Candidates

- Update Alert for CV
- Job Messenger and SMS Facility
- Email Alerts
- Resume Building Services
- Job Search Facility on the Basis of Functional Area ,Industry, Experience, Locations, Expected Salary, Job Type, Freshness etc
- Hot Employer/Preferred Employer marking facility

We sincerely hope that this Job Portal will be extremely helpful to the recruiting entities in their venture.

ICAI Job Portal –World Class Job Portal for recruiting World Class Finance and Accounting Professionals.

CA. Vijay Kumar Gupta
Chairman
Committee for Members in Industry (CMII)

For more details please contact:

Dr. Surinder Pal, Secretary, CMII , 011-30110430, spal@icai.in,
Mr. Ajeet Nath Tiwari, Placement Coordinator, 011-30110450, ajeet@icai.in
Ms Priyanka Sharma, 011-30110548, priyanka.sharma@icai.in

Certificate Course on Concurrent Audit of Banks

The concurrent audit system of banks has become very crucial and important for banks. The main objective of the system is to ensure compliance with the audit systems in banks as per the guidelines of the Reserve Bank of India and importantly, to ensure timely detection of lapses/irregularities. In view of the core competence of the chartered accountants in the area of finance and accounting, risk management, understanding of the internal functioning and controls of banks, etc., the banking sector has been relying extensively on them to comply with these requirements of the regulator. The Internal Audit Standards Board of ICAI conducts six days ***Certificate Course on Concurrent Audit of Banks.*** The purpose of the Certificate Course on Concurrent Audit of Banks is to provide an opportunity to the members to understand the intricacies of concurrent audit of banks thereby improving the effectiveness of concurrent audit system in banks, and also the quality and coverage of concurrent audit reports.

The course is open for the members of the Institute of Chartered Accountants of India as well as the students who have cleared CA final examinations.

Please refer link for further detail of the Course: http://www.icai.org/post.html?post_id=8236

Course Fees: For metro cities: ₹15,000 per participant, for non-metro cities: ₹12,500/- per participant *(Cheque may be drawn in favor of "Secretary, ICAI" Payable at Delhi and should be submitted to respective branch)*

The details of the forthcoming batches of the Certificate Course on Concurrent Audit of Banks, organized by the Internal Audit Standards Board at various places are as follows:

Location	**Scheduled Dates**	**Registration and Course Details**
Jamshedpur	August 3&4, 2013 and 10&11, 17&18, 2013	http://220.227.161.86/30075iasb19657-jamshedpur.pdf
Pimpri Chinchwad	August 10&11, 17&18, 24&25, 2013	http://220.227.161.86/30091iasb19657-pimpri.pdf
Gandhidham	August 17&18, 24&25, 2013. August 31, 2013 and September 1	http://220.227.161.86/30072iasb19657-gandhidham.pdf
Jalgaon	August 24&25, 2013 August 31, 2013 and September 1, 7&8, 2013	http://220.227.161.86/30074iasb19657-jalgaon.pdf
Surat	August 31, 2013 and September 1, 7&8, 14&15, 2013	http://220.227.161.86/30088iasb19657-surat.pdf
Nashik	August 10&11, 17&18, 24&25, 2013	http://220.227.161.86/30093iasb19657-nasik.pdf
Amritsar	October 19, 20, 26 & 27 and November 9 & 10, 2013	http://220.227.161.86/30081iasb19657-amrisar.pdf
Thane	October 19, 20, 26 & 27 and November 9 & 10, 2013	http://220.227.161.86/30087iasb19657-thane.pdf
Bhilai	October 26 & 27 and November 9, 10, 23 & 24, 2013	http://220.227.161.86/30082iasb19657-bhilai.pdf

Chairman,
Internal Audit Standards Board, ICAI
E-mail: iasb.program@icai.in; cia@icai.in

Commencement of 6th Batch of Certificate Course on
Master* in Business Finance (MBF)

In Delhi, Mumbai, Chennai, Kolkata, Jaipur, Hyderabad and Ahmedabad from Aug 2013 (Registrations Started)

About the Course

The Committee on Management Accounting (CMA) of ICAI will conduct 6th Batch of Master in Business Finance Certificate Course (MBFCC). Course coverage is extensively wide across various topics of advanced financial management like Capital Market, Investment Banking, Fund Raising & Fund Management, Corporate Valuation, Merger & Acquisitions, Banking , Forex Market, Treasury Management, Risk Management etc. with an aim to provide knowledge and skill required for tomorrow's CFO and high end consultancy in finance.

Highlights

- Comprehensive Finance Curriculum
- Skill augmenting to match India Inc Growth
- Unique mix of faculty
- Focus on Indian Market
- Innovative practical and managerial applications

Eligibility

Only the Members of ICAI and the Students of the Institute who have passed the CA Final Examination are eligible to pursue this Course.

Course Contents

LEVEL I

Paper 1 - Financial Management and Advanced Financial Analysis

Paper 2 - Capital Structuring, Fund Raising and Investment Management

LEVEL II

Paper 3 - Capital and Financial Markets Management

Paper 4 - Forex, Treasury and Risk Management

LEVEL III

Paper 5 - Valuations, Merger & Acquisitions, and Principles of Management

Paper 6 - Banking, Risk management and Business Strategy

Course Duration

This is approximately One year course.

Classes will be held on 2nd and 4th Saturdays (2 pm to 7:30 pm) and Sundays (9 am to 2 pm).

There will be two (one week each) residential programmes as part of Course.

Professional Credit

100 CPE hours credit in completion of course

Two Full Time Residential Programme of One Week Each

The Residential Programme aims at bringing eminent national and international faculty members to guide the students in undertaking practical and innovative project work . The fees for Two Residential Programmes at Centre of Excellence, Hyderabad/IICA, Manesar is Rs. 20,000 (Rs. Twenty thousands only) which includes cost of stay, food etc. Residential programmes are mandatory to attend.

Faculty

The Faculty members for the course are from IIM's, XLRI, NIBM, MDI, premier Universities , Public & Private Sector Banks/ Financial Institutions, Mutual Funds, ICRA, SIDBI, PE Funds, Senior Chartered Accountants from Industry/ Profession and reputed academicians.

Course Registration

The course registration is on receipt of duly filled in and signed Course Registration form with course fee of Rs. 30,000 (Rs. Thirty Thousands only) vide DD/ Pay Order in favor of "The Secretary, ICAI" payable at Delhi. Course fee can also be paid online through ICAI Payment Portal.

Registration Form Submission

The Registration form with course fee has to be sent at the following address:

The Secretary,
Committee on Management Accounting (CMA)
ICAI Bhawan, Administrative Block, 3rd Floor,
A-29, Sector - 62
Noida (U.P) - 201 309
Ph: 0120-3045905 and 9350799912
E-mail: cma@icai.in, ap.kar@icai.org

Important Links

Details are available in website : www.icai.org

Course Contents: http://220.227.161.86/30057mbfprospectus2013-19658.pdf

Online Payment: http://www.icai.org/ccm.html?progid=107

Registration Form: http://220.227.161.86/30312mbf_registration_form.pdf

Chairman, Committee on Management Accounting
anujgoel28@sify.com; anujgoyal@icai.org
+91 98 100 41371, 93122 58364

Committee on Management Accounting
The Institute of Chartered Accountants of India

* *Master indicates level of expertise and not a post graduate degree.*

Insurance Protection for Members & CA Firms

An Insurance Protection for Members in practice & CA Firms of ICAI...
An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI...

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of ICAI has arranged insurance protection for members in practice/firms in the form of specially designed professional indemnity insurance at a reasonable premium i.e. 85% discount in market rate. The scheme has become effective from 12th March, 2013 for the Members in practice/ Firms of the ICAI.

Scope

The policy covers all sums which the insured professional becomes legally liable to pay as damages to third party in respect of any error and/or omission on his/her part committed whilst rendering professional service. Legal cost and expenses incurred in defense of the case, with the prior consent of the insurance company, are also payable, subject to the overall limit of indemnity selected.

Only civil liability claims are covered. Any liability arising out of any criminal act or act committed in violation of any law or ordinance is not covered.

Eligibility:

Chartered Accountants, individual/jointly or Proprietorship Concern or a Partnership Firm / Partnership.

The applicants/firms should not have been subjected to disciplinary action by the Institute.

Premium Rates:

For Individual Members in Practice:

For SI of 10 lacs, the premium proposed is ₹1000/- (1:1), ₹803/-(1:2), ₹705/- (1:3) and ₹600/- (1:4).

Ratios indicate relationship between AOA and AOY

Additional: Per Capita for named professional employee- ₹100

Excess: 1/2% of Any One Year Limit subject to minimum ₹5,000/- and maximum of ₹1 lakh (as per Market Agreement) for higher limits.

For Chartered Accountants Firm:

The premium of 0.10% shall be as per rates for Individual Chartered Accountants and shall be applied on the AOY limit chosen. All named professionals shall be charged ₹100/-extra over and above the basic premium.

For Example:

If the CA firm chooses a Sum Insured of 2 Crore the Premium rate of 0.10% is to be applied on the AOY limit and each professional (including partners) have to be charged ₹100/- each. For example a CA firm with 20 professionals including 9 partners will pay ₹20, 000/- plus 20X ₹100 totalling to ₹22, 000/-. This would be on 1:1 ratio. If the ratio is 1:2, the Premium rate would be .08%,if the ratio is 1:3,the Premium rate would be .07% and if the ratio is 1:4,the ROL would be .06% on the indemnity limit chosen.

* Jurisdiction: India only

*Above Premium rates are subject to applicable Service Tax.

Members and CA firms desirous to avail the benefits of the aforesaid scheme may please visit: http://icai.newindia.co.in & online solution for the same.

For grievance or any other queries please contact the New India Personnel at nia.113000@newindia.co.in, Ms. Shrutika Thakur at her e-mail shrutika.thakur@newindia.co.in, Shri Mukesh Yadav at his e-mail id: mukesh.yadav@newindia.co.in, Telephone: 022-246260311 or Shri Satyanarayan Mohapatra, Sr. Divisional Manager at satyanarayan.mohapatra@newindia.co.in, Mobile: 08108311713 or Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI at ccbcaf.query@icai.org, Telephone: 0120-3045994.

Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI
E-Mail: naveen.ndgupta@icai.in

Health Insurance Scheme

Health Insurance Scheme

For Members of ICAI

An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of ICAI has arranged the specialised Health Insurance Scheme for Members of ICAI. The Committee has signed an afresh MoU with New India Assurance Co. Ltd., Mumbai for the same on 12th March, 2013. The scheme has become effective from 12th March, 2013 for the Members of ICAI.

The highlights of the Health Insurance Scheme for Members of ICAI are as follows:

- **5% discount in Premium to be paid to the Insurance company, where the Member has not preferred any claim in the expiring policy in case of renewal of the policy.**
- Sum insured available in slabs of ₹5 lakh, 7 lakh and 10 lakh.
- Floater Sum Insured for the entire family of Self, Spouse and dependent children.
- No health check-up. No entry age barrier.
- Dependant Parents covered under separate Floater Sum Insured, equivalent to the Sum Insured of the Member family.
- No Health check-up. No age limit.
- Premium discount in lieu of Cumulative Bonus.
- Hospital Cash Allowance @ 0.10% of Sum Insured, for a maximum of 10 days.
- Wide Coverage for Pre-existing diseases.
- Competitive Premium Rates

The member can carry over credit for previous continuous insurance. For a member with three years of continuous coverage with any other insurer, pre existing diseases are covered.

Pre existing disease coverage: under individual policies, pre existing disease is covered only after four years. Whereas, in ca super mediclaim, coverage for pre existing commences from first year, as per limits below:

First year of coverage	25% of the admissible claim amount, subject to a maximum of 25% of the sum insured
Second year of coverage	50% of the admissible claim amount, subject to a maximum of 50% of the sum insured
Third year of coverage	75% of the admissible claim amount, subject to a maximum of 75% of the sum insured
Fourth year of coverage	100% of the admissible claim amount, subject to a maximum of 100% of the sum insured

Members desirous to avail the benefits of the aforesaid scheme may please visit: http://icai.newindia.co.in & online solution for the same.

For grievance or any other queries please contact the New India Personnel at nia.113000@newindia.co.in, Ms. Shrutika Thakur at her e-mail shrutika.thakur@newindia.co.in, Shri Mukesh Yadav at his e-mail id: mukesh.yadav@newindia.co.in,Telephone: 022-246260311 or Shri Satyanarayan Mohapatra, Sr. Divisional Manager at satyanarayan.mohapatra@newindia.co.in, Mobile: 08108311713 or Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI at ccbcaf.query@icai.org, Telephone: 0120-3045994.

Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI
E-Mail: naveen.ndgupta@icai.in

Invitation for Empanelment of the Experts for Redressal of Professional Query

Invitation for empanelment of the experts for Redressal of Professional Query raised by the Members of ICAI to be organised by the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) in the Year 2013-14.

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) of the Institute of Chartered Accountants of India proposes to organize the webinars / teleconference programme for redressal of Professional Query raised by the Members of ICAI during the year 2013-14, which are broadly relevant to the Members of ICAI in Practice.

Indicative topics for the aforesaid programme:

- **i. IFRS**
- **ii. Taxation**
- **iii. Investment Strategy**
- **iv. Auditing**
- **v. Accounting Standards**
- **vi. Revised Schedule VI**
- **vii. Valuations**
- **viii. Capital Market**
- **ix. Portfolio Management**
- **x. Networking/Merger/Corporate form of Practice**
- **xi. Limited Liability Partnership**
- **xii. Service Tax**
- **xiii. Income Tax**
- **xiv. Issues on Direct Taxes**
- **xv. Issues on Indirect Taxes**
- **xvi. Professional opportunities/avenues**
- **xvii. Internal Auditing**
- **xviii. Auditing in ERP Environment**
- **xix. Cloud computing**
- **xx. Wealth Management & Investment Strategy**
- **xxi. New Companies Bill**
- **xxii. Anti Money Laundering**
- **xxiii. Other topics relevant for the Practitioners & CA Firm**

Experts who have more than five years of experience in the relevant area and who have delivered lectures at various forums of Chartered Accountants are eligible for the enlistment in the Panel of Experts. Experts who are interested to be associated with The Institute of Chartered Accountants of India as Resource Persons are requested to send/e-mail their resume to the following address:

Secretary
Committee for Capacity Building of CA Firms and Small & Medium Practitioners
The Institute of Chartered Accountants of India
ICAI Bhawan, A-29, First Floor,
Administrative Block, Sector-62
Noida (U.P.), P.C.-201309
E-Mail: sambit.mishra@icai.in, Phone: 0120-3045994

It would be appreciated if the resume including all details regarding qualification, membership no. of ICAI (if any), experience, areas of specialization, contact address, etc. is sent at the earliest, preferably within 15 days.

The Committee has constituted a Working Group for conducting the programme for Redressal of Professional Query raised by the Members of ICAI to be organised by the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF&SMP) in the Year 2013-14, you may reach to the Chairman, CCBCAF&SMP, ICAI at Mobile: 09810689998, E-mail: naveen.ndgupta@icai.org,Vice Chairman, CCBCAF&SMP, ICAI at Mobile: 09414053163, E-mail: shyamjpr@gmail.com, Convener of the Working Group for the aforesaid purpose at Mobile: 9821090612, E-mail: pchhajed@yahoo.com.

Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners(CCBCAF&SMP), ICAI
E-Mail: naveen.ndgupta@icai.in

An initiative by

Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI

The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)

TaxCloud

www.TaxCloudIndia.com

Fully web-based I-T Return and TDS Return Software

Features

Completely Free to use
Create a free account on www.taxcloudindia.com
& start working by adding your clients.
TaxCloud supports import of master data from XML, FVU.

No need to Install Software
TaxCloud works from your Internet Browser
like Mozilla Firefox or Google Chrome.

256-bit SSL Protection
Bank-grade security over the Internet.

Proper Safeguard for Data Privacy & Security
Only the CA firm has access to data.

Data Backups every night
No fear of losing data because of Viruses
or C: Drive / Hard Disk Failures.

Scales as you need it
Multiple employees can work from multiple
laptops or computers at the same time.

Great Support whenever you need help!
Login to www.taxcloudindia.com today to start!

How to Use TaxCloud

In your browser, go to
www.taxcloudindia.com
Use Mozilla Firefox,
Google Chrome or Internet Explorer

Login and use
No need to install software
Work from office or home. Access all
your data whenever & whereever you want

Use multiple computers to
work on cases simultaneously
Every member of your staff can work
on different returns using the same login ID

Submit your return
in 1-click without password
No Client Password needed as TaxCloud
is an authorized e-Return Intermediary

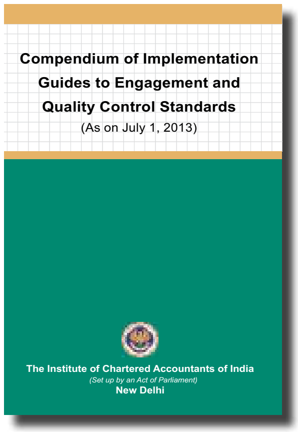
Chairman,
Committee for Capacity Building of CA Firms
and Small & Medium Practitioners (CCBCAF & SMP), ICAI
naveen.ndgupta@icai.in

For Technical Queries:
ClearTax
ClearTax Support
taxcloud@cleartax.in
011-25616304

For other queries:
Secretary, Committee for Capacity Building of CA Firms
and Small & Medium Practitioners (CCBCAF & SMP), ICAI
ccbbcaf.software@icai.org
0120-3045994

New Publications

Compendium of Implementation Guides to Engagement and Quality Control Standards (As on 1st July, 2013)



The Auditing and Assurance Standards Board has recently brought out the revised 2013 edition of the publication, "Compendium of Implementation Guides to Engagement and Quality Control Standards" which contains the text of all the Implementation Guides issued by the Board as on 1st July, 2013. The Compendium contains the text of the following Implementation Guides:

- Implementation Guide to SQC 1.
- Implementation Guide to Risk-based Audit of Financial Statements.
- Implementation Guide to Materiality in Planning and Performing an Audit.
- Implementation Guide to SA 530, Audit Sampling.
- Implementation Guide on Reporting Standards (SA 700, SA 705 & SA 706).
- Implementation Guide to SA 230, Audit Documentation.
- Implementation Guide to SA 501, Audit Evidence - Specific Considerations for Selected Items.
- Implementation Guide to SA 570, Going Concern.
- Implementation Guide to SA 720, The Auditor's Responsibility in Relation to Other Information in Documents Containing Audited Financial Statements.

The Compendium comes with a CD of the entire Compendium to provide ease of reference.

Price:

₹600/- (including CD)

Ordering Information

The publication can be purchased directly from the Sales Counters at the ICAI's Regional Offices or at the Head Office. To order by post, requisition may be sent to the Postal Sales Department of the ICAI at postalsales@icai.in

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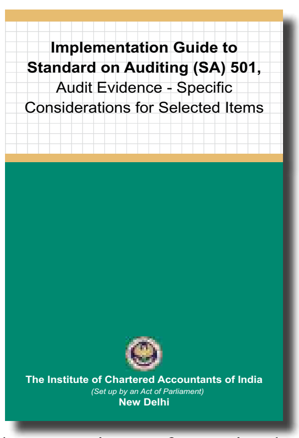
Implementation Guide to Standard on Auditing (SA) 501, "Audit Evidence - Specific Considerations for Selected Items"



The Auditing and Assurance Standards Board has recently brought out the publication on *Implementation Guide to Standard on Auditing (SA) 501, "Audit Evidence - Specific Considerations for Selected Items"*. Significant features of the Implementation Guide are:

- The objective of the Guide is to provide guidance to the members regarding implementation of Revised Standard on Auditing (SA) 501, "Audit Evidence - Specific Considerations for Selected Items" issued by the ICAI.
- The Guide is written in simple and easy to understand language.
- The Guide has been authored by eminent expert in the field.
- The Guide covers overview of SA 501, existence and condition of inventory, completeness of litigations and claims involving the entity, presentation and disclosure of segment information
- The Appendices to the Guide contain the Illustrative Stock Verification Checklist, Illustrative Formats of recording cut-off information, recording of test counts, inventory balance confirmation.
- The Appendices to the Guide also contain the Illustrative Letter of General Inquiry/Specific Inquiry to the Entity's Legal Counsel.

Price:

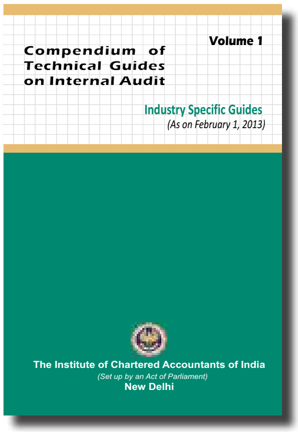
₹150/-

Ordering Information

The publication can be purchased directly from the Sales Counters at the ICAI's Regional Offices or at the Head Office. To order by post, requisition may be sent to the Postal Sales Department of the ICAI at postalsales@icai.in

Compendium of Technical Guides on Internal Audit (As on 1st February, 2013)
Pages: 3500 (including initial pages) (In Five Volumes)

Price:
₹1500/- including CD



The Internal Audit Standards Board has brought out the 2013 edition of the Compendium of Technical Guides on Internal Audit. The significant features of the Compendium are as follows:

- Contains text of all the Generic as well as Industry Specific Technical Guides issued by the Board as on 1st February, 2013.
- **Divided in five volumes:**

✔ **Volume 1, 2, 3 and 4: Compendium of Industry Specific Technical Guides**

These Volumes contains text of the all the Industry Specific Technical Guides issued by the Board as on 1st February, 2013. The Guides added in the revised edition are:

- Technical Guide on Internal Audit of Retail Industry
- Technical Guide on Internal Audit of Mutual Funds
- Technical Guide on Internal Audit of Stock and Relievable Audit
- Technical Guide on Internal Audit of Life Insurance Business
- Guide on Environmental Audit
- Technical Guide on Internal Audit of Mining and Extractive Industry
- Technical Guide on Internal Audit of Not-for-Profit Organisations
- Technical Guide on Internal Audit of Pharmaceutical Industry
- Guide on Corporate Social Responsibility (CSR) Audit

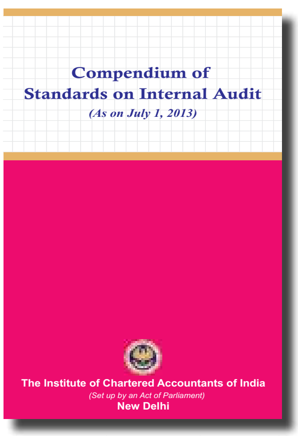
✔ **Volume 5: Compendium of Generic Guides**

It contains text of the Generic Guides issued by the Board as on 1st February, 2013.

All the five volumes of the Compendium come in a single box pack alongwith a CD containing text of the entire Compendium.

Compendium of Standards on Internal Audit (As on 1st July, 2013)
(Pages: 170+10 initial pages + 2 Cover pages)

Price:
₹300/- including CD



Quality is the cornerstone of internal audit and will require an even greater focus in today's environment as internal audit functions will be more intensively scrutinised by stakeholders. The best way for internal auditors to enhance their value is to ensure that they adopt the best practices and processes in carrying out internal audit engagements. Standards on Internal Audit issued by the Internal Audit Standards Board of the Institute focus on the principles to be followed, the objectives to be achieved and the essential considerations for the internal auditor in planning, conducting, documenting and reporting on internal audit. The Standards represent the basic principles of the practice of internal audit and establish the basis for evaluation of internal audit performance. This updated edition of Compendium contains text of all the Eighteen Standards on Internal Audit issued till date including the latest in the tally, i.e., SIA 18, "Related Parties".

Significant Features of the Compendium are:

✔ Contains the text of all the 18 Standards on Internal Audit as well as the Framework and the Preface.

- o SIA 1, "Planning an Internal Audit"
- o SIA 2, "Basic Principles Governing Internal Audit"
- o SIA 3, "Documentation"
- o SIA 4, "Reporting"
- o SIA 5, "Sampling"
- o SIA 6, "Analytical Procedures"
- o SIA 7, "Quality Assurance in Internal Audit"
- o SIA 8, "Terms of Internal Audit Engagement"
- o SIA 9, "Communication with Management"
- o SIA 10, "Internal Audit Evidence"
- o SIA 11, "Considertation of Fraud in an Internal Audit"
- o SIA 12, "Internal Control Evaluation"
- o SIA 13, "Enterprise Risk Management"
- o SIA 14, "Internal Audit in an Information Technology Environment"
- o SIA 15, "Knowledge of the Entity and Its

Environment”
- o SIA 16, “Using the Work of an Expert”
- o SIA 17, “Consideration of Laws and Regulations in an Internal Audit”
- o SIA 18, “Related Parties”

✔ Contents of each Standard given at the beginning for quick reference and overview.

This Compendium of Standards on Internal Audit comes with a CD of the entire material to ensure ease of reference and reusability.

Ordering Information:

These publications can be purchased online. Please refer link: http://www.icai.org/publications.html. The publications are also available at the sales counters of the Institute at New Delhi, Chennai, Mumbai, Kolkata and Kanpur. To order by post, please send a demand draft in favour of “Secretary, The Institute of Chartered Accountants of India”, payable at New Delhi to:

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An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners, ICAI

The Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP) of ICAI has arranged Motor Insurance Scheme at discounted OD premium for members of ICAI.

The salient feature of the aforesaid scheme as under:- Members would get 55% discount on Own Damage Premium in respect of private four wheelers and two wheelers if member approaches the office of Oriental Insurance Company directly.

Please approach to the office of the Oriental Insurance Company Limited with a self attested photo copy of the Membership Card for availing the aforesaid scheme. Please quote the special Client code: AI0000001313 for the aforesaid arrangement. For details about the motor insurance scheme offered by Oriental Insurance Company, kindly visit: http://icai.org/post.html?post_id=9385.

If any grievance arises while availing the aforesaid scheme, please mail your grievance to Shri P.S. Dishodiya at his e-mail id: dishodiyaps@orientalinsurance.co.in, Telephone: 011-43659834 or Shri V.P. Gupta at his e-mail id: vpgupta@orientalinsurance.co.in,Telephone:011-43659832 with a copy mark to Dr. H.C. Dhingra, Chief Manager, Oriental Insurance Co. Ltd., New Delhi at drhcdhingra@orientalinsurance.co.in and Secretary, Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI at ccbcaf.query@icai.org, Telephone: 0120-3045994.

Chairman
Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP),
ICAI
E-Mail: naveen.ndgupta@icai.in

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The Chartered Accountant e-Journal in Indexed-Mode Launched

Refer to articles and opinions published in the ICAI journal, The Chartered Accountant, of last 10 years, i.e. June 2002 to June 2012, in indexed mode.

You can search by name of author, article, area/field/category, date etc., by visiting the link, http://www.icaiejournal.org/. You will soon have all articles and opinions of all past issues on that link with the same facility.

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\- Editor

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Refer to *Guidelines for Authors* before You Send an Article to Us!

Before you submit your articles to the Editorial Board of The Institute of Chartered Accountants of India for publication in the journal *The Chartered Accountant,* you are requested to read the Author Guidelines available at http://www.icai.org/post.html?post_id=2556.

This document contains information on the kind of articles that are accepted for publication in our Journal. It also explains our requirements such as formatting, word-limit, references, enclosures that should be sent with the article, etc.

Kindly do check the Guidelines to make our editorial process streamlined and efficient.

-Editor

Multipurpose Empanelment Form (MEF)

Multipurpose Empanelment Form for the year 2013-14

Multipurpose Empanelment Form (MEF) for the year 2013-14 is available at www.meficai.org. Please go though the advisory before filling MEF. In case, an applicant faces any problem in accessing, operating or submission of MEF, complaint may be lodged by accessing complaint-box link available on www.meficai.org In case, the complaint is not resolved or replied within a week, members can call at 011-30110444, 30110438, 30110451, 30110480, 30110508 and 30110440.

The last date for submission of online form is **26th August, 2013** and for receipt of duly signed declaration is 5th September, 2013.

Deferment of Revised Empanelment Norms

Deferment of Revised Empanelment Norms of Statutory Central Auditors of Public Sector Banks by one year *i.e.* the norms will be effective from the year 2014-15.

Reserve Bank of India has decided to defer the implementation of the revised eligibility norms for empanelment Statutory Central Auditors of Public Sector Banks applicable by one year *i.e.* the norms will be effective from the year 2014-15.

Further, as the norms will be implemented from the next year, **all the audit firms, irrespective of the fact whether they are continuing or not,** will have to comply with the revised norms from the year 2014-15.

Classifieds

5030 Bangalore based FCA (with DISA and Certificate Course on Indirect Taxation) willing to associate with other CA firms on full time basis with long term perspective. e-Mail: ca.srvbng@gmail.com

5031 Delhi (Rohini) based CA firm Sandeep Bhalotia & Co. seeks professional work on assignment/sub-contract basis. Contact: 9650244639; e-Mail: sandeepbhalotia@outlook.com

5032 Noida based FCA with 23 years experience available for partnership/professional work. Contact :Phone 9560325986, e-Mail: caamitalok@rediffmail.com

5033 30 years standing C.A. firm having Head Office at Jaipur and branches at Jaipur and Jodhpur seeks exclusive professional association with Chartered Accountants at PAN India level (preferably major cities/towns) besides Phalodi, Balotra, Barmer (Rajasthan). Interested may contact or send resume at carajbothra@yahoo.com, Tel. 0291-2623707 (Contact person CA Raj Bothra). Fresher may also apply.

5034 Rajasthan based FCA firm seeks professional assignments, subcontracting, networking opportunities in Mumbai, NCR, Ajmer and Jaipur. e-Mail: ama@live.in/Contact +91-9460090609.

5035 Retiring CA seeks employment in finance/accounts/audit in a company or professional assignments/partnership at Mumbai/Ajmer. Contact: sngagrani53@gmail.com; 8860798308, 9413300955.

5036 Guwahati based CA Firm having branch in Mumbai wants newly qualified CAs as partners in Kolkata, Ahmedabad, Jaipur, Hyderabad, Chennai, Bangalore. You may apply with confidence at goswami255@gmail.com. Our terms are simple and attractive.

Forthcoming Events[1]

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
1.	Two Days National Conference on Indirect Taxes	23rd & 24th August, 2013	Ernakulam	12
Topics	• Place of Provision of Services and Service Imports & Exports • Self Assessment and OSPC Audit in Customs • EPC Contract – the Service Tax Aspect • Intellectual Property Services • Beyond the Negative List – *New Taxable Service* • CENVAT Credits – Admissibility of Credit after 01.04.2011 – *The Way Forward* • Provisions Relating to Arrest, Non Bailable Offences, Imprisonment and Personal Penalty in Service Tax • Service Tax Amnesty Scheme			
Contact Person	**Programme Director:** CA. Sanjay Agarwal, Chairman, Indirect Taxes Committee, Mobile: 9811080342, E-mail: agarwal.s.ca@gmail.com **Programme Co-Director:** CA. Atul Kumar Gupta, Vice-Chairman, Indirect Taxes Committee, Mobile: 9810103611, E-mail: atul@servicetax.net **Programme Co-ordinator:** CA. Mathew Joseph, Chairman, Ernakulam Branch of SIRC of ICAI, Mobile: 9447745467, E-mail: ernakulam@icai.org			
2.	One Day National Seminar on Excellence in Audit Profession	17th August, 2013	Lucknow	6
Topics	• Risk Assessments and Fraud Risk Considerations for Auditors-(SA 315 & SA 240) • New Audit Reporting Standards – (SA 700, SA 705, SA 706 & SA 720) • Audit Documentation- (SA 230) • Revised Schedule VI – Considerations for Auditors			
Contact Person	**Seminar Chairman:** CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board, Mobile: 09831059999, Email: babhijit@deloitte.com **Seminar Director:** CA. Shyam Lal Agarwal, Central Council Member, Mobile: 9414053163, Email: shyamjpr@gmail.com CA. Anuj Goyal, Central Council Member, Mobile: 9810041371, 9312258364, Email: anujgoel28@sify.com, anujgoyal@icai.org **Seminar Coordinator:** CA. Shashank Mishra, Chairman, Lucknow Branch of CIRC of ICAI, Mobile: 9335030313, 9415105054, Email: manishshashank@yahoo.co.in			
3.	Half Day Seminar on Enhancing the Quality of Audit	24th August, 2013	Munnar	3
Topics	• Risk Assessments and Fraud Risk Considerations for Auditors-(SA 315 , SA 240), & Audit Documentation- (SA 230) • New Audit Reporting Standards – (SA 700, SA 705, SA 706 & SA 720)			
Contact Person	**Seminar Chairman:** CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board, Mobile: 09831059999, Email: babhijit@deloitte.com **Seminar Director:** CA. Devaraja M. Reddy, Central Council Member, Mobile: 9399935799, Email: devarajareddy@yahoo.com **Seminar Coordinator**: CA. M. Muthusubramanian, Chairman, Sivakasi Branch of SIRC of ICAI, Mobile: 9842163649, Email: mmsrjpm@gmail.com; ms5942in@yahoo.co.in			

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

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
4.	One Day Conference on Audit Excellence	24th & 25th August, 2013 (Half Day each)	Surat	6
Topics	• Risk Assessments and Fraud Risk Considerations for Auditors-(SA 315 & SA 240) • New Audit Reporting Standards – (SA 700, SA 705, SA 706 & SA 720) • Audit Documentation- (SA 230) • Revised Schedule VI – Considerations for Auditors			
Contact Person	**Seminar Chairman:** CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board, Mobile: 09831059999, Email: babhijit@deloitte.com **Seminar Director:** CA. Jay Chhaira, Central Council Member, Mobile: 9825196241, Email: jaychhaira@yahoo.com **Seminar Coordinator:** CA. Vijay Jagani , Chairman, Surat Branch of WIRC of ICAI, Mobile: 9924299218, Email: vijayjagani@rediffmail.com			
5.	Two Days Workshop on Audit Excellence	30th & 31st August, 2013	Mumbai	12
Topics	• Auditing Standards – Overview of Recent Developments • Audit Documentation- (SA 230) • Audit Planning (SA 300) • Risk Assessments and Fraud Risk Considerations for Auditors-(SA 315 & SA 240), • Audit Materiality (SA 320 & SA 450) • New Audit Reporting Standards – (SA 700, SA 705, SA 706 & SA 720), • Issues in Tax Audit • Revised Schedule VI – Considerations for Auditors			
Contact Person	**Seminar Chairman:** CA. Abhijit Bandyopadhyay, Chairman, Auditing and Assurance Standards Board, Mobile: 09831059999, Email: babhijit@deloitte.com **Seminar Director:** CA. Shriniwas Y. Joshi, Central Council Member, Mobile: 9821096079, Email: syjoshi13@gmail.com **Seminar Coordinator:** CA. Mangesh Pandurang Kinare, Chairman, WIRC of ICAI, Mumbai, Mobile: 9869070539, Email: kinareca@rediffmail.com, mpkinare@icai.org			
6.	Certificate Course on International Taxation	Starting from 2nd August, 2013	Hyderabad	100
Topics	International Taxation Topic			
Contact Person	Hyderabad Branch of ICAI, Phone: 040-23393182, 23317026, 23317027, 23317028 Secretary, Committee on International Taxation, Phone: 0120-3045923, Mobile: 09310532063			
7.	Certificate Course on International Taxation	Starting from 4th August, 2013	Pune	100
Topics	International Taxation Topic			
Contact Person	Pune Branch of ICAI, Phone: 020-24212251, 24212252 Secretary, Committee on International Taxation, Phone: 0120-3045923, Mobile: 09310532063			
8.	Live Webcast on International Taxation	2nd August, 2013	Mumbai	-
Topics	Royalties and fees for Technical Services/Fees for included services			
Contact Person	Secretary, Committee on International Taxation, Phone: 0120-3045923, Mobile: 09310532063			
9.	Live Webcast on International Taxation	9th August, 2013	Mumbai	-
Topics	AAR, Mutual Agreement Procedures and Exchange of Information & Collection of Taxes			
Contact Person	Secretary, Committee on International Taxation, Phone: 0120-3045923, Mobile: 09310532063			

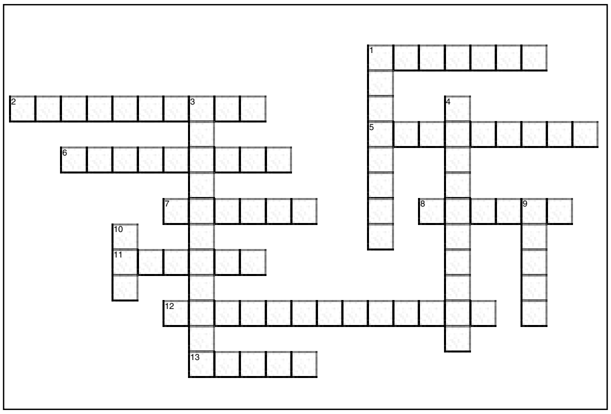
Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
10.	Live Webcast on International Taxation	16th August, 2013	Mumbai	-
Topics	Most Favored Nation and Force of Attraction Rules			
Contact Person	Secretary, Committee on International Taxation, Phone: 0120-3045923, Mobile: 09310532063			
11.	Live Webcast on International Taxation	23rd August, 2013	Mumbai	-
Topics	Anti Avoidance Rules & Treaty Shopping (including Limitation of Benefits)			
Contact Person	Secretary, Committee on International Taxation, Phone: 0120-3045923, Mobile: 09310532063			
12.	Live Webcast on International Taxation	30th August, 2013	Mumbai	-
Topics	Income from Artistes, Sportsmen, Athletes & Entertainers			
Contact Person	Secretary, Committee on International Taxation, Phone: 0120-3045923, Mobile: 09310532063			
13.	International Tax Conference	18th and 19th October, 2013	Bangalore	12
Topics	International Taxation Topic			
Contact Person	Secretary, Committee on International Taxation, Phone: 0120-3045923, Mobile: 09310532063			
14.	All India Conference	9th & 10th August, 2013	Hotel Mayfair Convention, Bhubaneswar	12
Topics	• Revised New Standards on Audit Reporting • Trend & Technique of Financial Reporting under Revised Schedule VI and Accounting Standard • Transition to DTC – Change in approach Real Estate Transactions: Changes in Sec.56(2) of IT Act & Related amendments in W.T. Act • GST – The road ahead Service Tax – Reverse charge mechanism • Regulatory Arbitrage on Deposit Acceptance Activities • Regulatory Changes affecting CA Profession under new companies Bill • Clouding Computing, Auditing in ERP Platform , * Motivating Chartered Accountants			
Contact Person	CA. Charanjot Singh Nanda, Central Council Member & Chairman, CPE Committee of ICAI, Mobile: 09212700353, Email: cjsnanda1@gmail.com CA. Ranjeet Kumar Agarwal, Chairman, EIRC of ICAI, Mobile: 830140211, Email: ranjeet_airan@hotmail.com; ranjeet.airon@gmail.com CA. Ramesh Chandra Pradhan, Chairman, Bhubaneswar Branch, Mobile: 09437177221, Email: bhubaneswar@icai.org			
15.	Two Days National Conference	16th & 17th August, 2013	Metropole, Hotel Nanutel, Margao, Goa	12
Topics	• FEMA – Overview & Issues • Forensic Accounting, Fraud Detection Methods & Case Studies • Issues in Capital Gains with special reference to Redevelopment			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Topics	• Limited Liability Partnership (including conversion of Company into LLP) – Tax, Accounting & FEMA issues • Service Tax Voluntary Compliance Encouragement Scheme • TDS Return Filing and Assessments – Tax Credits, Issues and Resolution			
Contact Person	CA. Charanjot Singh Nanda, Central Council Member & Chairman, CPE Committee of ICAI, Mobile: 09212700353, Email: cjsnanda1@gmail.com CA. Jay Ajit Chhaira, Vice-Chairman, CPE Committee of ICAI, Mobile: 9825196241, Email: jaychhaira@yahoo.com CA. Mangesh Kinare, Chairman, WIRC of ICAI, Mobile: 9869070539, Email: kinareca@rediffmail.com CA. Anup R.S. Borkar, Chairman, Goa Branch of WIRC of ICAI, Mobile: 09823952381/ 0832-6642216/2438516, email: goa@icai.org			
16.	Residential Refresher Course	16th- 18th August, 2013	'Carmelia Heaven Resort' *(A Plantation Theme Resort)*, Vandenmadu (Land of Hills and Spices), Kerala.	12
Topics	• Sec 195 of the Income tax Act – Certain Issues • Recent important judgments under Income tax Act • Tax liability under service tax -Negative list and major exemptions - How to claim Cenvat Credit and issues in Cenvat credit • Practice Development Strategies for SMP's • Opportunities for CA's in Management Consultancy Services & Challenges, Audit planning and documentation -An Overview • Special Consideration in Company Audit wrt. Accounting & Auditing Standards • Substance and concepts of Revised Schedule VI – Study of certain published financials • An overview of FEMA especially in relation to NRIs' & compliance under FCRA			
Contact Person	**Programme Chairman :** CA. Naveen N.D. Gupta, Chairman, Committee for Capacity Building of CA Firms & Small & Medium Practitioners, Mobile: 09810689998 Email: naveen.ndgupta@icai.in **Programme Director :** CA. Babu Abraham Kallivayalil, Central Council Member & Member, CBCAF&SMP, ICAI, Mobile: 9846035333, Email: babucentralcouncil@gmail.com **Programme Co-ordinator :** CA. R. Sreenivasan, Chairman, Alleppey Branch SIRC of ICAI, Mobile: 9847051915, Email: sreenivasan2121@gmail.com **For Registration & Information:** CA. Malu V. Nair, Alleppey Branch of SIRC of ICAI, Mobile: 09995627447, Email: malathynair0003@gmail.com, alleppey@icai.org, Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, New Delhi, Email: sambit.mishra@icai.org, Phone: 0120-3045994			
17.	International Residential Refresher Course	14th-19th August, 2013	Bali	15
Topics	• International Taxation • Specialisation in CA Profession? • Challenges in Sustaining Growth of a Firm			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
Contact Person	**Programme Chairman :** CA. Naveen N.D. Gupta, Chairman, Committee for Capacity Building of CA Firms & Small & Medium Practitioners, Mobile: 09810689998, Email: naveen.ndgupta@icai.in **Programme Director :** CA. Prafulla Premsukh Chhajed, Central Council Member, ICAI & Member, CBCAF&SMP, ICAI, Mobile: 09821090612, Email: pchhajed@yahoo.com **Programme Co-ordinator :** CA. Ramanand Gupta, Chairman, Vasai Branch of WIRC of ICAI, Mobile: 9322231113, Email: rg@caramanandassociates.com **For Registration & Information:** Vasai Branch of WIRC of ICAI, C-310/311, Shanti Shopping Centre, Opposite Railway Station, Mira Road (East), Thane-401107, 022-65568900/28102193, E-mail: vasaibranch@gmail.com Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, New Delhi, Email: sambit.mishra@icai.org, Phone: 0120-3045994			
18.	Professional Training Workshop for Members in Practice	31st August, 2013	ICAI Bhawan, Bhilai	6
Topics	• How to Represent before Assessing & Appellate Authority • Drafting and Conveyancing • Bird's Eye View on Financing Techniques and Parameters • A Panel discussion of Local CA Firms : Exploring the Unexplored areas			
Contact Person	**Programme Chairman :** CA. Naveen N.D. Gupta, Chairman, Committee for Capacity Building of CA Firms & Small & Medium Practitioners, Mobile: 09810689998, Email: naveen.ndgupta@icai.in **Programme Co-Chairman & Director :** CA. Shyam Lal Agarwal, Vice Chairman, CBCAF&SMP, ICAI, Mobile: 09414053163, Email: shyamjpr@gmail.com **Programme Co-ordinator :** CA. Rajendra Kumar Kothari, Chairman, Bhilai Branch of CIRC of ICAI, Mobile: 9425555184, Email: kothari.rajendra12@yahoo.com **For Registration & Information:** Bhilai Branch of CIRC of ICAI , "ICAI BHAWAN", Near Apex Bank, Civic Centre, Bhilai (Chhattisgarh) Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, New Delhi, Email: sambit.mishra@icai.org, Phone: 0120-3045994			
19.	Professional Training Workshop for Members in Practice	30th August, 2013	ICAI Bhawan, Bilaspur (C.G.)	6
Topics	• How to Represent before Assessing & Appellate Authority • Drafting and Conveyancing • Bird's Eye View on Financing Techniques and Parameters • A Panel discussion of Local CA Firms : Exploring the Unexplored areas			
Contact Person	**Programme Chairman :** CA. Naveen N.D. Gupta, Chairman, Committee for Capacity Building of CA Firms & Small & Medium Practitioners, Mobile: 09810689998, Email: naveen.ndgupta@icai.in			
Contact Person	**Programme Co-Chairman & Director :** CA. Shyam Lal Agarwal, Vice Chairman, CBCAF&SMP, ICAI, Mobile: 09414053163, Email: shyamjpr@gmail.com **Programme Co-ordinator :** CA Vinod Kumar Mittal, Chairman, Bilaspur Branch of CIRC of ICAI, Mobile: 9826166631, Email: cavkmittal@rediffmail.com **For Registration & Information:** Bilaspur Branch of CIRC of ICAI, ICAI Bhawan, Beside CIT Office, Vyapar Vihar, Bilaspur (CG) – 495001 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, New Delhi, Email: sambit.mishra@icai.org, Phone: 0120-3045994			

Sl. No.	Title of the Seminar/ Conference	Date	Place	CPE Hours
20.	Workshop for Capacity Building Measures of Practitioners & CA Firms	10th August, 2013	Patiala	6
Topics	• Domestic Transfer Pricing • Service Tax • E-filing of Tax Audit			
Contact Person	**Programme Chairman :** CA. Naveen N.D. Gupta, Chairman, Committee for Capacity Building of CA Firms & Small & Medium Practitioners, Mobile: 09810689998, Email: naveen.ndgupta@icai.in **Programme Co-ordinator :** CA Mohan Singh, Chairman, Patiala Branch of NIRC of ICAI, Mobile: 9417057701, Email: mohan_bhangu@yahoo. com **For Registration & Information:** Patiala Branch of NIRC of ICAI, Second Floor, Near Sukhdev Automobiles, Opp British Co Ed School, Lower Mall, Patiala (PB.) 147 001 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, New Delhi, Email: sambit.mishra@icai.org, Phone: 0120-3045994			
21.	Workshop for Capacity Building Measures of Practitioners & CA Firms	7th September, 2013	Jammu	6
Topics	• Domestic Transfer Pricing • Service Tax • Cloud Computing			
Contact Person	**Programme Chairman :** CA. Naveen N.D. Gupta, Chairman, Committee for Capacity Building of CA Firms & Small & Medium Practitioners, Mobile: 09810689998, Email: naveen.ndgupta@icai.in **Programme Co-ordinator :** CA. Dalip K. Kaul, Chairman, Jammu & Kashmir Branch of NIRC of ICAI, Mobile: 9419119479, Email: dkkaul@hotamail.com **For Registration & Information:** Jammu & Kashmir Branch of NIRC of ICAI, 3rd Floor, Ayakar Bhawan, Rail Head Complex, Jammu-Tawi - 180 001 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, New Delhi, Email: sambit.mishra@icai.org, Phone: 0120-3045994			
22.	Workshop for Capacity Building Measures of Practitioners & CA Firms	24th August, 2013	Amritsar	6
Topics	• Domestic Transfer Pricing • E-filing of Tax Audit Report • Service Tax			
Contact Person	**Programme Chairman :** CA. Naveen N.D. Gupta, Chairman, Committee for Capacity Building of CA Firms & Small & Medium Practitioners, Mobile: 09810689998, Email: naveen.ndgupta@icai.in **Programme Co-ordinator :** CA. Lakhwinder Singh Bhatia, Chairman, Amritsar Branch of NIRC of ICAI, Mobile: 9356021211, 9914421211 **For Registration & Information:** Amritsar Branch of NIRC of ICAI, C.A. Chamber Room No. 401 & 402, Central Revenue Building, The Mall, Amritsar – 143 001 Dr. Sambit Kumar Mishra, Secretary, CCBCAF & SMP, ICAI, New Delhi, Email: sambit.mishra@icai.org, Phone: 0120-3045994			

CROSS WORD 086



ACROSS

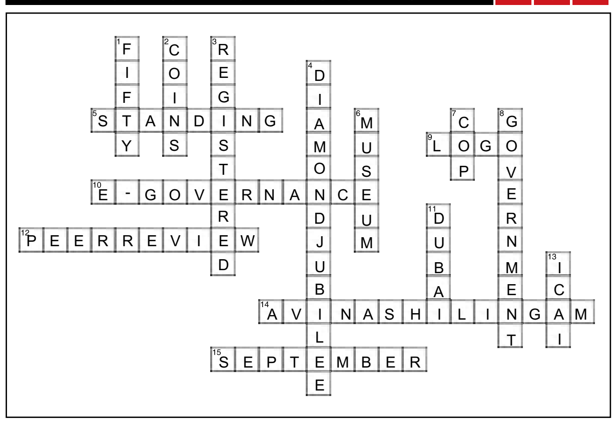
1. Indian Government allowed 100 per cent foreign direct investment (FDI) in the ____________ sector.
2. GAAP is the acronym for generally accepted accounting _______________.
5. ICAI ___________is now available in Indexed mode at its website.
6. Branch of Central India Chartered Accountants Students' Association to be set up at _________ with effect from June 15, 2013.
7. A festival in India of which postage stamp petitions submitted to US Postal Service.
8. A contra-asset account will have a _____________ balance.
11. The residual interest in the assets of an entity after deducting liabilities.
12. __________________ to owners will decrease owner's equity.
13. To raise revenue the British Government adopted a fiscal measure by enacting the _____Act, 1869 (18 of 1869) which was replaced by the Indian Stamp Act, 1879 (1 of 1879).

DOWN

1. The iconic 163-year-old medium of communication that passed into history last month.
3. Probable future sacrifices resulting from a past transaction or event.
4. Gilt-edged market means market of government securities.
9. Nigeria's biggest crude oil buyer.
10. Working capital is also referred to as _____working capital.

NOTE: Members can claim one hour – CPE Credit – Unstructured Learning for attempting this crossword by filling the details in the self-declaration form to be submitted to your regional office annually to avail CPE hours credit for Unstructured Learning activities under the activity 'Providing Solutions to Questionnaires/puzzles available on Web/Professional Journals'. There is no need to individually send this crossword in hard copy or email.

SOLUTION CROSSWORD 085



Faced with hard times, a company offered a bonus of ₹5,000 to any employee who could come up with a plan to save money. The bonus went to a young man in accounting who suggested limiting future bonuses to ₹500.