SRCP'S ➤ e-senze

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Editorial ....

Dear Readers,

DREAMS!

Every Yesterday a Dream of Happiness

And every Tomorrow a Vision of Hope

Look well therefore to this Day!

You cannot dream yourself into a character; you must hammer and forge yourself one. All men dream, but not equally. God's gifts put man's best dreams to shame. If you take responsibility for yourself you will develop a hunger to accomplish your dreams. Myths are public dreams, dreams are private myths.

Dream! Dream!! Dream!!!

L. Muralidharan
& Editorial Team of e-senze

Designed by: **Mr. G. Natarajan**

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WORKSHOP ON Direct Taxation, Advanced Accounts & Auditing Details in page No. 6 and 7

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Empirical Test of the CAPM

It is acknowledged that the assumptions of the CAPM are unrealistic from the perspective of the real world. One can see that a key assumption of the CAPM is that capital markets are perfect While capital markets are not perfect, however, as transaction costs and taxes clearly do exist in practice, markets have been found through various empirical tests to exhibit high levels of efficiency. The point we are trying to make here is that although the assumptions do not totally mirror reality, reality may not be so far away from the assumptions as to invalidate the model. The model, therefore, should not be prejudged on its assumptions but assessed on the results of its application.

There have been a large number of tests on the validity of the CAPM's applications and uses. Research carried out has concentrated on two main areas the first concerning the stability of beta coefficients over time and the second considering the strength and nature of the linear relationship that exists between risk and return.

Tests of the stability of beta:

While the CAPM is a forward-looking model, due to the availability of only past data, betas are calculated using historical returns of shares in relation to the historical returns of the market Therefore the usefulness of historical betas in both the process of pricing of shares and the appraisal of projects will depend heavily upon the stability of beta coefficients over time. This was the subject of the investigation of Sharpe and Cooper (1972), who examined the stability of US equity betas over the time period 1931-67. They started by splitting up their sample of shares into 10 different risk classes, each class containing an equal number of shares allocated according to their beta at the start of the test period. As a rule of thumb, stability was defined as any share that either remained in its existing class or moved by only one class over a five-year time period. Their results suggested that shares with high and low betas demonstrated higher levels of stability when compared with shares with mid-range betas. Additionally they found that approximately 50 per cent of shares' betas could be considered stable (accounting to their earlier definition) over a five-year time period.

While empirical evidence on the stability of individual betas is inconclusive, there is general agreement that the betas of portfolios of shares exhibit much higher levels of stability over time. The most common reasons put forward to explain this are that any errors associated with the estimation of an individual share's beta or any actual changes in the systematic risk characteristics of individual shares will tend to average out when shares are combines in a portfolio.

Service Tax Liability of Educational Institutions Running for Charitable Purpose

1. INTRODUCTION

Commercial training or coaching service are liable to service tax with effect from 01.07.2003

Section 65(26) of the Finance Act defines the term Commercial training or coaching as "it means any training or coaching provided by a commercial training or coaching centre."

Section 65(27) of the Finance Act -"commercial training or coaching center" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include pre-school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognized by law for the time being in force.

2.ISSUE

a) Whether fees/charges collected by institute for imparting training and conducting courses which are run by charitable trust or on no profit basis would fall within the phrase "commercial training or

coaching centre" and would liable to service tax?. This question arises because the term "commercial" has not been defined in the statute. There is litigation that whether commercial character is attached to type of training or coaching imparted or the service provider?

b) Relevance of Income tax exemption in service tax.

3. Clarification given by the Department

Vide para 2 of Circular No.107/1/2009-ST dated 28.01.2009 the CBE & C has clarified that "Many service providers argue that the world commercial appearing in the aforesaid phrase, suggests that to fall under this definition, the establishment or the institute must be commercial (i.e. having profit motive) in nature. It is argued that institutes which are run by charitable trusts or on no-profit basis would not fall within the phrase' commercial training or coaching center' and none of their activities would fall under the taxable service. This argument is clearly erroneous. As the phrase 'commercial training or coaching center has been defined in a statute, there is no scope to add or delete words while interpreting the same. The definition commercial training or coaching center has no mention that such institute must have 'commercial' (i.e. profit making) intent or motive. Therefore, there is no reason to give a restricted meaning to the phrase. Secondly, service tax, unlike direct taxes, is chargeable on the gross amount received towards the service charges, irrespective of whether the venture is' profit making, loss making or charity oriented' in its motive or its outcome. The word "commercial" used in the phrase is with reference to the activity of training or coaching and not to the nature or activity of the institute providing the training or coaching. Thus, services provided by all institutes or establishments, which fulfills the requirements of definition, are leviable to service tax.

4. Judicial Pronouncements

a) In the case of Great Lakes

Continued in next page

Institute of Management Ltd vs. CST(2008) 12 STT 296(Chennai-CESTAT) it was held that "... The provision of education by an institution will attract service tax only if the institution is a commercial concern. A commercial concern is run with the sole object of making profit. In the case of the appellants, no individual gains any profit by its operations. The MOA clearly spells out that no income earned by the company shall be paid by way of dividend, bonus or otherwise by way of profit to any member of the company or to anybody else through the members. If any surplus remains when the company is wound up, it shall be transferred to another institution run for the same object as the company or for some charitable object. These facts indicate that GLIM is not a commercial concern and therefore, training or coaching rendered by it is not liable to service tax as 'commercial training or coaching'." (p.303)

b) In the case of Administrative Staff College of India vs. CC & CE (Appeal No,ST/27 of 2007/ Final order No.1230 of 2008 dt. 11.08.2008 (Bang-CESTAT) tribunal held that when a society is registered with several laudable objectives, the same can't be equated with a commercial training or coaching center. The fact that the Income tax department had given it exemption was very relevant. The department stand that said point was not at all relevant could not be sustained. The fact that word "commercial" has been used indicates that the word "commercial" qualifies the commercial coaching or training center. It does not qualify coaching or training. It qualifies the center. As long as the institution is registered under the Societies Registration Act and is also exempted from income tax, it can't be considered as commercial center. Therefore, no service tax was leviable on the assessee under the category of commercial coaching or training service.

c) In the case of Center for Development of Advanced Computing vs. CC & CE (Final order No.124 of 2008, dt. 21.10.08 Bang-CESTAT) it was held that where assessee being registered under Societies Act and registered with income tax department as charitable society with no aim to derive profit, it can't be considered as commercial center and the assessee could not be classified as "commercial training or coaching center".

d) However in the case of Punjab Ex. Service men corporation VCCE (S.T. Appeal No. 129 of 2005 & Final order No.ST/337 of 2008 dt. 11.11.2008 (Delhi - CESTAT). It was held that income tax exemption to income of the assessee has nothing to do with question as to whether the assessee is a commercial concern or a non-commercial concern. For levy of service tax, it is the activity of an organization which is relevant, not its objective.

5. Observations

a) Circular issued by CBEC is binding on the officers of the department and they can not be deviate there form.

b) However the circulars are neither binding on the courts nor on the assessee. The assessee cant contest the validity or legality of the circular.

c) It is the responsibility of the courts to interprete the provisions given in the law.

d) Since the Tribunals have taken divergent views te assessee has to wait for the High Court/Supreme Court ruling on this issue to put this controversy to rest.

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What is Chartered Accountancy?

Chartered Accountancy is an exciting new age profession that offers practice or job opportunities in areas of accounting, auditing, corporate finance, project evaluation, company laws, other business laws, taxation, corporate governance, etc. Chartered Accountants are better equipped to discharge accounting and audit functions in a computerized business environment. It is a globally acclaimed profession, capable of offering new vistas to young talents, new vision to build exciting careers and new ideas to blossom.

About the Institute

The Institute of Chartered Accountants of India (lCAl) is established in July, 1949, by an Act of Parliament for the purpose of regulating the profession of Chartered Accountancy in India.

Steps required to become a Chartered Accountant

Step (I)

Appear CPT examination after passing the Secondary Examination and after one month from date of registration in the Institute.

Step (II)

Appear in and pass IPCC (Integrated Professional Competence Course)

Step (III)

Join CA final course:

After passing PCE one has to register for Final course with the Board of Studies of the Institute Complete articled training of 3-1/2 years.

Step (IV)

Pass Final Examination and complete GMCS Course

Step (V)

Enrol for membership in the Institute

Objective of the New Scheme.

The new scheme that has been introduced in 2008 emphasizes on simplified entry norms on a unifornl basis through Common Proficiency Test (CPT) which is an objective type test held two times in a year, i.e., June and December. After passing 10th standard examination a student can register with the Board of Studies and prepare for entry level test while pursuing 10 ..o. 2 level study, complementing theoretical education by appropriate modules of practical training.

Common Proficiency Test (CPT)

It is an entry level test for Chartered Accountancy Course. It is a test of four subjects i.e., Accounting, Mercantile Laws, General Economic and Quantitative Aptitude with an objective to test basic knowledge in these subjects areas. The test is of 200 marks. This test is divided in to two sessions of two hours each with a break in between. CPT is an objective type test with negative marking.

Common Proficiency Test at a Glance

A simplified entry to the Chartered Accountancy Course.

A test of four subjects - Fundamentals of Accounting, Mercantile Laws, General Economics and Quantitative Aptitude

A four hour duration 200 marks test with negative marking

Minimum Pass class: 10th Standard examination.

Register with the Board of Studies for Common Proficiency Test.

Collect Study Packagte Prepare for the test by reading the material. Practise by appearing by appearing in mock tests available in compact disks with the study package specified minimum study period.

Simultaneously study and appear in Senior Secondary Examination (10 +2 examination)

Appear in Common Proficiency Test

Be eligible to register for Professional Competence Examination after passing Common Proficiency Test and Senior Secondary Examination.

Frequently Asked Questions

1. What is the Common Proficiency Test?

It is dn entry level test for Chartered Accountanc) Course. It is a test covering four subjects i.e. Accounting, Mercantile Laws, General Economics and Quantitative Aptitude. This is of 200 marks

2 Who all can join the course?

A student who has passed the 10th standard examination conducted by an examining body duly constituted by law in India or an examination recognized by the Central Government a equivalent thereto, may register for Common

3 How to apply for admission to the CPT Course?

A student may buy Prospectus remitting Rs.IOO. Our institute, Sreeram Coaching Point (CCP) , will assist you in registration.

4. What all documents are required to be submitted along with the application form?

i) One photograph is to be affixed on the application form

ii) DD of Rs.1500 is to be drawn in favour of the Secretary, The Institute of Chartered Accountants of India, payable Chennai

iii) Attested copy of Certificate proving Date of Birth.

iv) Attested copy of certificate I mark sheet of 10th standard examination. Attestation can be done by a Gazetted Officer! Principal of the school! Chartered Accountant.

5. Where to submit! despatch filled-in application form? The application form ean be obtained and/or submitted in our office.

Legal World - Corporate Laws - LW 15-02-2009 - by Mr. Kamal Garg

SHIVALIK SAVINGS AND GENERAL INVESTMENTS LTD. (IN LIQUIDATION) v. C.J.SINGH & ORS [(2009)147 COMP CAS 22 (P& H)] Permod Kohli J. [Decided on 15.09.2008]

Companies Act, 1956 - Sections 542 and 543 - Misfeasance proceedings against directors - Winding up order passed in 1989 Misfeasance proceedings initiated in 1995 - Whether limited by time - Held, No.

Brief Facts: The applicant-company was ordered to be wound up by an order dated January 27, 1989. The official liquidator filed a petition under section 478 of the Companies Act, 1956 read with rules 249 to 254 and 256 of the Companies (Court) Rules, 1959, for public examination of the erstwhile directors of the company. The court upon forming a prima facie opinion that fraud had been committed by the ex-directors by its order dated November 18, 1993, directed them to attend the public examination. The order was challenged and the appeal was dismissed on March 24, 1994 and a District and Sessions Judge was asked to examine the ex-directors of the company publicly in terms of section 478 of the Act. The judge submitted his report dated March 31, 1995, giving a finding that the directors of the company had committed fraud in the promotion, formation and conduct of the company as stated in the application by the official liquidator. Based on the report of the judge, the official liquidator, inter alia, sought directions of the court for recovery of the amount from the directors and to punish them under section 538 of the Act. The respondents sought dismissal of the application on the grounds that the prayer in the petition for public examination had been granted and no fresh action was warranted, that the application was beyond the period of limitation, that the claim of the

creditors sought to be recovered from the directors was also barred by time.

Decision: Application allowed.

Reasons: The objection that no further action was warranted is not sustainable as the prayer of the official liquidator in the petition seeking directors for public examination of the respondents was two fold and included the prayer for initiation of penal proceedings against the respondents. The District and Sessions Judge had been specifically directed to submit his report within two weeks of conclusion of the public examination. The limitation of five years prescribed in section 543(1) of the Act would and should commence from the date the acts complained of came to surface and became known. The limitation of five years would commence from March 31, 1995 and the application filed on July 4, 1995, was within the prescribed period of limitation. For the various acts of malfeasance, misfeasance and breach of trust, the respondents were liable for criminal prosecution under section 542(3) as also for section 543(1) of the Act. The directors were also liable to reimburse the company the amount found by the Sessions judge to have misutilised by them.

LW 16.02.2009

RASIKLAL S. MARDIA v. O.L. OF MARDIA CHEMICALS LTD. [(2009) 147 COMP CAS 31 (GUJ)] K.A. Puj J. [Decided on 15.04.2008]

Companies Act, 1956 - Section - Company under liquidation OL failing to represent the company in legal proceedings Shareholder seeking to represent the company in assistance to the OL - Whether permissible-Held, Yes.

Brief Facts: The respondent-company was ordered to be wound up and proceedings initiated by various creditors against the company were pending. The applicant, a promoter, shareholder, ex-chairman and managing director of the company and also a guarantor to loans advanced to the company in liquidation sought, inter alia, permission of the court to represent all legal cases filed by and against the company in order to protect the legal interests of the company in liquidation and to initiate contempt proceedings against the official liquidator for not representing the company in violation of the orders passed by the court thereby causing irreparable loss to the company in liquidation. The second respondent, ICICI bank objected to the application on the ground that it was barred by the principle of res judicata since the permission sought by the applicant earlier to represent all cases filed by or against the company was rejected.

Decision: Application allowed.

Reasons: It was true that permission to represent the company in liquidation in pending litigations filed by or against the company was not granted earlier expecting that the official liquidator would take proper care of all pending proceedings.

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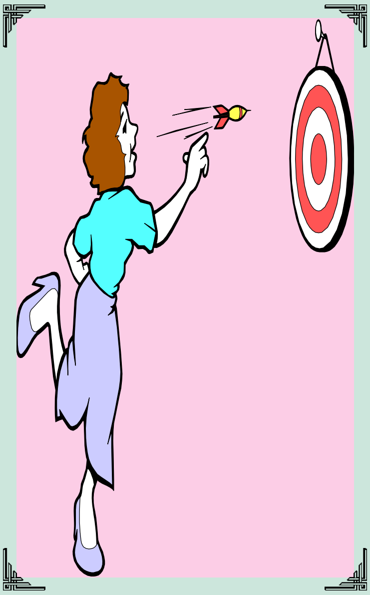
Continued in next edition



Last *Week's* Question:

What is the difference between present obligation and possible obligation?

Present Obligation

A present obligation that arises from past events but is not recognised because:

(i) It is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or

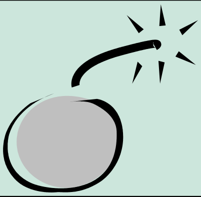
(ii) The amount of the obligation cannot be measured with sufficient reliability.

Possible Obligation

A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity.

This Week's Question: **What is Euro Market?**

Send your queries and suggestions to : joinsreeram@gmail.com



Jokes

Doctor! I have a serious problem; I can never remember what i just said.

When did you first notice this problem?

What problem? (Scott)

= =oo0oo= =

I lost my pet rat?

Give an add in the Newspaper

But is doesn't have a habit of reading Newspapers

= =oo0oo= =

When is your Birthday?

1st Jan

Which year?

Every Year

= =oo0oo= =

Patient to the eye doctor: "Whenever I drink coffee, I have this sharp, excruciating pain."

"Try to remember to remove the spoon from the cup before drinking."

= =oo0oo= =

Patient: I always see spots before my eyes.

Doctor: Didn't the new glasses help?

Patient: Sure, now I see the spots much clearer.

= =oo0oo= =

Teacher: Johnny, you know you can't sleep in my class.

Johnny: I know. But if you were just a little quieter, I could sleep well.

= =oo0oo= =

Prosecutor: Did you kill the victim?

Defendant: No, I did not.

Prosecutor: Do you know what the penalties are for perjury?

Defendant: Yes, I do. And they're a hell of a lot better than the penalty for murder

= =oo0oo= =

An applicant was filling out a job application. When he came to the question, "Have you ever been arrested?" He answered, "No." The next question, intended for people who had answered in the affirmative to the last one, was "Why?" The applicant answered it anyway: "Never got caught."

= =oo0oo= =

Salesman: This computer will cut your workload by 50%.

Office Manager: That's great, I'll take two of them.

= =oo0oo= =

Tomorrow, what is your programme?

I don't have any important job. But I can't sleep anyway.

Why?

Tomorrow, my office is not working.

= =oo0oo= =

Rules, Rules, Rules!!!

by Mr. L.N. Venkataraman

You have to learn the rules of the game. And then you have to play better than anyone else.

- Albert Einstein

Man creates rules to regulate and control human behaviour. Therefore rules shape our responses to circumstances. Rules are found in all aspects of life. We have moral rules for conduct, family rules for bonding, society rules for harmony, school rules for discipline, traffic rules for smooth travel, game rules for entertainment, company rules for productivity, state rules for peace and nature's laws for existence. Rules give meaning to our lives. Some rules are less obvious such as those for composing music, writing, studying, chanting mantras, acting, eating or exercise. These rules help us grow and develop in the areas mentioned. They act as the fundamentals to specialise in the chosen area. This article focuses on these less obvious rules.

Einstein's quote in the beginning is inspiring. His "game" is much broader in meaning than an ordinary game. By "game" he probably meant physics or science or life in general. He points to the competitive nature of the game. Perhaps he also points to the need to improve on what others have already done. One has to be strong in the rules of the game before even trying to play better than others. One cannot ignore the rules. Rules are an essential part. Rules broken spoil the richness of the game. Those who know the rules understand the "game" or subject much better than others. However being a specialist in a subject may rob one from expertise in other subjects. We get isolated into little islands of knowledge. Whether Einstein considered this fact is debatable.

Experts master the rules of their subject. An expert writer's view of a piece of writing is much different than that of an ordinary reader. The writer can get into the true meaning of the writings and can absorb and retain information far better than others. He or she can even think of ways to write better sentences in the writing. It gives a commanding position to judge the strengths and weaknesses of the author's writing. In short the writer is in control. Let us take an example of a movie actor. The actor has a much different thought on a movie than an average person. The actor understands the nuances of the act. The response from the average person is passive while that of the actor is active.

Both the writer and the actor have developed the means for critical analysis in their areas. However both may fail if their roles are reversed. Each lives in an isolated island of knowledge with no meaningful connection to other sources (or islands) of knowledge. The same applies to each of us. The parable of the elephant and the blind men symbolises this idea. Each blind man recognises only a certain feature of the elephant and cannot make out that it is indeed an elephant. They do not get the complete picture. Similarly, though we may have a broad view in one area, we have a limited view in other areas. Is it possible to develop a holistic view wherein all those islands join together to form a great mainland?

The only answer to the question is to apply the rules of the subject to observe patterns and relationships in it. The goal would be to develop critical thinking based on the rules, to analyse and assimilate the true meaning of the subject. The more we do so for subjects we are less confident at, the more complete we become. To quote Ashleigh Brilliant, "Life is the only game in which the object of the game is to learn the rules."

Class Timings & Venue

SUBJECT	DATE	TIMINGS	VENUE
Direct Taxation	14th March to 23rd March, 2009	9.30 am to 4.30 pm	No. 7, Sree Flats, 4/3, Krishnaswamy Street, North Usman Road, T. Nagar, Chennai-600 017
Accounting Standards	24th March to 30th March, 2009	10.00 am to 5.00 pm	P.S. High School, Behind Sanskrit College, Mylapore, Chennai - 600 004
Auditing	11th April to 15th April, 2009	9.00 am to 5.00 pm	P.S. High School, Behind Sanskrit College, Mylapore, Chennai-600 004

Registration in full swing

For more details
& queries
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- CPT is the gateway of CA course
- CPT means Common Proficiency Test
- CPT is objective type exam consisting 4 papers
  1. Accounting 2. Quantitative aptitude
  3. Economics 4. Mercantile Law
- Anybody who has completed 10th std., can enroll
- +2 candidates/Graduates (Commerce/Non-commerce) students are eligible for writing CPT exam

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For more details & queries
Contact :

MR. C. K. BHALAJI
Cell**: 98409 54207**

Class Timing: 10 a.m. to 5 p.m. - All days

Course Fee: **5,500/-**only

(Inclusive of Service Tax and Registration Fees)

Website: www.sreeramcoachingpoint.com