



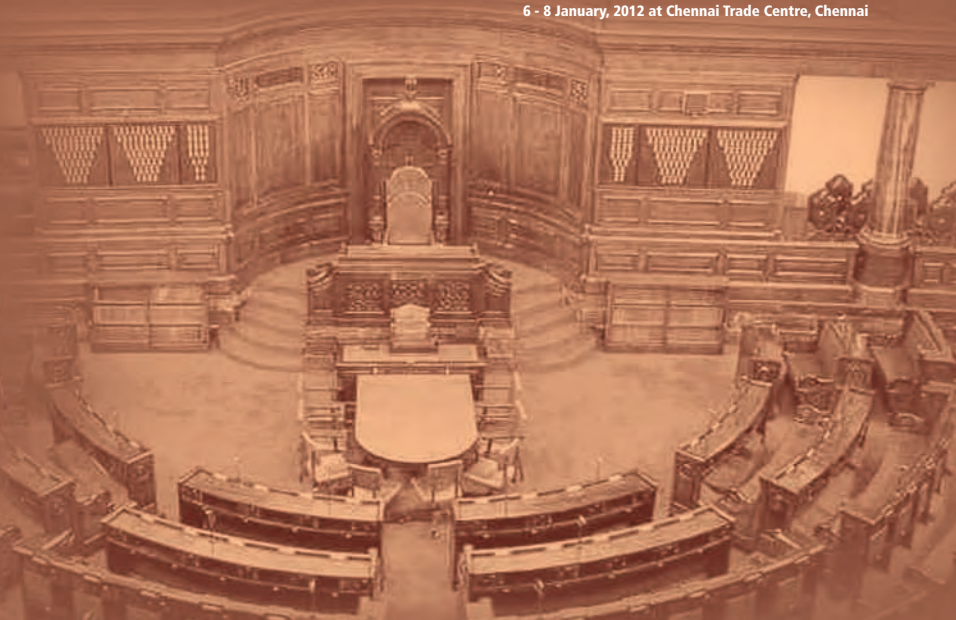
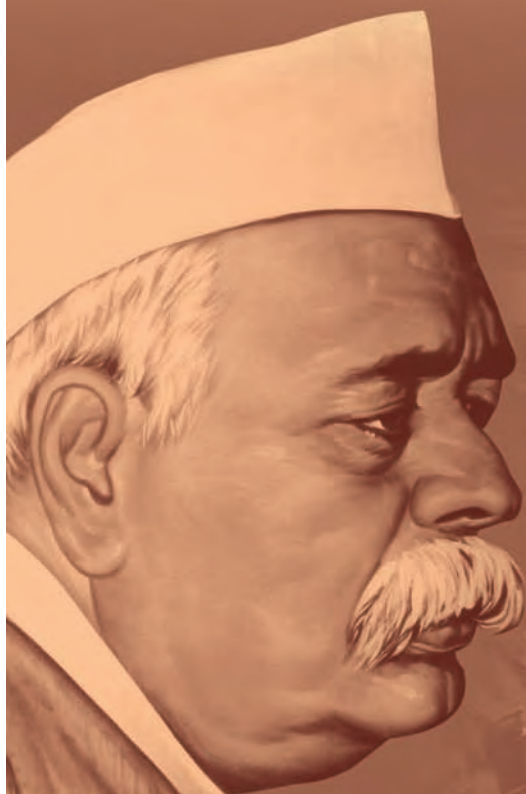
THE CHARTERED ACCOUNTANT JOURNAL

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



ICAI International Conference

*"Accountancy Profession: Leveraging
Emerging Challenges For Inclusive Growth"*
6 - 8 January, 2012 at Chennai Trade Centre, Chennai



“...there is no dispute...(that accountants in India) are considered to be efficient enough to examine and certify the correctness of accounts of any firm, however big and, however, extensive its business may be, that is situated in this country... it is, I think, reasonable to conclude that so far as their capacity, ability, sense of responsibility and respectability are concerned they do not lag behind any other class of accountants...If such (big) firms can come under the scrutiny of these accountants and auditors, I see no reason why these people should be supposed to be lacking in qualifications, competence or efficiency...When they can be credited with such work, I submit that they are entitled to the best designation that we can give them and in these circumstances their request should not be treated as unceremoniously as it has been so far.”

Shri Govind Ballabh Pant

Union Home Minister (1955-61) and first Chief Minister of Uttar Pradesh (1950-54)

(Defending the competence of accountants qualified and trained in India, while strongly supporting the use of designation *Chartered Accountant* in the Legislative Assembly)

HAPPY
NEW
YEAR
2012

The Economic Morass and the Way Out

The gloomy global scenario has finally quite visibly started casting a shadow on India. A noticeable slowdown in manufacturing sector, sharp slump in industrial output, decline in mining output, some delay in reforms, high inflation and rising interest rates have pulled down the Indian economy's growth to 6.9% in the second quarter, much lower than the 7.7% growth recorded in the previous quarter this fiscal. The economy has slumped to its lowest in more than two years while output expansion at key industries tumbled to a six-year low. To make the matters all the more worse, a slowing economy and less than buoyant revenues are making fiscal deficit slip out of control. Further, many economists say that India may face its worst financial crisis in decades if it fails to stem a slide in the rupee.

Another casualty of the uncertainty in global economy and some delay in decision-making is the 'investments'. The Gross Fixed Capital Formation (GFCF) has registered a negative growth of minus 0.6% in real terms for the latest ended quarter. This had earlier happened in January-March 2009 — the peak period of earlier global financial crisis. Also, the GFCF as a proportion of GDP at current prices (more commonly known as investment rate) has slumped to 28%, which is about the levels in 2004-2005.

Meanwhile, according to data released by Controller General of Accounts recently, the fiscal deficit for the first seven months (April to October) of the current fiscal has already hit 75% of the targeted deficit for the entire year. This has serious implications for domestic inflation since a large fiscal deficit is an important contributor to overall demand pressures. The Centre has pegged the fiscal deficit target for 2011-2012 at 4.6% of GDP, but in view of current estimates fiscal deficit can be as much as 5.7% of GDP.

Yet another related major area of concern is the slide in Indian Rupee by more than 16% in the past four months — to about 53 per dollar after touching a low of 54 per dollar recently. The drop in the portfolio inflows and the hefty current account and fiscal deficits have been a key factor behind the rupee's decline. As Europe's banks deleverage, investment money has flooded out of India's markets. If Europe's debt troubles deteriorate, India could be hit with a balance of payments crisis as severe as the one that forced a sharp devaluation in 1991. In this scenario RBI is left with a difficult choice over how to make the best use of its limited \$300 billion reserves to maintain the confidence of foreign investors. If the RBI is too timid, it risks adding fuel to the ire of portfolio investors, which India relies on heavily to cover its imports tab.

However, when considered in the backdrop of serious global slow down, the decline in India's GDP growth is not all that disappointing. By all indications, the slowdown is only temporary and unlikely to jeopardise India's long-term growth story if investments keep coming. The Indian economy is, in some ways, better placed than many other

nations to withstand a fresh round of global economic turmoil. India's resilience results from the fact that the bulk of India's GDP is domestic demand driven. In fact, our top policymakers have also exuded confidence that overall growth would be 7% to 7.5% this fiscal, but not without 'hard days' ahead, particularly in the third quarter. Finance Minister Pranab Mukherjee said: "I am expecting that the present downturn will be temporary and our economy will soon revert to high growth," adding that "basic fundamentals of the Indian economy are still strong. Rate of savings is high. Yes, it is not as high as 35% to 36%, but it is around 33% to 33.5%. Rate of investment is around 34% to 35% despite depression." Planning Commission Deputy Chairman Mr. Montek Singh Ahluwalia attributes the fall in GDP growth mainly to the fall in investments, but expects the economy to rebound in the fourth quarter with overall growth rate of 7% to 7.5%. Prime Minister's Economic Advisory Council Chairman Dr. C. Rangarajan says that expected improved performance in agriculture in the third and fourth quarters should help the economy record annual growth of 7.5%.

A way out from the current economic morass is that the Government expedites the decisions on various issues linked with our growth and does a big balancing act. The reforms need to be stepped up to enable fiscal correction, and resources need to be redeployed from wasteful consumption expenditures to productive investments. More avenues need to be opened for investments and allowing 51% FDI in multi-brand retail is economically a good move if implemented with adequate checks and balances. It is good that the RBI, which has raised rates by 375 basis points since March last year, has put a brake on its tightening monetary policy for the first time in the current year keeping all the policy rates unchanged in the recently Mid Quarter Review of Monetary Policy for 2011-2012 in view of somewhat encouraging inflation numbers. Indeed, the RBI cannot afford to relax its guard on inflation which has continued to remain above 11% for almost a year now. The successive repo rate hikes have done little to curb inflation, but have considerably impacted investments by making capital more expensive and eating into the profits of the firms. So far as fiscal deficit target is concerned, a big balancing act and fiscal consolidation is the need of the hour. However, any reckless cuts in Government expenditure may not go down well with growth prospects. In this regard, the Chartered Accountants, as the backbone Indian financial system and facilitators of fiscal prudence and financial discipline, can play a pivotal role in boosting the growth. The current situation demands that all the forces having stakes in Indian economy join hands for national and global benefits.

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

ICAI Bhawan, Post Box No.7100, Indraprastha Marg,

New Delhi-110002, Tel: +91 (11) 39893989.

E-mail: icaiho@icai.org, Website: www.icai.org

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DELHI: No.7, 1st Floor, Nizamuddin (West) Market.

New Delhi-110013. Tel: +91 (11) 4669 9999.

BENGALURU: Old No. 583, New No. 9, Sri Manjunatha Krupa,

80 Feet Road, 3rd Cross, Opp. Koramangala Police Station,

Bengaluru-560095. Tel: +91(80) 4161 8966/77.

KOLKATA: 206-Jodhpur Park, Kolkata - 700068. Tel: +91(33) 2473

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CHENNAI: AKS Pooja Complex, 2nd Floor, Old No: 203 New No:

154, R. K. Mutt Road, Mandaveli (Next to Jagan Mohan Clinic),

Chennai-600028.

HYDERABAD: H.No: 8-2-684/3/R/1&2, Flat No: 304, Alankrith Apts,

Gulmohar Avenue, Rd No: 12, Banjara Hills, Hyderabad.

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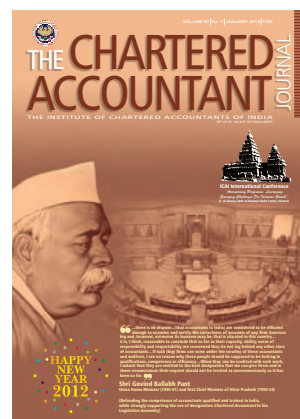
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6TH - 8TH JANUARY, 2012 AT CHENNAI TRADE CENTRE

- 1006** In the context of integrated and diversified financial operations, our profession is undergoing a sea change in its fundamentals, including a need for uniform accounting code. At this crossroads, with our determination to stick to integrity, we cannot forgo our responsibility at any cost. This Conference aims to touch essentially all such aspects...



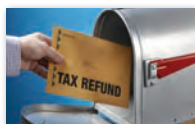
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Smile Please





CA. G. Ramaswamy, President, ICAI

Dear Friends,

Our accession to the designation 'chartered accountant' turned into reality after a prolonged struggle of our accountants, who were trained and educated in India, and were socially and professionally perceived different despite an equality in their abilities and rightfulness to audit accounts of companies in India, with their contemporary Chartered Accountants, who got their formal education from one of the British chartered societies. It started with an honest demand for a common status for all accountants of India. Veterans like Shri Govind Ballabh Pant, Shri Mohammad Ali Jinnah, Shri Krishna Kant Malaviya, etc., came out strongly in favour of the Indian accountants in the Legislative Assembly in 1936. Shri Jinnah argued: *...I stand for Indian talent, I want complete privileges and same rights as those given to anybody else in my country.* In fact, this demand reminded us of a 1925 recommendation of the Indian External Capital Committee that included the educationist Shri Madan Mohan Malviya and the celebrated legislator Shri Vithalbhai Patel, to establish the order of chartered accountants in this country through the formation of an all-India Institute.

Unfortunately many felt in those days and some carry that misplaced notion even today that the designation 'Chartered Accountant' has a colonial baggage in it. Let us understand before we term and frame something colonial. All that is English or British is not colonial. With such wrongly-positioned understanding, we will have to change the names of

many of the existing core courses in our Universities, as they were started following the British models. History and literature will also be withdrawn following this misplaced notion. In fact, I would like to quote here Shri Govind Ballabh Pant: *...we have M.A.'s and LL.B.'s as in Cambridge...There are mechanical engineers again qualified in England as in India. Are not their titles common?...I do not mind suffering from an inferiority complex if it goads us on to a superior status, but I do not want superior arrogance if it tends to perpetuate an inferior status.* It was the British who introduced modern education in our country from which we got acquainted with the existing contentions of world academia. Our own Ministry of Commerce had noted just before the enactment of the Chartered Accountants Act, 1949 that there was '*no insuperable legal objection in using the designation 'Chartered Accountants'.*' This designation was well-accepted those days in countries including Canada, Alberta, British Columbia, Manitoba, South Africa, Cape of Good Hope and South Rhodesia. It is still being used without any hint of 'colonial'. Therefore, we will have to be quite sensitive in understanding what colonial is.

Our journey had begun with quite a clear conscience. Even today, a change just for the sake of change will not be acceptable to us. We would not allow anybody, for that matter, to doubt our sense of integrity and national pride, which has been the core and integral aspect of our professional constitution. We have been partnering in all possible ways with our Government since the profession's inception in 1949. Our sense of responsibility and accountability is well-defined. We do not believe in futile exercises at the cost of our national resources, as this would be an absolute insult to the efforts of our intellectuals, who continue to command respect from all spheres of our society even today.

Let me update our stakeholders now with some important developments in the profession that have taken place in the past one month:

CA Amendment Bill Passed by Both Houses of Parliament

The Chartered Accountants Amendment Bill has been passed by both the Lok Sabha as well as the Rajya Sabha, thus, paving the way for limited liability partnerships (LLPs) and multidisciplinary partnerships subject to notification of the relevant provisions, after the assent of the President of India and issue of guidelines for multidisciplinary partnerships by the Council. The Bill, moved by the Hon'ble Corporate Affairs Minister Dr. M. Veerappa Moily, will allow chartered accountants to have a choice to form a business model of LLPs to offer their services. This legislation will expectedly help them achieve a leadership position in the services sector. Our members' practice through LLPs and Partnership firm and their entry to MDPs has been allowed. LLPs

can also be called firms within the meaning of the CA Act, 1949 and the CA Regulations, 1988.

Second Meeting of IASB Emerging Economies Group in New Delhi

I am happy to share with all of you that we recently hosted the second meeting of the IASB Emerging Economies Group in New Delhi, for the first time in India, which was inaugurated by Deputy Comptroller & Auditor General of India Shri A. K. Awasthi. I participated in the meeting along with the ICAI Vice-President CA. Jaydeep N. Shah, IASB Vice-Chairman Mr. Ian Mackintosh, IASB Director of International Activities Mr. Wayne Upton, and IASB Board member Mr. Prabhakar Kalavacherla. The two-day meeting was attended by representatives from eight countries, i.e. Brazil, China, India, Indonesia, Korea, Malaysia, Russia and South Africa, focusing chiefly on the effects of changes in foreign exchange rate and currency translation. At the meeting, it was decided to keep close cooperation and coordinate perspective in order to contribute to the development of high quality global accounting standards through tracing specific accounting issues from emerging economies for in-depth study. I expressed my concerns from the perspective of the emerging economies, as the adverse effects of volatility in foreign exchange rates affects that them more than the advance economies, as the currencies of emerging economies are not reserve ones and they rely more on foreign investments to ensure growth in their economy. The discussion aimed at finding a common solution for all emerging economies and various alternatives in this regard.

Partner-in-Nation-Building Initiatives

Pre-Budget Memorandum, 2012: Like every year, we have recently submitted the Pre-Budget Memorandum on direct taxes as well as on Indirect Taxes to the CBDT and the CBEC respectively. The recommendations in Pre-Budget Memorandum, 2012 have been finalised on the basis of representations, suggestions received and subsequent discussions held. The core issues regarding the Direct Taxes had also been placed before the CBDT Chairman Shri M. C. Joshi in a Pre-Budget meeting.

In the Pre-Budget Memorandum, on the Direct Tax front, we have suggested to introduce a requirement to upload the tax audit report digitally signed by the tax auditor to prevent the misuse of details of members in the returns filed by the assesseees who are subject to tax audit. We also suggested for suitable measures to provide relief to the genuine hardship faced by the assesseees on account of imposition of penalty where there is no actual concealment of income or no inaccurate particulars of income have been furnished by the assessee. A scheme on the lines of *Kar Vivad Samadhan Scheme* (KVSS) was recommended too for introduction. Another very important recommendation

is suggesting deduction of expenditure incurred by corporates on community/social development (both capital and revenue) to provide suitable tax incentives in respect of such CSR Costs. We submitted that this deduction will accelerate the process of development and ensure that our country achieves the goal of being a developed nation.

On the Indirect Taxes side, we have recommended/suggested that (i) submission of audit report be made mandatory in service tax also along with audited annual accounts, (ii) suo moto adjustments of excess amount paid towards service tax liability be allowed without any limit in case of assesseees not having centralised registration also in view of the fact that chances of errors or omissions have increased manifold in e-payment of service tax, (iii) in line with the legal services, individual Chartered Accountants be also exempted when providing professional services to individual service receivers. Further, the status-quo, by continuing the exemption which was hitherto available to CAs for representational services be restored till such time as the matter is finally decided and (iv) all inputs and input services used wholly and exclusively for the purpose of business be allowed as input tax credit and there should be no artificial restriction or exclusions in relation to such input tax credit.

The Memoranda have been hosted on the Institute's website and executive summaries of these memoranda have also been published in this issue of Journal for the information of members.

Global Commerce Education Summit: I am happy to acknowledge that we recently organised the Global Commerce Education Summit in New Delhi to provide a forum for exchange of views on issues of academic and practical interest, viz. need for relevant course-curriculum, teaching methodology, examination reforms, etc., among the leading academicians from the commerce and accountancy education in India. The objective was to assess the current state of the commerce and accountancy education in India, the changing environment in view of the introduction of the IFRS, Goods and Services Tax, etc., and integrate the same in the course-curriculum, which was attended by many Vice-Chancellors, Heads of Departments/Chairmen/Deans/Professors of commerce and management of various universities, IITs, IIMs, etc. I along with the ICAI Vice-President CA. Jaydeep N. Shah addressed the Summit representing the Institute among others. My Central Council colleagues CA. Amarjit Chopra, former ICAI President, CA. Charanjot S. Nanda, CA. J. Venkateshwarlu, CA. Naveen N. D. Gupta, CA. Rajkumar S. Adukia, and CA. Pankaj Tyagee were also present on the occasion.

RBI Working Groups on Statutory Auditors and Concurrent Audit: Pursuant to our request, the RBI

has informed us that a working group on "Revision in the Norms for Empanelment of Statutory Auditors and Other Issues Related to Appointment of Auditors in Public Sector Banks" has been formed and I have been made a member of the group. A meeting of the group has already taken place recently. Further, Report of the RBI working group on "Concurrent Audit System in Commercial Banks" has also been finalised by the Group. We have also recently submitted suggested format of the revised Long Form Audit Report to Shri K.C.Chakraborty, Dy Governor, the RBI.

Workshop on Financial Management in Chennai: Realising our responsibility in nation-building, we have not only been providing assistance to central and state governments to develop effective mechanism for financial administration and management of public fund but also taking initiatives to update their officials by providing awareness about the benefits and necessity of accounting reforms in government sector for addressing the issues of transparency, good governance and for meeting challenges posed by consumer activism, citizens rights and RTI, etc. I am happy to acknowledge that we recently organised a two-day *Workshop on Financial Management in SPSUs/Boards* for the Accounts & Finance Heads of SPSUs/Boards and the officials of Finance (BPE) Department, Govt. of Tamil Nadu in Chennai. I along with Shri Thiru K. Shanmugam, IAS, Principal Secretary to the Government of Tamil Nadu, Finance Department, inaugurated the Workshop in the presence of CA. Anuj Goyal and CA. P. Rajendra Kumar, my Central Council colleagues, Shri Thiru P. Raghvan, Additional Director, Finance Department, Government of Tamil Nadu, and CA. K. Shanmukha Sundaram, SIRC Chairman.

Introduction of The Companies Bill, 2011

The Companies Bill, 2011 was introduced in the Lok Sabha on 14th December, 2011. As we all know, the Bill is a completely new one, very much different from the one on which we had earlier made our presentation before the Standing Committee. Many new Sections and provisions which are very important from professional perspective have been added on which neither the profession nor any other interested groups/stakeholders have had any opportunity to express views. Since the passage of the Bill has been deferred in the current session of Parliament, I request all the members to provide their suggestions on the provisions introduced so that we can make our revised presentation once again.

Corporate and Industry Initiatives

ICAI's Corporate Forum and ICAI Awards 2011: We recently organised our 5th Corporate Forum 2011 in Bangalore, a two-day event for our members-in-industry, which comprised many concurrent events including Career Ascent, Corporate Conclave, Financial Services Expo, etc. *Corporate Conclave*,

a two-day national convention for our members-in-industry, was attended by more than 400 members. I had the pleasure of inaugurating this Convention in the presence of the ICAI Vice-President CA. Jaydeep N. Shah and my other Central Council colleagues. *Financial Services Expo* was held to showcase the products and services relevant to the profession. *Career Ascent* was organised with a registration of 1,358 candidates.

The Corporate Forum also included, *ICAI Awards 2011*, which was held at the Bangalore Palace and attended by more than 2,500 members. It was a colourful event graced by the august presence of our Chief Guests including the Hon'ble Corporate Affairs Minister, Dr. M. Veerappa Moily, and the Rajya Sabha Deputy Chairman, Shri. K. Rahman Khan. Well-known playback singer Ms. Usha Uthup enthralled the audiences with her melodious songs. I am happy that my 27 Central Council colleagues participated in this function, where exemplary work of our members-in-industry were recognised and honoured. I feel proud that they have demonstrated excellence in their professional lives and have become role models for other members-in-industry as well. In total, 18 awards were conferred for excellence in three different categories. To select the awardees, we had organised a required Jury meet in Mumbai under the leadership of Shri N. R. Narayana Murthy, Chairman Emeritus, Infosys Limited.

Jury Meeting for ICAI Awards in Financial Reporting: We have been holding ICAI Awards for Excellence in Financial Reporting annually since 1958 to recognise excellence in presentation of annual reports. Emphasis is given on the quality and manner of presentation of information, besides technical and statutory compliances, and reporting from corporate governance perspective. Meeting of the Jury for Awards was held recently in Mumbai under the chairmanship of the Deputy Comptroller & Auditor General of India, Shri A. K. Awasthi. Awards will be given post-inauguration at our forthcoming International Conference, to be held from 6th to 8th January, 2012 in Chennai.

2nd Conclave of Members in Entrepreneurship & Public Services: Encouraged by the success of first conclave, we are organising the Conclave of ICAI Members in Entrepreneurship & Public Services again in Mumbai in January 2012 with an objective to encourage the participation of our members in entrepreneurship and public services in the Institute's activities and to provide them an interactive platform, aiming at enhancing the efficacy of our activities by factoring our members' perspective and vision. I sincerely appreciate our members in entrepreneurship or public services, as they have not only established themselves in their career, but, in process, have positioned the brand CA on a higher pedestal.

Regional Conference of WIRC: Recently, 26th Regional Conference of WIRC of ICAI was organised in Mumbai, which was graced by the presence of Dr. M. Veerappa Moily, Hon'ble Minister of Corporate Affairs and Dr. D. Subbarao, Governor, Reserve Bank of India as Chief Guests. Addressing the participants, Hon'ble Minister spoke on the CSR provisions in the proposed Companies bill and cited that consultations for framing a 'national corporate governance policy' would be started soon. Dr. D. Subbarao, in his speech mentioned that the "auditors are the 'eyes and ears' of RBI, and we trust them to alert us to early warning signals to assist us in our supervisory process". He further stressed that profession needs to identify emerging opportunities in the market place and develop the skills needed to exploit them.

Submission of Various Suggestions

Suggestions on TDS in Service Tax and Refunds in Service Tax: The CBEC had proposed to introduce a mechanism of tax deduction at source for service tax collections. We have submitted our suggestions on the same to the CBEC. Further, CBEC had also issued a Draft Circular inviting comments/suggestions on refunds in service tax with a view to streamline the process of sanctioning of refund claims, mainly arising on account of service tax borne on input services that have gone into exports of services in terms of Notification No. 5/2006. Suggestions on the Draft Circular have also been sent to the CBEC.

Suggestions on Taxation of Services: The CBEC had also issued a concept paper on Taxation of Services based on a Negative List of Services and invited suggestions/comments. We had submitted our suggestions to the CBEC, which has now issued a revised concept paper based on the feedback it received. I feel satisfied that many of our suggestions have been accepted by the Government.

Suggestions on GST Amendment Bill, 2011: We have also submitted our suggestions on the Constitution 115th Amendment Bill, 2011 (Goods and Service Tax), to the Government recently. We have welcomed the Bill and committed ourselves to provide full support to the Government in this path-breaking initiative. The Bill will pave way for the most awaited reform in indirect taxation system of India. One of the significant recommendations made by us is that experts in the area of accounting be also there in the Bench of Goods and Services Tax Dispute Settlement Authority considering that GST is value added tax system and its monitoring is record based. The accounting professional would facilitate in understanding the financial implications of the dispute and its resolution.

Inputs Submitted on Tax Accounting Standards: With regard to the release of Discussion paper on Tax Accounting Standards (TAS), we have submitted

our comments/suggestions to the CBDT. The recommendations/suggestions have been finalised on the basis of suggestions received and subsequent discussions held. As a whole, it has been respectfully submitted that prescription of such "Standards" is not necessary and would increase complexity and litigation, which is contrary to the objectives of the CBDT. However, if at all Tax Accounting Standards are to be notified, the same should be notified under Section 295 rather than Section 145 and should be renamed as "Tax Computational Rules" instead of "Tax Accounting Standards".

Second Meeting of Standing Committee on TDS: My Central Council colleague CA. Sanjay Agarwal among others attended the second meeting of the Standing Committee on TDS for exchange of ideas on enhancing voluntary TDS/TCS compliance, strengthening partnerships with tax practitioners, etc. The meeting was also attended by the representatives from FICCI, CII, Delhi Tax Bar Association, etc. Major issues being faced by assesseees in claiming TDS were flagged by ICAI. We also submitted a compilation of issues being faced in claiming TDS to the Committee. Issues presented by us were appreciated by the Committee.

Professional and Capacity Building Initiatives

General Amnesty Scheme for Members: The Executive Committee of the ICAI Council has at its recent meeting considered the question of putting a General Amnesty Scheme in place for members whose names had been removed on account of non-payment of membership fee with a view to facilitating such members restore their names with retrospective effect. The Committee recommended to the Council that the members whose name stood removed in the past due to non-payment of membership fee be given an opportunity, by way of a General Amnesty Scheme, to restore their name, irrespective of the period of such removal, retrospectively on payment of applicable membership fees for the year during which the name was removed and for the current year, i.e. 2011-2012 - the year in which the restoration of name is applied for together with fee(s) of the intervening year(s), if any, along with Form '9' and the additional (restoration) fee of ₹1,200. The Committee further recommended that the above General Amnesty Scheme be kept in force (and inclusive of) 31st March, 2012.

Clarification regarding number of tax audit assignments under Section 44AB: The ICAI Council, at its 311th meeting held recently, has clarified that audit prescribed under any statute which requires the audit report in the form as prescribed under Section 44AB of the Income-tax Act, 1961 shall not be considered for the purpose of reckoning the specified number of tax audit assignments if the turnover of the auditee is below the turnover limit specified in Section 44AB of the Income-tax Act, 1961. For instance, audit

under Section 44AD, under DVAT, 2004 (for turnover between ₹40 lakh and ₹60 lakh), etc., will not be considered for inclusion in the current limit of 45 audits. The said clarification has also been hosted on the Institute website.

QRB Meeting in New Delhi: A meeting of the Quality Review Board (QRB) was held recently in New Delhi, which I attended along with my Central Council colleagues, where we considered the recommendations made by the Review Group constituted with a view to assessing the quality of audit and reporting by the auditors/audit firms, and to enable the Board to complete inspection and assessment of quality of audit and reporting by at least 10-15 auditors/audit firms auditing accounts of public interest entities in India by March 2012. The Board decided that the Review Group may further augment the panel of chartered accountants to act as technical reviewers with the Board so that the Board can have sufficient number of technical reviewers from different parts of the country for undertaking review of audit quality of auditors/audit firms in India. The Board also appreciated the QRB Workshop organised by the Institute last month in Mumbai.

Financial Review of Enterprises and Training Programmes: During this Council year (2011-2012), we have undertaken the review of 193 enterprises selected either on suo motu basis or as special cases. Pending receipt of eight Annual Reports, the review of 185 enterprises has been initiated. Preliminary review of 181 enterprises has been completed by the Technical Reviewers, which have been allotted to Financial Reporting Review Groups (FRRGs) for further review. So far, the FRRGs have submitted the review report on 104 enterprises for consideration of the Board, and have finalised the review of 23 enterprises. To aid our technical reviewers, we have decided to conduct six training programmes at our various Regions/Branches including Bhubaneswar, Ahmedabad and New Delhi to guide them on further enhancing their review skills of the general purpose financial statements and to familiarise them with major non-compliances during the review of general-purpose financial statements of various companies.

Software for Billing and Accounting, and Payroll Management: In order to empower our professionals further, we will soon be arranging the Billing and Accounting software, i.e. software for accounting and billing on cash-basis, which will be a complete package to manage all accounting and billing requirements of a CA Firm on cash system of accounting and provide facilities to generate bills, receipts, vouchers, etc. We will also be arranging the Payroll software, i.e. software for payroll management for professionals named 'Payroll' Software. The software is a complete package to manage all small business firms' PF, ESI, PT and TDS aspects of the same. This software will be available to

all our practitioners and CA firms free-of-cost for two financial years.

XBRL Software and Certificate Course: I am happy to acknowledge that 703 training programmes, awareness programmes, workshops and teleconferencing programmes on XBRL have been organised across the nation with a participation of more than 23,000 members. We will soon be arranging XBRL software for our members towards cloud service for the MCA mandate XBRL filing, i.e. a solution for converting financial information of a company in XBRL format as per the MCA mandate. The software will be available to all CA firms free-of-cost for two financial years. Further, in order to provide requisite technical knowledge to our members to learn this new form of business language, the XBRL India has decided to launch a Certificate Course on XBRL. The XBRL India board has constituted a committee comprising my Central Council colleagues CA. Atul C. Bheda, CA. K. Raghu, CA. S. Santhanakrishnan, CA. Abhijit Bandyopadhyay and CA. Rajkumar Adukia for working out the layout, content and other modalities in this regard.

Initiatives for Students

MoU between ICAI and University of Madras: An MoU was signed with the University of Madras recently in Chennai for the furtherance of commerce and management education and to provide an opportunity to acquire undergraduate and postgraduate degrees for those who have registered for the CA course. Recognising the subjects studied at all stages of the CA course, i.e. CPT, Intermediate PCE/IPCE and Final, the University of Madras is launching special professional integrated courses in B.Com./M.Com. and BBA/MBA for our members and students. We have also agreed for an arrangement to carry out research, leading to award of MPhil and PhD degrees, while organising joint seminars on contemporary issues relevant for commerce, management and other related subjects. During the ceremony, besides Shri R. Kannan, IAS, Principal Secretary to the Government of Tamil Nadu, Higher Education Department, I was also present along with Col. Dr. G. Thiruvassagam, Vice-Chancellor, University of Madras, Dr. T. Leo Alexander, Registrar, University of Madras, CA. Jaydeep N. Shah, Vice-President, ICAI, and CA. V. Murali, my Central Council colleague, among others.

Release of CPT Online Self-Assessment Test and E-Learning Module on Financial Analysis: Two useful online resources, CPT online subject-wise Self Assessment Test to assist our students in a timed environment, and e-Learning Module on Financial Analysis using MS Excel 2010 to enable our students use MS Excel for financial analysis and reporting requirements, were released recently during the National Convention for CA Students in Chennai. I feel quite satisfied to acknowledge that we have received

an enormous response from our students, especially with regard to our e-learning initiatives.

Infrastructure Update

It's my firm view that providing all facilities from the Institute at the doorsteps of our members and students is the need of the hour. And due to consistent growth in number of our members and students, it is necessary that we should also accelerate the process of Infrastructure set-up. In that line, I am pleased to inform you that I have inaugurated the building of the Bellary Branch of ICAI and also performed *bhoomi puja* for the building of Varanasi and Tirupur Branches.

Important Publications

Report on Accounting on Food, Fertilisers and Oil Subsidy: In order to deal with the current methodology and deficiencies in the current system of accounting for subsidies and recommendations for the improvement in the current practices, we have prepared a *Study Report on Accounting on Food, Fertilisers and Oil Subsidy*, which was released by the Rajya Sabha Deputy Chairman Shri K. Rahman Khan during the ICAI Corporate Forum in Bangalore recently.

Compilation of Registration Provisions under VAT Laws: A publication, *Compilation of Registration Provisions under VAT Laws of Different States*, was also released by Shri K. Rahman Khan during the ICAI Corporate Forum in Bangalore recently. The Compilation contains information regarding registration provisions under VAT laws of 20 States.

Technical Guide on Internal Audit of Mutual Fund Industry: The Indian mutual fund industry is witnessing a rapid growth and facing challenges in achieving sustainable growth while increasing retail penetration. Here, internal auditors have a dynamic role to play in reviewing the risk and performance analysis to meet the required transparency. We have recently come up with a *Technical Guide on Internal Audit of Mutual Fund Industry*, which deals with the governing regulations of mutual funds in India. It contains a comprehensive internal audit checklist too.

Life in aggregate has been quite tough these days in view of the full-blown attack of winter since mid-December this year, especially in the northern part of our nation. Airlines and railway services are getting affected badly. It is notable that lack of shelter is adding to the hardships of our destitute fellow citizens. I would sincerely urge our member-professionals to be kind to them especially in this hour, who genuinely need a lot of care and comfort.

We all know that winter at its peak literally paralyses all our endeavours. But we should always remember what the celebrated author Arthur C. Clarke had said: *The only way of finding the limits of the possible*

is by going beyond them into the impossible. We should not be disappointed by our failures, as our best success comes only after our disappointment, according to a Latin proverb. For inspiration, we might look up to our present Government's action plan and its fast-paced executions. Integrity, responsibility and accountability of our citizens are on their prime agenda nowadays. Cabinet has passed the Judicial Standards and Accountability Bill, 2010, Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010, i.e. Whistleblowers' Protection Bill, and Citizens' Charter and Grievance Redressal Bill, 2011. Cabinet has also cleared Food Security Bill for the underprivileged. Lokpal and Lokayukta Bill has also been cleared. Grievance Redressal Bill has been introduced in the Lok Sabha. In brief, there has been a nation-wide concern and awareness regarding the evils of service and administration at all layers of the democracy. Let us not forget the words of wisdom of the great Albert Einstein: *Believe with all of your heart that you will do what you were made to do.* We have never forgotten this. We have always been the front-runners in such endeavours through our strict compliance with the declared *Code of Ethics* and our strict and fast disciplinary mechanism. We have truly and successfully strived to be a role model for such exercises and responsibilities of our nation. And I completely agree with the acclaimed poet Robert Frost that *we should not wait to strike till the iron is hot; but we should make it hot by striking*, as luck favours only those who take initiatives and brave the adversaries.

We are about to leave 2011 and touch 2012. I extend my sincere wishes for 2012, the New Year, in advance to all of you. It is time to reflect on what we have accomplished last year. It is also time to take stock of our successes and failures, and understand what helped in creating our success stories, and why we did not achieve what we had planned. Let us understand ourselves better in the perspective of our past, so that we could start afresh with a new energy. It is time to take into account of our learning processes, as it will help us in creating customised learning processes. Let us prepare a balance sheet on the promises that we keep, lose, or, wish to follow in our life, whose financial year would be eternal.

I wish all my readers a very warm and Merry Christmas filled with love, peace and joy, on the birthday of Jesus Christ. May this festival bring merriment, happiness and satisfaction in your life! Amen!



CA. G. Ramaswamy
President, ICAI
December 24, 2011

December 2011 CA Journal "A knowledge Bank"

➤ I am happy to say that December 2011 CA Journal was really "A knowledge Bank". The article named "Municipal Bonds and India" has given the exposure of opportunity to raise funds through local authorities for nation building. "Guidance Note on Certification of XBRL Financial Statements" will definitely help our practising professionals to meet statutory compliance. The special coverage on "Penal provisions for non-compliance of CPE guidelines in various countries" has enlightened the importance of CPE requirements and I request our esteemed institute to make a clear provision regarding the same for our members because as of now our members are not clear about the penal provisions of not completing CPE requirements within the stipulated time as this is the early stage in the adoption of it in our profession in India. I sincerely appreciate the works of the editorial board for such a good designed knowledge bank journal.

-CA. Jomon C.V., Mumbai

➤ The cover page of the December 2011 issue carrying photograph and profession oriented words of Shri C. D. Deshmukh, the first Indian RBI Governor (1943-1949) are informative for all times. Well explained editorial "Decline of Indian Rupee Hits Economy," and President's write up are quite informative. Legal Update is very much knowledge enhancing as it covered all the areas of Direct and Indirect taxes, Companies Act, RBI, circulars and notifications, etc. 'Accounting for Customer Loyalty Programmes - IFRS Perspective' by CA. Vivek Raju P., 'Municipal Bonds and India' by Mr. Anand Wadadekar, 'Tantalization Agreement with US will

Augment Billions of Dollars Annually in India's Forex' by CA. Rakesh Kumar Jain and CA. Gagan Gujral, 'Tech for You' (Using Business Intelligence Tools & Techniques) by CA. A. Rafeeq, besides National and International updates, penal provisions for non compliance of CPE Guidelines in various countries are worth reading and worth preserving. Thanks for providing treasure of knowledge every month. Information is Power. Keep up the Good Show.

-CA. Subhash Chandra Podder, Kolkata

➤ I am very pleased to inform you that the articles published under 'International Taxation' feature are informative, analytic, as well as practical, especially the topics which are contributed by the Committee on International Taxation.

-Hrishikesh D. Khatri

Journal Extremely Informative

➤ The journals provided by the ICAI are extremely informative for the members as these help us to keep ourselves up-to-date on the various happenings in our financial, legal and economic environment. Further, I would like to make a few suggestions. For better interaction with readers/members and for value added knowledge services to the readers, the journal should make use of social networking sites, which are quite popular mode of communication these days. Further, there should be a system wherein the members can communicate with the Editor and President of the ICAI directly.

-CA. Dhiren G. Shah

Hats Off to the ICAI

➤ It was good to read about latest on Satyam fraud that ICAI has barred two auditors from practice for life and

slapped a penalty of ₹5 lakh each on them in connection with the scam following a probe by the disciplinary committee of ICAI. As a member, I feel personally proud of ICAI in this regard. Yes, with this we have not only set greatest precedent in the history of ICAI and Corporate India but have showed all what the President of ICAI, CA. G Ramaswamy has referred in his message for December 2011 issue of the journal and I quote him "we are instantly reminded of our Conviction about the Consciousness that we must possess while carrying out our professional responsibilities". I am also reminded great Quotes by Legendary Adv. Nani Palkhiwala, who has also given us his Words of Wisdom on the following lines: "When you lose a Case, nothing is lost. When you lose a Client again nothing is lost, even you lose a Judge, still nothing is lost, but when you lose your Conscience then everything is lost." Once again congratulations to whole team of the Central Council of ICAI for setting highest standards and helping regaining the public confidence in CA fraternity.

-CA Suniel R. Karbhari, Pimpri Chinchwad, Pune

Corrigendum

Readers please note that a mention in the President's message of November 2011 issue of the journal that Udaipur branch building was inaugurated by the President is factually not correct.

In the article titled 'Justice is Important, Rules and Procedure are Handmaids: Discussion in View of SC Verdict' on page 728 of November 2011 issue the word 'principle' with reference to 'Principle of Natural Justice' has been inadvertently wrongly spelt. Errors are deeply regretted.

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 board@icai.org or write to: nadeem@icai.org

The Editor, The Journal Section, ICAI, A-29, Sector 62, Noida (UP) - 201309



26th Regional Conference – WIRC

Dr. M. Veerappa Moily, Hon'ble Minister of Corporate Affairs, Dr. D. Subbarao, Governor, Reserve Bank of India, CA. G. Ramaswamy, President ICAI and CA. Shrinivas Y. Joshi, Chairman WIRC at the 26th Regional Conference of the WIRC at Mumbai. (16.12.2011)



Emerging Economies Group

Mr. Wayne Upton, Director of International Activities, IASB, Mr. Prabhakar Kalavacherla, Board Member, IASB, CA. G. Ramaswamy, President, ICAI, CA. Jaydeep N. Shah, Vice-President, ICAI, and Mr. Ian Mackintosh, Vice-Chairman, IASB, during 2nd meeting of the Emerging Economies Group of the IASB in New Delhi. (19-20.12.2011)



MoU with Madras University

Signing of MoU between ICAI and University of Madras in Chennai. Seen from left to right are: CA. G. Ramaswamy, President, ICAI; Dr. R. Kannan, IAS, Principle Secretary, Higher Education, Government of Tamil Nadu, Col Dr. G. Thiruvassagam, Vice Chancellor, University of Madras and CA. Jaydeep N. Shah, Vice-President, ICAI. (02.12.2011)



Regional Conference – EIRC

Unveiling the conference backgrounder during Regional Conference of EIRC of ICAI in Kolkata. Seen from Left to Right are: CA. Jaydeep N. Shah, Vice-President ICAI; Shri Sovan Chatterjee, Mayor, KMC; CA. G. Ramaswamy, President, ICAI; Shri Partha Chatterjee, Cabinet Minister, Govt. of West Bengal; and CA. Sushil Kr. Goyal, Chairman EIRC of ICAI. (25-26.11.2011)



Regional Conference – NIRC

Shri Prakash Javadekar, Hon'ble Member of Parliament, inaugurating the Diamond Jubilee Regional Conference of the NIRC of ICAI in New Delhi in the presence of CA. G. Ramaswamy, President ICAI; Central Council members CA. Vinod Jain and CA. Sanjay Agarwal; CA. Rajesh Sharma, Chairman, NIRC; regional council members and other dignitaries. (26.11.2011)



Global Commerce Education Summit

Inauguration of Global Commerce Education Summit in New Delhi. Seen from left to right are: Prof P. K. Sahoo, Vice-Chancellor, Utkal University; CA. Jaydeep N. Shah, Vice-President, ICAI; CA. J. Venkateswarlu, Central Council member; CA. G. Ramaswamy, President, ICAI; Shri Vijay Kapur, Director, Board of Studies, CA. (Dr.) Ashish Bhattacharyya, Director, International Management Institute. (05.12.2011)



Publication Released

ICAI publication "Accounting on Food, Fertilisers and Oil Subsidy" was released by Shri K. Rahman Khan, Hon'ble Deputy Chairman, Rajya Sabha, in the presence of CA. G. Ramaswamy, President-ICAI, CA. Jaydeep N. Shah, Vice-President and CA. Anuj Goyal and CA. K. Raghu, Central Council members during the ICAI's Award Ceremony held in Bangalore. (09.12.2011)



7th Social Get Together

CA. G. Ramaswamy, President, ICAI, and CA. Jaydeep N. Shah, Vice President, ICAI, at the 7th Social Get Together of ICAI Employees Association (Southern Region) at Chennai. (02.12.2011).



Workshop on Financial Management

Two-day Workshop on Financial Management in SPSUs/Boards for the accounts & finance heads of SPSUs/Boards and the officials of Finance (BPE) Department, Govt. of Tamil Nadu was held in Chennai. Seen in the picture (L to R) are CA. Rajendra Kumar P., Central Council Member-ICAI; Thiru P. Raghavan, Additional Director-Finance, Govt. of Tamil Nadu; CA. G. Ramaswamy, President-ICAI; Thiru K. Shanmugam, IAS, Principal Secretary to Govt. of Tamil Nadu; Finance Department, CA. Anuj Goyal, Chairman, CPF&GA; and CA. K. Shanmukha Sundram, Chairman-SIRC of ICAI. (2-3.12.2011)



Bhoomi Poojan at Varanasi

CA. G. Ramaswamy, President ICAI performing bhoomi poojan during foundation stone laying ceremony of the Varanasi Branch of the CIRC of ICAI. Also seen in the photograph Central Council members CA. Anuj Goyal and CA. Ravi Holani; Executive Committee members of Varanasi Branch and other dignitaries. (27.11.2011)



Building Inauguration at Bellary

CA. G. Ramaswamy, President, ICAI in the presence of Central Council member CA. K. Raghu, SIRC Chairman CA. K. Shanmukha Sundaram, Bellary branch managing Committee members and other dignitaries inaugurating the branch building of the Bellary branch of SIRC of ICAI. (03.12.2011)



Sub-Regional Diamond Jubilee Conference

CA. G. Ramaswamy, President, ICAI in the presence of Central Council member CA. M. Devaraja Reddy, SIRC Chairman CA. K. Shanmukha Sundaram and branch managing Committee members inaugurating the Sub-Regional Diamond Jubilee Conference organised by SIRC and hosted by Guntur Branch at Guntur. (01.12.2011)



Jury Meet – ICAI Awards for Excellence in Financial Reporting

CA. G. Ramaswamy seen with Jury Chairman Shri A. K. Awasthi, Dy. C&AG of India, and other eminent jurists during Jury Meet for finalising the ICAI Awards for Excellence in Financial Reporting, in Mumbai. (08.12.2011)

Know Your Ethics*

Ethical Issues in Question-Answer Form

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

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

- (a) in respect of cases where the death of the proprietor concerned occurred on or after 30-8-1998.

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

- (b) in respect of cases where the death of the proprietor concerned occurred on or after 30-8-1998 and there existed a dispute as to the legal heir of the deceased proprietor.

Provided the information as to the existence of the dispute is received by the Institute within a year of the death of the proprietor concerned. In respect of these cases, the name of proprietary firm concerned shall be kept in abeyance till one year from the date of settlement of dispute.

- (c) in respect of cases where the death of the proprietor concerned had occurred on or before 29-8-1998 (irrespective of the time lag between the date of death of the proprietor concerned and the date of sale/transfer of goodwill completed/to be completed)

Provided such a sale/transfer is completed/effectuated and the Institute's permission to practice in the deceased's proprietary firm name is sought for by 28-8-1999 and also further provided that the firm name concerned is still available with the Institute."

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

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

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

A. Where a new auditor is appointed, the incoming auditor has an obligation to communicate the fact of his appointment to the retiring auditor and make enquiry as to whether there are any professional or other reasons why he should not accept the appointment. This is intended not only as a mark of professional courtesy, but also to know the reasons for the change in order to be able to safeguard member's own interest, the legitimate interest of the public and the independence of the existing accountant. The provision is not intended, in any way, to prevent or obstruct the change. The incoming auditor may not accept the audit in following cases:

- Non-compliance of the provisions of Sections 224 and 225 of the Companies Act as mentioned in Clause (9)
- Non-payment of undisputed audit fees by auditees other than in case of sick units for carrying out the statutory audit under the Companies Act, 1956 or various other statutes; and
- Issuance of a qualified report.

Q. Can the details of a student passing examination be published in local press?

A. It is usual for local papers to publish details of the examination success of local candidates. Some biographical information is often included. The candidate's name and address, school and local background, examination passed with details of any prize or place gained, the name of the principal, firm and town in which the principal practices may be published.

Q. Can a member act as an Insurance Surveyor?

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

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

A. No, the Council has decided that the tax auditor cannot act as an internal auditor or vice versa for the same financial year.

Q. Can a concurrent auditor of a bank also undertake the assignment of quarterly review of the same bank?

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

* Contributed by the Ethical Standards Board of the ICAI

Q. Can a member act as insurance agent and arrange business for Insurance Company?

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

Q. Can a member or firm advertise his/it's services?"

A. Yes, in a restricted manner within the provisions of advertisement guidelines issued by the Council on 14th May, 2008. For advertisement guidelines, please refer pages 309-312 of Code of Ethics, 2009 (issued under Clause -7 of the First Schedule)

Q. Is a member holding certificate of practice entitled to own agricultural land and continue agricultural activity?

A. Yes, member holding certificate of practice can own and hold agricultural land and continue agricultural activity through hired labour.

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 procedure which is followed for misconduct under the Second Schedule.

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 CA 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 letter-heads, 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 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. ■

International Conference

Accountancy Profession: Leveraging Change & Challenges

6th to 8th January, 2012 at Chennai Trade Centre

As financial markets integrate and business operations diversify; the seamless integration has occasioned ripples never seen before. While at one end one sees the expanding horizons for professionals and professional services; one still grapples with sporadic issues of service quality, need for a uniform lexicon of globalised standards to name a few. Accountancy profession like any other professional services is today at threshold. The responsibility is cast more on the accountancy profession as unlike others it touches upon vast segment of society. The challenges of trust, utility, technology, relevance and in process adherence to laid ethical norms are all the more important and should form the part of “must do” for each one of us so that the profession is projected as a responsible constituent and collaborative partner in whatever sphere of economic activities it is.

The ICAI believes that in such complex and emerging times; it is knowledge sharing of emerging paradigm and its application in a practical context which would provide the requisite information, skill application and empathisation to broader context so that these learning outcomes are dovetailed by membership and other stakeholders in their professional pursuits. Recognising its responsibility to the stakeholders in general and ICAI members in particular; the ICAI is organising the International Conference. The International Conference is a forum of establishing interface for region's most influential thought leaders in the field of accounting, finance & business and participants from academics, researchers, practitioners and policy makers to share and gain fresh insights in cutting-edge information on global trends, issues and challenges. Participants would only have the occasion to professionally upgrade but also have enough networking opportunities with vast segment of accounting fraternity which is likely to participate not only from across pan India also likely to see significant delegations from SAARC Region and galaxy of International speakers and those from industry, government and other regulatory constituents.

It is an event which extends to full two days on 7th & 8th January, 2012. The Conference would be an assimilation of learned resources in areas of financial reengineering, Governance, harmonisation of standards; Financial cauldron & learning lessons, SMP Context, Accountants and millennium Developmental goal and related issues out of current and emerging context.

CPE Hours	12 hours	
Delegate Fees	Members (ACA)	₹ 2000
	Members (FCA)	₹ 2500
	Non Members	₹ 3000
	Foreign Delegates	US\$ 125
	On the spot Registration	Members ₹ 3000
How to make payment	Pay online at www.icaai.org or by Demand Draft in favour of 'Secretary ICAI, Chennai International Conference 2012 A/c', Payable at Chennai	
Program Details	DAY ONE 6th JANUARY, 2012 5:30 pm – 8:00 pm	
	Inaugural Session	
	ICAI Awards for Excellence in Financial Reporting	
	Dinner	
	DAY TWO 7th JANUARY, 2012 8:00 am – 5:30 pm	
	Session – I: Towards Globalised Accounting Framework – A Reality Check	
	Session – II: Value Creation through Innovation & Entrepreneurial Vision	
	■ Easing the Regulatory Burden on SMEs & SMPs	
	MoU with Association of International Accountants	



Session – III: Professional & Social Panorama

- Knowledge Innovations for Inclusive Growth
- International Taxation & Transfer Pricing
- Working towards an Enterprise Governance Framework- Indian Perspective

Special Session: Professional Opportunities Abroad

Session – IV : Accountancy Profession: Serving a Wider Landscape

- Equity as tool to Inclusive Growth
- Banking Sector- Maintaining Resilience to Risk and Shock
- Integrated Reporting: New Paradigm of Sustainability Reporting
- Competency Building of SMEs in the Emerging Milieu

Dinner

DAY THREE
8th JANUARY, 2012
9:00 am – 5:00 pm

Session – I: Financial Sector – Fulcrum of Inclusive Economic Growth

- Financial Sector – Fulcrum of Inclusive Economic Growth

Session – II : Harmonisation of International Auditing Standards – International & Indian Perspective

- Harmonisation of International Auditing Standards – International Perspective
- Harmonisation of International Auditing Standards – Indian Perspective

Session –III : Encouraging Good Governance through Market Mechanisms

Session – IV: Standards for Government Accounting & Reporting

- Harmonisation of Accounting Standards: Global Perspective
- Accounting for National Development – Public Finance and the Professional Accountants

Special Session: Managing Through Turbulent Times : Balancing Growth & Stability

Session – V: Emerging Paradigm of Accounting Profession

- XBRL in the Business Reporting Supply Chain and the role of Chartered Accountants

Panel Discussion: Past President's ICAI Vision – 2030

Special Session: Managing Through Turbulent Times : Balancing Growth & Stability

Session – V: Panel Discussion: Competency Building of SMEs in the Emerging Trade Order



Eminent Speakers

CA. Suresh Prabhu, Former Union Minister
 CA. Piyush Goyal, Member of Parliament, Rajya Sabha
 Dr. K. C. Chakrabarty, Dy. Governor, RBI
 Mr. Naved Masood*, Secretary, Ministry of Corporate Affairs
 Ms. Sudha Pillai, Secretary, Planning Commission
 Mr. A. K. Awasthi, Dy. Comptroller & Auditor General
 CA. M. M. Chitale, Chairman NACAS
 Mr. Avinash Srivastava*, Joint Secretary, MCA
 CA. Keki Mistry, MD, HDFC Ltd.
 CA. P. K. Choudhary, Vice Chairman & Group CEO, ICRA
 CA. T. V. Mohan Das Pai, Director, Manipal Universal Learning
 CA. R. Sankariah, ED Jubilant Organosys
 CA. Nirmal Jain, Chairman, India Infoline Ltd.
 Ms. Kavita Venugopal, Group President & Chief Risk Officer, YES BANK
 Mr. N. Ram,* Editor in Chief, The Hindu
 Mr. Jelil Bouraoui, Board Member, International Federation of Accountants
 Mr. Giancarlo Attolini, Chair, IFAC Small & Medium Practices Committee



Cultural Nights
6th & 7th
January, 2011

	Eminent Speakers Mr. Mark Spofforth, Dy. President, ICAEW Mr. Bill Palmer, Director – Asia, ICA Australia CA. Prabhakar Kalvacherla, Member, International Accounting Standards Board Mr. Kevin Stevenson, Chairman, AOSSG Ms. Liv Watson, XBRL International Mr. Reyaz Mihular, Chairman, SAFA Accounting & Auditing Standards Committee Mr. Eamonn Siggins, CEO, CPA Ireland Mr. Rob Thomason, EGM, CPA Australia Mr. Rashid Rahman Mir, President ICA Pakistan Mr. Sudarshan Raj Pandey, President, ICA Nepal Ms. Parveen Mahmud, President, ICA Bangladesh Mr. Sujeewa Rajapakse, President, ICA Srilanka CA. R. Balakrishnan*, Past President, ICAI CA. N. C. Sundararajan*, Past President, ICAI CA. B. P. Rao, Past President, ICAI CA. G. Sitharaman*, Past President, ICAI CA. R. Bupathy, Past President, ICAI CA. Kamlesh Vikamsey, Past President, ICAI Padmashri CA. T N Manoharan*, Past President, ICAI CA. Ved Jain, Past President, ICAI Mr. R. Narayanamohan, Chairman, Singapore Indian Chamber of Commerce & Industry CA. P. R. Ramesh, FCA CA. Narendra Aneja, FCA CA. T.P. Ostwal, FCA CA. Venugpoal Govind, FCA ‘*’ Confirmation awaited			
Organisers	Conference Chairman CA. G. Ramaswamy President, ICAI		Conference Co-Chairman CA. Jaydeep N. Shah Vice-President, ICAI	
	Conveners			
	CA. S. Santhankrishnan Central Council Member	CA. V. Murali Central Council Member	CA. Rajendra Kumar P. Central Council Member	
	Co-Convenor			
	CA. K. Shanmukha Sundaram Chairman, SIRC			
	Co-ordinators			
	CA. S. Murali Secretary, SIRC	CA. P. R. Aruloli Regional Council Member, SIRC	CA. Gopal Krishna Raju Regional Council Member, SIRC	
For registration and other details please contact	Shri T. V. Srinivasan, Deputy Secretary (044-30210320) Shri D. Vijayaragavan, Deputy Secretary (044-30210325) Shri Nitin Grover, Executive Officer (011-3011 0443) ICAI Bhawan, 122, Mahatma Gandhi Road, Post Box No. 3314, Nungambakkam, CHENNAI-600 034 Email: vijayaragavan@icai.in ; tvsrinivasan@icai.org ; ic@icai.org Website: http://www.icai.org			
For sponsorship related details please contact	Dr. Surinder Pal, Sr. Dy. Director (011-3011 0430) Email: spal@icai.in			
For more details, please visit http://www.icai.org				

ICAI Corporate Forum-2011 Boosts Accountancy Profession: A Report

The Institute of Chartered Accountants of India organised Corporate Forum 2011 – a two days mega event on 9th to 10th December 2011 in Bangalore. This is the fifth time in a row that the Committee for Members in Industry of the Institute has organised such an event. These events have been a mix of opportunities for the corporates and the members of ICAI. The Corporate Forum also included the much awaited ICAI Awards-2011 ceremony in the evening of 9th December 2011 at Bangalore Palace, Bangalore. The event comprised several concurrent events viz., Career Ascent- Mid Career Campus, Corporate Conclave, Financial Services Expo and ICAI Awards 2011. The programmes were conducted simultaneously in different locations on 9th and 10th December, 2011 in Bangalore.



ICAI President CA. G. Ramaswamy inaugurates Corporate Conclave in the presence of ICAI Vice President CA. Jaydeep N. Shah, ICAI Council members CA. K. Raghu, CA. Madhukar N. Hiregange, CA. Bhavna Doshi, CA. Anuj Goyal, CA. Sanjay Kumar Agarwal and other dignitaries

CORPORATE CONCLAVE: ICAI President CA. G. Ramaswamy inaugurated the event which was a two day National Convention on contemporary topics and it was organised at Hotel Lalit Ashok on 9th and 10th December 2011. The topics covered included Direct Taxes, Information Technology, Indirect Taxes – VAT, International Taxation, Corporate Laws and Accounting Standards. It provided the members, an opportunity to enrich the knowledge and enhance their skill sets. More than 350 members participated in the Convention.

FINANCIAL SERVICES EXPO: ICAI President CA. G. Ramaswamy inaugurated the Expo which was organised at Hotel Lalit Ashok, Bangalore on 9th and 10th December 2011. **Financial Services Expo** acted as a platform where Chartered Accountants and Corporates from all over India marked their presence. This enabled various organisations involved in Banking, Insurance, Mutual Funds, Capital Markets, Real Estate, Information Technology products and services and other technological products to interact with the chartered accountants, investors, finance fraternity, and corporate decision makers.

CAREER ASCENT was organised at Hotel Bangalore International, Bangalore on 9th December 2011. A total of **1358** candidates were registered. It helped Chartered Accountants who have one year or more of industry experience with growth and career prospects to realise their full potential and aspirations and widen their horizon. A total of three companies participated in the career Ascent programme.



ICAI President CA. G. Ramaswamy opens the ICAI Awards-2011 ceremony in the presence of ICAI Vice President CA. Jaydeep N. Shah, ICAI Council members CA. Pankaj Tyagee, CA. K Raghu and other dignitaries.

ICAI AWARDS 2011: The glittering event of ICAI Awards 2011 was graced by the valuable presence of eminent Chief Guests such as **Dr. M. Veerappa Moily, Union Minister of Corporate Affairs** and **Shri. K. Rahman Khan, Deputy Chairman, Rajya Sabha**. The well known singing sensation **Ms. Usha Uthup** enthralled the audience with her mesmerising voice.

Speaking on the occasion, ICAI President CA. G. Ramaswamy said: "In a dynamic and challenging business environment, Chartered Accountants are considered as Complete Business Solution Providers," adding that Chartered Accountants play a vital role in assisting business and industry to optimise the use of resources,



Union Minister of Corporate Affairs Dr. M. Veerappa Moily, Deputy Chairman of Rajya Sabha Shri Rahman Khan, ICAI President CA. G. Ramaswamy with other dignitaries during ICAI Awards-2011 ceremony.

improve their efficiency as well as facilitate in enabling them to achieve their objectives. "The ICAI awards recognise the achievements of outstanding CAs whose professional achievements and service to the society exemplify the objectives of their Alma Mater," he said.

Union Minister of Corporate Affairs **Dr. M. Veerappa**



Moily, in his address, said that accountancy profession has a proud history of innovation and reform, nevertheless its unwavering commitment to ethics and integrity, to maintain the highest standards, and to protect the public interest has remained constant. He wished

that the Institute should continue to make its valuable contribution to the growth of our economy and the nation in the years to come. He also congratulated to the winners of ICAI Awards 2011.

Deputy Chairman, Rajya Sabha



Shri. K. Rahman Khan, in his address, said that accounting profession was undergoing a paradigm shift with demand far outnumbering supply. He said that accounting profession is unique as its acts as trustee of

transparency and helps the government in all its activities. He also congratulated to the winners of ICAI Awards 2011.

The event was cheered and witnessed by a jam-packed audience. The awards honoured the exemplary work of Chartered Accountants in Industry by recognising those who have demonstrated excellence in the professional life, personal life and are the role models for others in industry. As many as 18 awards were conferred on Chartered Accountants for excellence in various categories.

The prestigious programme ranging for two days on 9th and 10th December 2011, was widely covered by local

as well as national media encompassing both print media and electronic media.

Jury of ICAI Awards – 2011



Shri N. R. Narayana Murthy, Chairman Emeritus, Infosys Limited addressing in the Jury meet for the ICAI Awards – 2011 held on 28th November, 2011 at InterContinental The Lalit Mumbai, Sahara Airport Road, Andheri East, Mumbai. Other seen in the picture are (L-R) CA. G. Ramaswamy, President, ICAI, CA. K. Raghu, Chairman, Committee for Members in Industry of ICAI.

A high profile jury has been instrumental in the selection process. The luminaries from the Industry who constituted the jury which is as follows:

1. Shri. N.R. Narayana Murthy, Chairman Emeritus, Infosys Limited (Chairman of the Jury).
2. CA. Arun Nanda, Director, Mahindra & Mahindra Limited.
3. Shri. Bharat Goenka, Co-Founder & Managing Director, Tally Solutions Pvt. Ltd.
4. CA. B. P. Rao, Past President, The Institute of Chartered Accountants of India.
5. CA. G. E. Veerabhadrappe, President, Income Tax Appellate Tribunal.
6. Shri. H. D. Khunteta, Chairman & Managing Director, Rural Electrification Corporation Limited.
7. Shri. Jaimin Bhatt, Group CFO, Kotak Mahindra Bank Limited.
8. Shri. Paresn Parasn, Executive Director and Chief Operating Officer, HDFC Standard Life Insurance Company Limited.
9. Shri. P. K. Ghose, Executive Director and CFO, Tata Chemicals Limited.
10. Shri. Sandeep Bakhshi, Chief Executive Officer, ICICI Prudential Life Insurance Co. Ltd.
11. Shri. S. V. Arumugam, Chairman, Confederation of Indian Textile Industry.
12. Shri. Thiru R. Kirlosh Kumar, IAS, Joint Commissioner, CT Dept.
13. Shri. Venugopal Nandlal Dhoot, Chairman & Managing Director, Videocon Industries Ltd.
14. CA. Yeshwant M. Deosthalee, Chief Financial Officer & Member of the Board, Larsen & Toubro Limited

RECIPIENTS OF ICAI AWARDS – 2011*

CA BUSINESS ACHIEVER -FINANCIAL SECTOR  CA. Keki Mistry Vice Chairman & CEO Housing Development Finance Corporation Ltd.	CA BUSINESS ACHIEVER — CORPORATE  CA. Chandrasekaran Ramakrishnan President & CFO Tata Motors Ltd.
CA BUSINESS ACHIEVER — SMALL MEDIUM ENTERPRISES  CA. Prabhakar Rao Bantwal Chairman & Managing Director Suprabha Protective Products Pvt. Ltd.	CA BUSINESS ACHIEVER — GLOBAL ACHIEVER  CA. C. M. Sharma Global Chief Financial Officer Aegis Ltd.
CA BUSINESS ACHIEVER — WOMAN  CA. Neeru Abrol Director Finance National Fertilizers Ltd.	CFO — MANUFACTURING SECTOR  CA. Patel Hasmukhbhai Baldevbhai Chief Finance Officer Gujarat Alkalies and Chemicals Ltd.
CFO — FINANCIAL SECTOR  CA. Ravi Venkatraman Chief Financial Officer Mahindra & Mahindra Financial Services Ltd.	CFO — SERVICE SECTOR  CA. C.P. Toshniwal Chief Financial Officer Pantaloon Retail India Ltd.
CFO — INFORMATION TECHNOLOGY SECTOR  CA. Karandeep Singh VP Finance & Managing Director (India) Sapient Corporation Pvt. Ltd.	CFO — FMCG SECTOR  CA. Sarwate Milind Shripad Group CFO & CHRO Marico Ltd.
CFO — INFRASTRUCTURE & CONSTRUCTION  CA. Devatha Prasad Head of Finance for India Essar Projects(I) Ltd.	CFO — ENGINEERING AND CAPITAL GOODS SECTOR  CA. O. K. Balraj Group Chief Financial Officer Escorts Group
CFO — PUBLIC SECTOR  CA. T. K. Ananth Kumar Director (Finance) Oil India Ltd.	CFO — WOMAN  CA. Vibha Padalkar Chief Financial Officer HDFC Standard Life Insurance Co.

* Photographs of the winners being conferred with ICAI awards-2011 can be viewed on the web link
http://www.icaai.org/forum/photographs_bg.html

CA PROFESSIONAL ACHIEVER — MANUFACTURING SECTOR	CA PROFESSIONAL ACHIEVER — SERVICE SECTOR
 CA. Siddhanta Goel Asst. General Manager (Finance) Volkswagen India Pvt. Ltd.	 CA. S.V. Sunder Krishnan Chief Risk Officer Reliance Life Insurance Co. Ltd.
CA PROFESSIONAL ACHIEVER - WOMAN	CA PROFESSIONAL ACHIEVER - INFORMATION TECHNOLOGY
 CA. Revati Parag Kasture General Manager Credit Analysis & Research Ltd. (CARE)	 CA. Gargi Ray Senior Manager- Risk & Compliance Infosys Ltd.

An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI

Tax Compliance Software



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ICAI- Tax Suite is comprehensive package that combines features of Income Tax, Audit Reports, Service Tax, e-TDS, e-AIR, CMA / Project Report, Form manager software and Document manager.

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- Preparation of Form ST-1, ST-3 and e-Filing of ST-1, ST-3, GAR 7 Challan & Online Payment and Refund Form R.
- Enable Client wise documents management for easy listing, storing.
- Preparation of CMA Project Report with relevant ratios.
- Preparation of CMA data and calculation of MPBF as per Tandon and Nayak Committee.
- Approx. 1000 Blank forms and filled forms with Circulars & Notification of Income Tax.
- Facility to Prepare Annual Information Return and e-Filing thereof (with correction statement).

About the Arrangement

- The vendor will provide initial license free of cost with first two years activation for CA members holding COP as per following table:

Softwares Name	Income Tax/ Service Tax	Balance Sheet/ AIR	TDS
1st Year Activation	A. Y. 2011-12	F.Y. 2010-11	A.Y. 2012-13
2nd Year Activation	A. Y. 2012-13	F.Y. 2011-12	A.Y. 2013-14

- For activation of assessment year immediately next to initial free license, license renewal charges would be Rs. 2100/-. Software capacity to accommodate 700 returns would be increased to 1000 returns for each assessment year/ financial year.
- KDK Softwares will provide full support free of cost from the date of entering into MOU to 30-sept-2013. However afterwards the free support will be provided to members and practicing firms who renew their license.
- KDK Softwares will provide software patches free of cost for the years mentioned in above table.

Downloading the software:

The software may be downloaded free of cost from the website of Committee for Capacity Building of CA Firms and Small & Medium Practitioners (<http://www.icaai.org.in>)

Technical Support for software:

KDK Software will provide technical support to users and renewed customers via phone, email and remote PC access from the date of registering the license.

K.D.K. Softwares (I) Pvt. Ltd., E-mail: support@kdksoftware.com, Ph.: 0141-4123456



Committee for Capacity Building of CA Firms and Small & Medium Practitioners

The Institute of Chartered Accountants of India

[Set up by an Act of Parliament]

New Delhi

Legal Decisions¹

DIRECT TAXES



Income-tax Act

LD/60/70

CIT

Vs.

Asahi India Safety Glass Ltd.

October 4, 2011 (DEL)

[Assessment Years 1997-98 and 1998-99]

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

Expenditure incurred by the assessee for installing, maintaining and updating accounting software and professional expenses was revenue expenditure

The assessee is in the business of manufacturing safety glass which is used in automobiles. Thus the main source of income of the assessee is from the said activity. The assessee entered into an agreement with Arthur Anderson & Associates (Arthur) in the financial year 1996-97 for installation of a software application for assistance in areas related to financial accounting, inventory and purchase. The said agreement between the assessee and Arthur also required the assessee to enter into a back-to-back agreement with Oracle. The reasons perhaps being that the software application supplied by the Arthur worked on oracle application. It is precisely for this reason that Arthur required the assessee to enter into a licence agreement with oracle titled Master Software Licence and Services Agreement. The assessee was thus, required to pay apart from the fee to Arthur qua its agreement with it; licence fee to Oracle. As a matter of fact Oracle also offered support and maintenance services for which a further additional fee was required to be paid to Oracle. The assessee thus admittedly in respect of the aforesaid transactions incurred an expenditure to the tune of ₹1,36,77,664 and ₹1,70,68,811 in assessment years 1997-98 and 1998-99 respectively. In the books of accounts for the assessment years 1997-98 the assessee had not written off any sum, while in the succeeding assessment year, i.e., 1998-99 the assessee had written off a part of the expenditure amounting to ₹9,91,228. On these facts, could it be said that the expenditure incurred by the assessee in the aforementioned assessment years was in the nature of capital expenditure.

The Delhi High Court held that software is nothing but another word for computer programmes, i.e., instructions that make the hardware work. Software is broadly of two types, i.e., the systems software, which is also known as the operating system which controls the working of the computer; while the other being applications such as word processing programs, spread sheets and data base which perform the tasks for which people use computers. Besides these there are two other categories of software, these being network software and language software.

The network software enables groups of computers to communicate with each other, while language software provides with tools required to write programmes.

The aforesaid would show that what the assessee acquired through Arthur was an application software which, enabled it to execute tasks in the field of accounting, purchases and inventory maintenance. The fact that the application software would have to be updated from time to time based on the requirements of the assessee in the context of the advancement of its business and/or its diversification, if any; the changes brought about due to statutory amendments by law or by professional bodies like the Institute of Chartered Accountants of India, which are given the responsibility of conceiving and formulating the accounting standards from time to time, and perhaps also, by reason of the fact that expenses may have to be incurred on account of corruption of the software due to unintended or intended ingress into the system – ought not give a colour to the expenditure incurred as one expended on capital account. On the fact that there are myriad factors which may call for expenses to be incurred in the field of software applications, it cannot be said that either the extent of the expense or the expense being incurred in close proximity, in the subsequent years, would be conclusively determinative of its nature. The assessing officer has erred precisely for these very reasons.

It was submitted by the Revenue that in the books of accounts, the assessee had not written off the expense in issue, while in the succeeding assessment year only a part of the expense had been written off and, therefore, the assessee's own understanding of the nature of the expense involved was that it was expended on capital account.

This submission is only to be stated to be rejected. The reason being that the treatment of a particular expense or, a provision in the books of accounts can never be conclusively determinative of the nature of the expense. An assessee cannot be denied a claim for deduction which is otherwise tenable in law on the ground that the assessee had treated it differently in its books. In the case of *Kedar Nath Jute Manufacturing Co. Ltd. vs CIT (1971) 82 ITR 363* the Supreme court has observed that, whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of accounts be decisive or conclusive in the matter. Therefore, the contention is of no avail to the revenue. Resultantly, the questions of law have to be answered in the affirmative and in favour of the assessee.

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

LD/60/71
CIT
Vs.

Amway India Enterprises
October 4, 2011(DEL)

[Assessment Years 2001-2002 and 2002-2003]

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

Expenditures incurred by assessee in purchasing software applications and acquiring licence to use said applications, was to be allowed as revenue expenditure

Certain expenditure was incurred by the assessee on purchase of software applications. These applications are MS Office Software, Anti Virus software, Lotus Notes Software and Message Exchange applications. The assessee in respect of these applications acquired a licence to use the said applications on payment of consideration. The said expenditure has been disallowed by the Assessing Officer in each of the assessment years by treating the expenditure as one incurred on capital account.

The Delhi High Court held that the issue has been considered and decided against the revenue in a judgment delivered in *CIT Vs. M/s Asahi India Safety Glass Ltd. [ITA Nos. 1110/2006 and 1111/2006]*². Following the same, expenditures incurred by the assessee was to be allowed as revenue expenditure.

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

Expenditure incurred on improvement of leasehold business premises would be allowable as revenue expenditure

Certain expenditure was incurred by the assessee on improvements carried out in respect of business premises held on lease. In respect of the said premises, expenses were incurred on flooring, partition, wiring, false ceiling, roofing, air-conditioning unit and duct, electric wiring, laying network for setting up computers and, on purchase of furniture. Both the Assessing Officer and CIT(A) disallowed the expenses on the ground that they were incurred on capital account. The Tribunal allowed the entire expenditure incurred on improvement of leasehold premises save and except that which was incurred on air-conditioning unit(s) and furniture.

The Delhi High Court held that in *CIT Vs. Hi Line Pens Pvt. Ltd [2008] 306 ITR 182*, had concluded that the expenditure was in the nature of revenue expenditure. In *CIT Vs. Escorts Finance Ltd [2006] 205 CTR (Delhi) 574*, the Delhi High Court held the expenses incurred on improvement of leasehold premises, were in the nature of revenue expenditure and, hence, allowed the deduction claimed under Section 37(1). In a number of cases it has been observed that in ascertaining whether an expenditure incurred is made on revenue account or

otherwise one would have to bear in mind the nature of the expenditure that is, was it incurred for maintenance or preservation of an asset or was it expended otherwise. It thus concluded that if the expenditure was of the former kind it would be in the nature of revenue expenditure. In *Gulamhussein Ebrahim Matcheswalla vs. CIT (1974) 97 ITR 24 (Bom)*, the court rejected the submission that it is the amount spent on repairs which would determine the nature of the expenditure.

Therefore, having regard to the principles laid down in the aforementioned judgments and the nature of the expenses in issue, the revenue's appeal, on this issue, would have to be rejected.

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LD/60/72

Bharati Shipyard Limited
Vs.

Dy. Commissioner of Income-tax
September 9, 2011 (ITAT-MUM-SB)
[Assessment Year 2005-2006]

Section 40(a)(ia) of the Income-tax Act, 1961 – Expenses disallowed – Interest, Commission/ Brokerage etc. paid to a resident

Amendment brought out by the Finance Act, 2010 to section 40(a)(ia) w.e.f. 01.04.2010, is not retrospective in nature; for assessment year 2005-06, even if amount of tax deducted at source was paid before filing of return of income u/s 139(1), same would be disallowed

For assessment year 2005-06, the AO noted that the assessee failed to deposit tax deducted at source within the specified time. On being show caused, it was stated that the amount of tax deducted at source was paid before the filing of return of income u/s 139(1) and hence no disallowance of expenses was called for u/s 40(a)(ia). However, the AO made additions. The question for consideration is as to whether section 40(a)(ia) amended by the Finance Act, 2010 with effect from 01.04.2010 is retrospective from 01.04.2005. Unless stated otherwise, the provisions of the Finance Act, 2010 would have applied w.e.f. 01.04.2011 i.e. A.Y. 2011-12. The provision in question has been specifically given retrospective effect from A.Y. 2010-11. Now the case of the assessee was that the amendment made by the Finance Act, 2010 should be given retrospective effect from 01.04.2005, being the date from which sub-clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.

The Mumbai Special Bench of Tribunal held that it has no where been expressly set out that the amendment is curative or merely declaratory of the previous law. The intention of the legislature as gathered from the Notes on clauses and the Memorandum explaining the provisions of the Finance Bill does not particularly indicate any relaxation in the provision retrospectively from A.Y. 2005-06 by providing that the expenditure on which due tax was deducted up to February, 2005 but paid before the

² Reported in the Chartered Accountant Journal [LD/60/70].

due date specified in section 139(1) of the Act would not suffer any disallowance in the A.Y. 2005-06.

Any amendment to the substantive provision is ordinarily prospective except expressly stated otherwise or it comes out so by necessary implication. Unless the amendment is made applicable with retrospective effect, such amendment to the substantive provision is to be regarded as prospective barring out cases in which it is explanatory or clarificatory on one hand or it aims at removing the unintended consequences.

Section 40(a)(ia) was inserted by the Finance (No.2) Act, 2004 with effect from 1st April, 2005 debarring deductions otherwise allowable u/s 30 to 38 in respect of the items set out in this provision if the assessee failed to deduct tax at source or after deduction, failed to pay the same during the previous year or in the subsequent year before the expiry of the time prescribed u/s 200(1). The position anterior to the insertion of sub-section (ia) of section 40(a), which is continuing today also, is that the assessee is obliged to deduct tax at source under Chapter XVII-B. The failure to deduct or pay tax as per the requisite provisions entails consequences u/s 201 and 271C etc. by which the assessee is treated as in default, becomes liable to pay interest and also suffers penalty. These provisions were also applicable prior to insertion of section 40(a)(ia). It shows that the duty of the payer to deduct tax at source was always there in the Act. With the insertion of section 40(a)(ia) by the Finance (No.2) Act, 2004 non-deduction of tax at source from the items of expenses specified or failure to pay such tax after deduction, results into one more adverse consequence in the shape of disallowance of the amount of expenditure in the year of incurring it. Simultaneous with the disallowance, proviso provides that the deduction of the expenditure shall be allowed in the subsequent year when the deducted tax is paid. To put it simply if there is no deduction of tax at source or after deduction it is paid beyond the previous year or within the time specified u/s 200(1), the income of the first year increases but at the same time the income of the subsequent year is reduced on the payment of tax. It is well-known that each year is a separate and independent unit of assessment. The potential deduction in a later year cannot be allowed to reduce the income for the earlier year and *vice versa*. Total income of an assessee for each year has to be computed as per the provisions of the Act in so far as they apply. It is neither desirable nor permissible to mix up the assessment of two years by claiming that since the deduction shall become permissible in second year, the AO should grant the deduction in the first year and ignore it in the second year. If this view point is accepted then many provisions of the Act shall become otiose. It is incumbent upon the AO to separately compute total income of each year unmindful of the possible deduction or addition in the next year. Thus it can be seen that from assessment year 2005-2006 the assessee's failure

to comply with the relevant provisions has the effect of enhancing income by way of non-granting of the relevant deduction in the year of incurring such expenditure. It is an altogether different matter that in the subsequent year the assessee becomes eligible for deduction on payment of tax. Hence apart from the consequences already faced by the assessee for failure to deduct tax at source or pay late as per the prescribed time in terms of the applicability of sections 201 and 271C etc., it came to be additionally hit by section 40(a)(ia) in terms of losing deduction of expenditure in the concerned year for its failure to deduct or pay after deduction of tax at source within the prescribed time, which was otherwise available to it because of having genuinely incurred the expenditure from assessment years 2005-2006.

The sum and substance of the submission of the assessee was that the relaxation given by the Finance Act 2010 has mitigated the unintended hardship which was earlier caused to the assessee and hence it should be given retrospective effect from the date of insertion of the provision.

There is no force in this contention. The reason is that there is no doubt that some intended difficulty has been caused by the Finance Act, 2004 on the introduction of section 40(a)(ia). It is a hardship to the assessee from a different angle as with the insertion of this provision the expenditure otherwise deductible has become non-deductible in the year of incurring on its failure to deduct tax at source or pay such tax after deduction within the stipulated period. At the same time it is "intended" for the reason that the legislature in its wisdom has brought out this provision with a view to augment compliance of the TDS provisions. The objective sought to be achieved by bringing out section 40(a)(ia) is the augmentation of the TDS provision. If in attaining this main objective of augmentation of such provision, the assessee suffers disallowance of any amount in the year of default, which is otherwise deductible, the legislature allowed it to continue. This is the cost which the Parliament has awarded to those assesses who fail to comply with the relevant provisions by considering the overall objective of boosting TDS compliance. Apart from other consequences of failure to deduct tax at source as discussed above, one more adverse consequence has been added. The fact that this provision is still continuing in the Act, proves that the Parliament did not consider it expedient to remove section 40(a)(ia) projecting so called hardship, which is only the side effect in the attainment of the larger goal of augmentation of compliance of TDS provision. The Finance Act, 2008 brought out certain amendments by relaxing the rigor of the provision by making two categories of defaults causing disallowance on the basis of the period of the previous year in which tax was deductible. It is important to note that the amendment by the Finance Act, 2008 was made with retrospective effect from 01.04.2005. Thus it can be seen that from the

assessment year 2005-2006 up to assessment year 2009-2010, post the retrospective amendment carried out by the Finance Act, 2008, the first category of disallowances included the cases in which tax was deductible and was so deducted during the last month of the previous year but there was failure on the part of the assessee to pay such tax on or before the due date specified in sub-section (1) of section 139; and the second category included cases in which tax was deductible and was so deducted during the first eleven months of the previous year but there was failure to pay it before the last day of the previous year. The Finance Act, 2010 has made partial change in the specified time for payment of tax only in the above referred second category by extending it from the last day of the previous year to the time specified u/s 139(1) of the Act, in parity with the specified time of the first category. Except for that there is no change in the overall structure of the provision. Non-deduction of tax at source from the specified payments still warrants disallowance u/s 40(a)(ia) as was there under the Finance (No. 2) Act, 2004 and the Finance Act, 2008. Further the disallowance per se has also been maintained in the provision in its current form, where the assessee, after deduction of tax at source, fails to pay it within the specified time. Still further, the prescription of the proviso providing for the remedial relief in the subsequent year in which tax has been paid, also exists.

None can appreciate the contention raised on behalf of the assessee that the undue hardship caused to the assessee has been relaxed by the legislature with the amendment carried out by the Finance Act, 2010. The so called hardship as caused with the insertion of section 40(a)(ia) with effect from 1st April, 2005 is still continuing as such. The effect of amendment by the Finance Act, 2010 is limited only to extending the time available for deposit of tax in the second category of cases from the last day of the previous year to the time specified u/s 139(1) of the Act. Thus it is vivid that the amendment by the Finance Act, 2010 is not aimed at removing any unintended hardship to the assessee, but to relax the

intended hardship to some extent by increasing the time available for deposit of tax in one category of cases. When the amendment does not remove the unintended hardship or is not explanatory, the same cannot be held to be retrospective unless it is specifically provided.

It is abundantly clear that the time limit to deposit of tax deducted at source for one category of cases has now been extended by the Finance Act, 2010 to the due date u/s 139(1) of the Act. Such a benefit was earlier specifically excluded as it was available only in respect of the other category of cases. As such, it can not be inferred that the later extension of time is indicative of the intention of the legislature to have made it available even in the earlier years.

In view of the fact that section 40(a)(ia) has been amended by the Finance Act, 2010 with retrospective effect from 01.04.2010, the Court should refuse to declare it as having retrospective effect from the date of insertion of the provision i.e. 01.04.2005.

The legislature has employed the words 'such sum' in the language of the proviso and not 'any sum'. These words in the proviso talk of the sum referred to in the main provision of sub-clause (ia) of section 40(a). The words 'such sum' have tightly tied the proviso with the main provision. It is imperative to note the proviso to sub-clause (ia) always contained the words 'such sum' whether it is the insertion of section 40(a)(ia) by the Finance (No. 2) Act, 2004 or amendment by the Finance Act, 2008 or by the Finance Act, 2010. One needs to consider the non-obstante clause in the beginning of section 40 which provides that : "Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head 'Profits and gains of business or profession'". To put it simply, in order to fall within the trap of sub-clause (ia) of section 40(a) causing disallowance, it is sine qua non that the expenditure should be otherwise deductible in the year as per sections 30 to 38. Proviso obtains its scope from the main provision of sub-clause (ia) which, in turn, refers to the amounts otherwise



deductible in the year of incurring such expenditure under the head 'Profits and gains of business or profession'. Only when the assessee is otherwise eligible for deduction in respect of interest, commission, brokerage etc. in the year of its incurring, that the question of making disallowance u/s 40(a)(ia) arises. Thus the proviso is controlled by the main provision of sub-clause (ia) of section 40(a) and cannot be looked upon as *de hors* the main provision. Following the meaning of the words 'such sum' in the proviso, it becomes manifest that the sum deductible as expenditure in the year of payment of tax is the one which was not allowed as deduction due to disabling provision of section 40(a) in the year of incurring such expenditure. It cannot refer to the expenditure neither claimed nor disallowed as per the main provision in the earlier year. The proviso allows deduction of the amount of such expenditure in computing the income of the subsequent year, when tax is paid. To put it simply, the proviso is only an enabling provision in the subsequent year, of the disabling provision of the main part of the section 40(a)(ia) in an earlier year of incurring such expenditure. When a particular amount of expenditure is disallowed in the first year for failure to deduct tax at source or to pay tax thereon after such deduction as per the main provision of sub-clause (ia), then such amount of expenditure wins deduction on the payment of tax in the later year.

It is the complete provision of section 40(a)(ia) together with its proviso as prevailing in a particular year which governs the non-deductibility of expenditure in one year and then its deductibility in the later year. Because of the thread of 'such sum' in the language of proviso, it becomes impermissible to look at the main provision as amended by the Finance Act, 2008 for making disallowance of expenditure and then at the proviso as amended by the Finance Act, 2010 for allowing expenditure in the subsequent year of payment. The situation would have been otherwise, if the expression 'any sum' had been used in the language of the proviso instead of 'such sum'. In that case any amount of expenditure, on which tax deducted had been paid in a particular year, irrespective of the year of incurring expenditure, would have got deduction in such year of payment of tax. It is only in that case that payment of tax made in July 2009 would have suffered complete disallowance both in the A.Y.s 2009-10 and 2010-11. But fortunately, position is not so as the deduction will be permissible to the assessee in A.Y. 2010-11 going by the provision as amended by the Finance Act, 2008.

It can be seen that the Finance Act, 2010 has not repealed the provision of sec. 40(a)(ia) that it could be claimed that the hardships enumerated above which were caused by the Finance (No. 2) Act, 2004 have been done away with. The latest amendment has simply extended the time limit for deposit of tax deducted at source in certain cases. The other consequences of

section 40(a)(ia) are still present in the provision. That apart, it is simple and plain that if the expenditure is not genuine or not incurred for the purpose of business, it would not at all qualify for deduction at the very threshold and the resultant application of section 40(a)(ia) would be automatically ruled out. None can be convinced with the contention of substantial compliance of the provisions on late deposit of tax deducted at source. There can be either compliance or non-compliance of a particular provision. Given the time limit for the deposit of tax deducted at source, if it is deposited by the time prescribed it is a case of compliance of the provision and if it is late deposit even by a single day, it is non-compliance. It cannot be said that by depositing such tax belatedly, the assessee substantially complied with the provisions of section 40(a)(ia).

The Finance Act, 2010 has extended the time limit for depositing tax deducted at source by the due date u/s 139(1) of the Act from the earlier lesser time available for compliance. If the tax is deposited by the due date, it would mean escape from the clutches of section 40(a)(ia) for assessment year 2010-2011, but if it is deposited even the next day beyond the due date, natural consequences would follow and it would call for disallowance u/s 40(a)(ia) in the year of incurring the expenditure. In the like manner, in the year under appeal, if the tax deducted at source up to February, 2005 had been deposited up to 31st March, it would have amounted to compliance of the provision, but the late deposit even on 1st April, 2005 would amount to noncompliance warranting interference by section 40(a)(ia) entailing disallowance of expenditure in the Assessment year 2005-06. However the fact that the assessee deposited it beyond the prescribed period, would amount to compliance of the prescription of the proviso, entitling the assessee to deduction in the A.Y. 2006-07.

Further if one proceeds with the hypothesis of substantial compliance even on late deposit not causing any disallowance u/s 40(a)(ia) in the year of incurring the expenditure, it will make the proviso redundant. When one considers the mandate of section 40(a)(ia) in entirety, it becomes apparent that it has two ingredients, viz., first, the disallowance of expenditure due to non-deduction or non-deposit of tax deducted at source in time and second, the allowing of expenditure in the later year in which the amount of tax deducted at source is deposited. It is one composite provision. Both these limbs, that is, the disallowance of expenditure in the year of incurring expenditure and allowing it in the year of payment are integral part of the provision. As per the proviso, the assessee gets deduction of expenditure in the year of payment of tax deducted at source. But if the Court allows deduction of the expenditure in the year of its incurring on some equitable ground or on the theory of substantial compliance despite the fact the tax was deposited beyond the prescribed time, then it would



mean the obliteration the proviso from the provision, which is obviously impossible.

In view of the foregoing reasons, the amendment carried out by the Finance Act, 2010 with retrospective effect from assessment year 2010- 2011 cannot be held to be retrospective from assessment year 2005-2006. The question posted before the Special Bench is, therefore, answered in negative, in favour of the Revenue and against the assessee by holding that the amendment brought out by the Finance Act, 2010 to section 40(a)(ia) w.e.f. 01.04.2010, is not remedial and curative in nature.

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LD/60/73

CIT

Vs.

Lawrence D'Souza

September 14, 2011 (KAR)

[Assessment Year 1996-97]

Section 48 of the Income-tax Act, 1961 – Capital gains – Computation of

Where hotel business was stopped but assessee had to pay rent and interest and renovation expenses so that business could be sold as going concern, these expenses were to allowed as deduction in computing capital gains

The assessee was carrying on hotel business. Due to labour problem he stopped the business and wanted to sell it as a going concern. Even though he had stopped his business, the liability to pay rent and interest continued. It was not a personal liability of the assessee. Interest was payable on the amount borrowed for carrying on the business and rent was payable for the business premises. Therefore, the assessee claimed deduction of these amount while computing capital gains.

The Karnataka High Court held that in so far as renovation expenses was concerned, it was the specific case of the assessee that after the business was stopped, in order to get a good price, when he intended to sell the business as a going concern, he renovated the hotel premises. That was how these expenses were incurred after the closure of the premises. These

expenses were incurred in connection with the business, though the business was stopped in the year 1994. Therefore, the authorities were justified in granting the said deduction.

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LD/60/74

CIT

Vs.

Gaur Brahmin Vidya Pracharini Sabha

October 10, 2011 (P&H)

Section 80G read with Section 10(23C) of the Income-tax Act, 1961 read with Rule 11A of the Income-tax Rules, 1962 – Deductions – Donations to certain funds, charitable institutions, etc.

Merely because an educational institution is making a profit it would not render itself ineligible for registration under the provisions of section 10(23C)(vi), nor this would be a ground to deny registration under section 80G(5)(vi)

The Commissioner rejected the application filed by the respondent society under section 80G(5)(vi) of the Income Tax Act, 1961 on the ground that the respondent society was running five educational institutions, and it was charging fee in the range of 36,000/- to 1 lac and, therefore, it was not a charitable purpose. The Commissioner has relied upon the table wherein percentage of profit was reflected from 20.44% to 28.49% and came to the conclusion that the respondent was enhancing the earning capacity of the institutions through acquisition of the buildings and fixed assets and not fulfilling any noble objects.

The Tribunal noticed that the society was spreading education without any distinction of caste and creed by establishing educational institutions. The assessee was entitled for registration under Section 12AA of the Act with effect from 29.9.1980 and has been running educational institutions since then. Though the assessee derived income yet such income was held not liable to inclusion in total income as per Sections 11 and 12 of the Act. Reference had also been made to Section 2(15) of the Act to hold that the education is *per se* charitable purpose irrespective of the fact that for imparting education, the assessee charges fee and there is no condition to hold that to become eligible for charitable

purposes in respect of imparting education, the same should be imparted freely or without charging any fee.

The Punjab and Haryana High Court held that in *Sonepat Hindu Educational Charitable Society v. CIT* (2005) 278 ITR 262 (P&H), it was held that where the petitioner society has been regularly allowed exemption under Section 80G and especially where it is registered under section 12A for charitable purposes then the position has to be sustained and not changed in subsequent years without any sufficient proof that the institution is not carrying its activities in furtherance of its object.

Mere making of profit would be ground to deny registration once the objects of the society were for charitable purpose and especially where five educational institutions were being run by the respondent which was registered since 29.9.1980 under the Societies Registration Act, 1860, and solely because the respondent was charging fees and was getting surplus, would not be a reason to deny registration.

It was held that, if an institution is making a profit, it would not render itself ineligible for registration under the provisions of section 10(23C)(vi). Merely, because there are some surplus with a charitable institution, this should not be a ground to deny the registration under section 80G(5)(vi). Even otherwise Proviso to section 2(15) of the Act also mentions that assessee should not carry activities in the name of trade, commerce and business.

Where, as a matter of fact, the Tribunal had found that the conditions laid down in Rule 11AA of the Income Tax Rules, 1962 had also been complied and held that the Trust was eligible for registration under section 80G(5)(vi), no substantial question of law as contended arose.

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LD/60/75
CIT
Vs.

Ms. Jagriti Aggarwal
October 10, 2011 (P&H)
[Assessment Year 2006-07]

Section 139 read with Section 54 of the Income-tax Act, 1961 – Return of income

Due date for furnishing return of income as per section 139(1) is subject to extended period provided under sub-section (4) of section 139

Sub-Section (4) of section 139 of the Act is, in fact, a *proviso* to sub-section (1) of section 139 of the Act fixes the different dates for filing the returns for different assessee. In the case of assessee who is an individual, it is 31st day of July of the assessment year in terms of clause (c) of the *Explanation 2* to sub-section 1 of section 139 of the Act, whereas sub-section (4) of Section 139 provides for extension in period of due date in certain circumstances.

A reading of the sub-section (4) would show that if a person has not furnished the return of the previous year within the time allowed under sub-section (1) i.e. before 31st day of July of the assessment year, the assessee can file return before the expiry of one year from the end of the relevant assessment year. Thus, sub-section (4) of section 139 provides extended period of limitation as an exception to sub-section (1) of section 139. Sub-section (4) is in relation to the time allowed to an assessee under sub-section (1) to file return. Therefore, such provision is not an independent provision, but relates to time contemplated under Sub-Section (1) of section 139. Therefore, such sub-section (4) has to be read along with sub-section (1).

The due date for furnishing the return of income as per section 139(1) of the Act is subject to the extended period provided under sub-section (4) of section 139. Where the sale of the asset took place on 13-1-2006, falling in the previous year 2006-2007, the return could be filed before the end of relevant assessment year 2007-2008, i.e., on 31.3.2007.

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LD/60/76

Alok Todi

Vs.

CIT

July 13, 2011 (CAL)

[Block Period 1987-88 to 1996-97]

Section 260A read with Section 144 of the Income-tax Act, 1961 – High Court – Appeal to

Where in spite of service, neither any return was submitted nor any cause shown pursuant to notice, best judgment assessment of Assessing Officer cannot be said to be vitiated by any error of law

The new plea sought by the assessee before the High Court was that the Assessing Officer should have furnished necessary documents and intimates the date of personal hearing. However, no such plea was taken either before the Assessing Officer or the Tribunal. In spite of service of notice, nobody even submitted return or had shown cause as required.

The Calcutta High Court held that raising new questions which were essentially questions of fact could not be permitted to be raised for the first time in appeal before High Court under section 260A and the Revenue in terms of sub-section 4 of section 260A would be entitled to raise the question that the ground formulated were not involved within the scope of this appeal. When no material had been produced dislodging the finding of the Assessing Officer that in spite of service neither any return was submitted nor any cause shown pursuant to the notice, the best judgment assessment of the Assessing Officer cannot be said to be vitiated by any error of law.

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Finance (No. 2) Act, 1998

LD/60/77

Union of India³

Vs.

Nitdip Textile Processors Pvt. Ltd.

November 3, 2011 (SC)

Section 87 of the Finance (No. 2) Act, 1998 – Kar Vivad Samadhan Scheme

Section 87(m)(ii) (b) of Finance (No.2) Act, 1998 is not violative of Article 14 of the Constitution of India even though it seeks to deny the benefit of the 'Kar Vivad Samadhana Scheme, 1998 to those who were in arrears of duties etc., as on 31.03.1998 but to whom the notices were issued after 31.03.1998

The Gujarat High Court, vide its impugned judgment and order dated 25.07.2005, has declared that Section 87(m)(ii) (b) of Finance (No.2) Act, 1998 (the Act) is violative of Article 14 of the Constitution of India insofar as it seeks to deny the benefit of the 'Kar Vivad Samadhana Scheme, 1998 to those who were in arrears of duties etc., as on 31.03.1998 but to whom the notices were issued after 31.03.1998 and further, has struck down the expression "on or before the 31st day of March 1998" under Section 87(m)(ii)(b) of the Act as *ultra vires* of the Constitution of India and in particular, Article 14 of the Constitution on the ground that the said expression prescribes a cut-off date which arbitrarily excludes certain category of persons from availing the benefits under the Scheme. The High Court has further held that as per the definition of the 'tax arrears' in Section 87(m) (ii)(a) of the Act, the benefit of the Scheme was intended to be given to all persons against whom the amount of duties, cess, interest, fine or penalty were due and payable as on 31.3.1998. Therefore, this cut-off date in Section 87(m)(ii) (b) arbitrarily denies the benefit of the Scheme to those who were in arrears of tax as on 31.03.1998 but to whom notices were issued after 31.3.1998. This would result in unreasonable and arbitrary classification between the assessee merely on the basis of date of issuance of Demand Notices or Show Cause Notices which has no nexus with the purpose and object of the Scheme. In other words, the persons who were in arrears of tax on or before 31.03.1998 were classified as those, to whom Demand Notices or Show Cause Notices have been issued on or before 31.03.1998 and, those to whom such notices were issued after 31.3.1998. The High Court observed that this classification has no relation with the purpose of the Scheme to provide a quick and voluntary settlement of tax dues. The High Court further observed that this artificial classification becomes more profound in view of the fact that the Scheme came into operation with effect from 1.9.1998 which contemplates filing of declaration by all persons on or after 1.9.1998 but on or before 31.1.1999. The High Court further held that all persons who are in arrears of direct as well as indirect tax as

on 31.3.1998 constitute one class, and any further classification among them on the basis of the date of issuance of Demand Notice or Show Cause Notice would be artificial and discriminatory. The High Court concluded by directing the Revenue to consider the claims of the respondents for grant of benefit under the Scheme, afresh, in terms of the Scheme.

The Supreme Court held that the Scheme was introduced by Finance (No.2) Act and is contained in Chapter IV of the Act. The Scheme is known as Kar Vivad Samadhana Scheme, 1998. It was in force between 1.9.1998 and 31.1.1999. Briefly, the Scheme permits the settlement of "tax arrears" as defined in Section 87(m) of the Act. The object and purpose of the Scheme is to minimize the litigation and to realize the arrears of tax by way of Settlement in an expeditious manner.

The Scheme defines the meaning of the expression 'Tax Arrears', in relation to indirect tax enactments. It would mean the determined amount of duties, as due and payable which would include drawback of duty, credit of duty or any amount representing duty, cesses, interest, fine or penalty determined. The legislation, by using its prerogative power, has restricted the dues of duties quantified and payable as on 31st day of March, 1998 and remaining unpaid till a particular event has taken place, as envisaged under the Scheme. The date has relevance. The definition is inclusive definition. It also envisages instances where a Demand Notice or Show Cause Notice issued under indirect tax enactment on or before 31st day of March, 1998 but not complied with the demand made to be treated as tax arrears by legal fiction. Thus, legislation has carved out two categories of assessee viz. where tax arrears are quantified but not paid, and where Demand Notice or Show Cause Notice issued but not paid. In both the circumstances, legislature has taken cut off date as on 31st day of March 1998. It cannot be disputed that the legislation has the power to classify but the only question that requires to be considered is whether such classification is proper. It is now well settled by catena of decisions of this Court that a particular classification is proper if it is based on reason and not purely arbitrary, caprice or vindictive. On the other hand, while there must be a reason for the classification, the reason need not be good one, and it is immaterial that the Statute is unjust. The test is not wisdom but good faith in the classification. It is too late in the day to contend otherwise. It is time and again observed by this Court that the Legislature has a broad discretion in the matter of classification. In taxation, 'there is a broader power of classification than in some other exercises of legislation'. When the wisdom of the legislation while making classification is questioned, the role of the Courts is very much limited. It is not reviewable by the Courts unless palpably arbitrary. It is not the concern of the Courts whether the classification is the wisest or the best that could be made. However,

³ Decision of the Gujarat High Court in Special Civil Application No. 735 of 1999 dated 25.07.2005 was set aside.

a discriminatory tax cannot be sustained if the classification is wholly illusory.

Kar Vivad Samadhan Scheme is a step towards the settlement of outstanding disputed tax liability. The Scheme is a complete Code in itself and exhaustive of matter dealt with therein. Therefore, the courts must construe the provisions of the Scheme with reference to the language used therein and ascertain what their true scope is by applying the normal rule of construction. Keeping this principle in view, the reasoning of the High Court is to be considered.

The tests adopted to determine whether a classification is reasonable or not are, that the classification must be founded on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the groups and that the differentia must have a rational relation to the object sought to be achieved by Statute in question. The Legislature in relation to 'tax arrears' has classified two groups of assesseees. The first one being those assesseees in whose cases duty is quantified and not paid as on the 31st day of March, 1998 and those assesseees who are served with Demand or Show Cause Notice issued on or before the 31st day of March, 1998. The Scheme is not made applicable to such of those assesseees whose duty dues are quantified but Demand Notice is not issued as on 31st day of March, 1998 intimating the assessee's dues payable. The same is the case of the assesseees who are not issued with the Demand or Show Cause Notice as on 31.03.1998. The grievance of the assessee is that the date fixed is arbitrary and deprives the benefit for those assesseees who are issued Demand Notice or Show Cause Notice after the cut off date namely 31st day of March, 1998. The Legislature, in its wisdom, has thought it fit to extend the benefit of the scheme to such of those assesseees whose tax arrears are outstanding as on 31.03.1998, or who are issued with the Demand or Show Cause Notice on or before 31st day of March, 1998, though the time to file declaration for claiming the benefit is extended till 31.01.1999. The classification made by the legislature appears to be reasonable for the reason that the legislature has grouped two categories of assesseees namely, the assesseees whose dues are quantified but not paid and the assesseees who are issued with the Demand and Show Cause Notice on or before a particular date, month and year. The Legislature has not extended this benefit to those persons who do not fall under this category or group. This position is made clear by Section 88 of the Scheme which provides for settlement or tax payable under the Scheme by filing declaration after 1st day of September, 1998 but on or before the 31st day of December, 1998 in accordance with Section 89 of the Scheme, which date was extended upto 31.01.1999. The distinction so made cannot be said to be arbitrary or illogical which has no nexus with the purpose of legislation. In determining whether classification is reasonable, regard must be had to the purpose for which legislation is designed. While understanding the Scheme of the legislation, the legislation is based on a reasonable basis which is firstly, the amount of duties, cesses, interest, fine or penalty must have been determined as on 31.03.1998 but not paid as on the date of declaration and secondly, the date of issuance of Demand or Show Cause Notice on or before 31.03.1998, which is not disputed but the duties remain unpaid on the date of filing of declaration. Therefore, the Scheme 1998 does not violate the equal protection clause where there is an essential difference and a real basis for the classification which is made. The mere fact that the line dividing the classes is placed at one point rather than another will not impair the validity of the classification.

In view of the above discussion, the findings and the conclusion reached by the High Court could not be upheld.

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Companies Act

LD/60/78

Podar Finance (P.) Ltd.

Vs.

Official Liquidator

October 10, 2011 (RAJ)

Section 536, read with section 428, of the Companies Act, 1956 – Avoidance of transfers, etc., after

commencement of winding up

Court has absolute discretion to validate the transaction of transfer of shares after commencement of winding up only if it is found that the transaction was for the benefit of and in the interest of the company or for keeping the company going or keeping things going generally

Shakti Mills was a holding company while Jaipur Spinning Mills was its subsidiary company. Shri G.N. Poddar is Director in Shakti Mills and also in Jaipur Spinning Mills and his son Ajay Poddar is also Director in Jaipur Spinning Mills and the applicant Poddar Finance and his another son Pawan Poddar is Director of applicant-Poddar Finance. A petition for winding up of company Shakti Mills was filed on 25-4-1978 and the High Court ordered winding up of Shakti Mills on 21-1-1981. The applicant-Podar Finance purchased certain shares of Jaipur Spinning Mills from Shakti Mills and those shares were transferred on 10-5-1979. The applicant-Podar Finance filed an application and it was prayed that applicant-Poddar Finance be held to be a contributory of Jaipur Spinning Mills in liquidation. The Official Liquidator contested the application stating that in view of section 536(2), the transfer of shares after presentation of winding up petition of Shakti Mills was void as shares held by Shakti Mills could not have been legally transferred after presentation of winding up petition. The Company Judge also held that the applicant could not be held to be contributory. The Company Judge has assigned the following reasons while recording the finding that applicant-Poddar Finance cannot be treated to be a contributory of Jaipur Spinning Mills in liquidation:-

- (i) That transfer of shares in question in the same management by one company to another was made on the under-valued price and therefore, transfer of shares could not be said to be in the interest of creditors, which was of paramount consideration and should not be defeated.
- (ii) That the Court has not validated the transaction, as such, the applicant-Poddar Finance could not be treated to be a contributory of Jaipur Spinning Mills in liquidation.
- (iii) That applicant-Poddar Finance cannot be held

to be a contributory merely because it holds fully paid-up shares of Jaipur Spinning Mills in liquidation and the transfer of shares in question is hit by the provisions of section 536(2) of the Act.

The Rajasthan High Court held that the applicant-Poddar Finance had not claimed any investment in Jaipur Spinning Mills as was evident from the balance sheets and thus, cloud was cast over the genuineness of the transaction in question. The Official Liquidator of Shakti Mills had also objected to the transfer of shares in question vide letter dated 2.8.2011.

As per Section 428, "contributory" includes holder of any shares which are fully paid-up. It includes any person alleged to be a contributory. Section 536(2) provides that in the case of a winding up by the Court, any transfer of shares in the company or alteration of the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

There is power given to the court to validate the transfer which has taken place after the commencement of the proceedings for winding up of the company. As per provisions of section 441(2), winding up order relates back to the date of presentation of the petition for winding up. In the instant case, winding up of Shakti Mills had been ordered and since the transfer of shares in question was made after commencement of the winding up proceedings, the same was void under section 536(2) unless otherwise ordered by the Court. It was not the case of the applicant-Poddar Finance that any court had otherwise ordered. Thus, the expression "unless otherwise ordered by the Court, any transfer made after the commencement of the winding up proceedings is void" has to be given full effect. The Court is given power to validate the transaction. Thus, any disposition would not be *ab initio void*. The word 'void' is not conclusive as Court has been given power to order otherwise. However, the fact remains that in the instant case, the Court has not so far ordered otherwise.

Under section 536 (2) transaction of transfer of share or other disposition is not required to be annulled by court. It is void unless court orders otherwise. An order "to the otherwise" is required to be made in order to validate transfer of share/other disposition. It was at option of the applicant to avoid it but he has not chosen that recourse. The submission to the contrary raised could not be accepted that it was for official liquidator to get transfer of shares declared void or court to make such declaration. It was for Poddar Finance to get transfer of shares validated. Whatever it may be, in the absence of validation, statutory expression as to voidity of transaction mandated in section 536(2) of the Act has to be given full effect.

Under section 443, the Court may dismiss the petition or make an order of winding up. Under sub-section (2) of Section 443, the Court may refuse to make order of

winding up. Before appointing a provisional liquidator, the Court has to give notice to the company and reasonable opportunity to make representation. As per Section 449 of the Act, on a winding up order being made in respect of a company, the official liquidator becomes the liquidator of the company. In the instant case, the order of winding up of Shakti Mills had been passed and official liquidator had been appointed by Bombay High Court with respect to Shakti Mills and thus, transaction in question had to be treated as void unless the court otherwise ordered and the court had not ordered otherwise. Consequently, the transaction was void, the applicant- Poddar Finance could not be said to be a contributory.

In *Tulsidas Jasraj Parekh v. Industrial Bank of Western India*, AIR 1931 Bom. 2, it has been laid down by the Bombay High Court that any *bona fide* transaction carried out and completed in the ordinary course of current business will be sanctioned by the Court under section 227(2) of Companies Act, 1913. On the other hand, it will not allow the assets to be disposed of at the mere pleasure of the company and thus, cause the fundamental principles of equity amongst creditors to be violated.

The Court has absolute discretion to validate the transaction. However, discretion is to be controlled and exercised judicially. If it is found that the transaction was for the benefit of and in the interest of the company or for keeping the company going or keeping things going generally, it ought to be confirmed.

The Bombay High Court in the case of *Sarigam Containers (P) Ltd. V. Magatul Industries Ltd.* [2009] 90 SCL 321 (Bom) held that it is also to be shown as to what were the compelling circumstances necessitating the company in liquidation to enter into such transaction during the pendency of winding up action. In absence of such pleadings that transaction was for the benefit and in the interest of company or for keeping the company going or for keeping things going generally, the question of validating such transaction by the court

does not arise. No improper transaction which is covered by section 536(2) of the Act can be validated by the Court.

In *Administrator, MCC Finance Ltd. V. Ramesh Gandhi*, [2009] 63 SCL 326 (Mad), the Madras High Court has considered the provisions of section 536(2) of the Act and has observed that the object of section 536 seems to be to prevent improper disposition or dissipation of the property or transfer of shares of the company otherwise available for distribution among the creditors of the company in liquidation. If the transfer is not *bona fide*, in terms of section 536(2), the transaction would be void. Once winding up has been ordered, the provisions of section 536(2) are attracted.

In the present case, considering of aspect that interest of creditors is of paramount consideration, the Official Liquidator had rightly opined that transaction in question was grossly under-valued. The Official Liquidator of Shakti Mills had also preferred an application in the Bombay High Court alleging under-value of the transaction by more than ₹17 lakhs. 1,65,010 equity shares of ₹10/- each and 12,478/- preference shares of ₹100/- each of Jaipur Spinning Mills were transferred by Shakti Mills in favour of applicant-Poddar Finance for a paltry consideration of ₹22,854. The transaction could not in any manner be said to be for the benefit and interest of the company or for keeping the company going or keeping things going generally. It had not been shown as to what were the compelling circumstances necessitating Shakti Mills to transfer the shares in question of Jaipur Spinning Mills in favour of applicant-Poddar Finance after commencement of proceedings of winding up. Considering the surrounding circumstances and *inter-se* relationship of the Directors of all the three managements, the transaction in question could not be said to be *bona fide* and it was to be treated as void in view of section 536(2) of the Act. The court had not ordered otherwise under section 536(2) and even no application has been filed by the applicant for validation in court so as to order otherwise. The applicant had failed to satisfy as to *bona fide* nature of the transaction in question. Thus, the transfer in question was to be treated as void in term of section 536(2) of the Act. On the basis of such transaction, applicant could not claim to be contributory.

No application for validation of transaction in question has been filed by the applicant-Poddar Finance for the last 30 years. When winding up of Shakti Mills had been ordered, obviously transaction was void as per statutory mandate of section 536(2) which could not be ignored by us while adjudging the question whether the applicant Poddar Finance was contributory or not. The surrounding circumstances showed that transaction was not to benefit creditors or to keep company going, it appeared to be under-valued also. Unless and until transaction was legal and validated, the applicant-Poddar



Finance could not claim itself to be a contributory and the Company Court and Official Liquidator had rightly opined so. The applicant had as per agreement availed recourse of settlement of its claim as contributory with the Official Liquidator under the provisions of the Act and the Rules. Thereafter, finding had been recorded by the Official Liquidator that applicant could not be treated to be a contributory and report was submitted to the Company Court and the Company Court had also expressed the same opinion that applicant could not be held to be a contributory, which was in accordance with the law. Since the transfer of shares in question was void in view of section 536(2) of the Act, the applicant-Poddar Finance could not be treated to be a contributory.

The intendment of section 537 is to prevent fraudulent preference, transactions which are not in good faith or are not effected in ordinary course of business and even attachment, distress or execution are avoided unless permitted by court. In the instant case, provisions of section 536(2) of the Act were attracted and the applicant-Poddar Finance Private Limited could not be held to be a contributory of company Jaipur Spinning Mills in liquidation.

SEBI

LD/60/79

Pawan Goyal
Vs.Securities and Exchange Board of India
September 16, 2011 (DEL)

Section 27 read with Section 24 of the Securities and Exchange Board of India Act, 1992 read with Regulations 26 and 27 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 – Offences by Companies

Where in the complaint it has been averred that directors were the persons in charge of and responsible for conduct of business of accused company and, thus, were liable for the violations committed by accused company, as provided by section 27 of the Act, petitions by directors seeking relief from liability should be dismissed

A complaint was filed on behalf of the Securities and Exchange Board of India and taking cognisance of the same the accused, i.e., the company and persons stated to be its directors and in day to day control of the affairs of the company were summoned to face trial by the Metropolitan Magistrate. It is alleged that as per Regulation 68 of the Securities and Exchange Board of India (Collective Investment Schemes) Regulations, 1999 persons operating Collective Investment Schemes had to register the scheme before the Board and as per regulation 73 in the failure to do so, the scheme would be wound up with information to the investors and the board and simultaneously the investments

would be returned to the investors. It was alleged in the complaint that the last date by which the Collective Investment Schemes had to be got registered was March 31, 2000. Alleging that accused company had neither got registered the Collective Investment Scheme(s) floated by it nor refunded the amounts to the investors; thus, an offence punishable under section 24 of the Act was committed. The petitioners who were stated to be the directors of the company and were impleaded as accused have filed the petitions stating that all of them have resigned as directors of accused company in the years 1994 and 1996 and thus were not liable for default of the company.

The High Court of Delhi held that it is not the grievance in the petitions that the averments made in the complaint do not make out any case against the petitioners assuming that the petitioners are directors of the company. On the plea that the petitioners had resigned, suffice would it be to state that along with the petitions, certified copies of Form No. 32, prescribed under the Companies Act, 1956, have not been filed, and thus it would be a matter of trial whether the petitioners ceased to be directors of the company in the year in which they allege to have resigned as directors of the company.

It was a continuing offence if money was not returned to the depositors upon the Collective Investment Scheme not being registered with the SEBI latest by March 31, 2000 and in the complaint in question there is an averment that since the company did not register the scheme by March 31, 2000, on December 7, 2000, the SEBI directed the company to refund the money collected under the scheme to the investors within one month and report compliance, and despite repeated directions, compliance has not been made. In other words, the wrong continues till the amounts collected are not returned to the depositors.

The offence is upon not getting the scheme registered retaining the amount received from the depositors and not refunding the same to them within the time prescribed. The offence is not to have got registered the Collective Investment Scheme. The offence is to continue with the scheme post March 31, 2000, in spite of the scheme not being registered and the deposits not returned to the investors.

Since no argument has been advanced with respect to the deficiency or otherwise in the complaint pertaining to the vicarious liability of the alleged directors, the issue was not dealt with. It is simply highlight that in the complaint it has been averred that as directors were the persons in charge of and responsible for the conduct of the business of accused Company and thus were liable for the violations committed by accused company, as provided by section 27 of the SEBI Act, 1992. Therefore, the petitions were liable to be dismissed. ■

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.

DIRECT TAXES



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

I. Notifications

1. Notification No. 60/2011 dated 01-12-2011

Section 115JC which provided for special provisions for payment of "Alternate Minimum Tax" by certain Limited Liability Partnerships (LLP), was introduced by the Finance Act, 2011. As per section 115JC(3) every LLP to which section 115JC applies is required to obtain a report from an accountant in such form as may be prescribed. Accordingly, the Central Board of Direct Taxes, has through this notification, notified Income-tax (9th Amendment) Rules, 2011. The said Amendment Rules have inserted Rule 40BA after Rule 40B which provides that the report of an accountant which is required to be furnished by the assessee under section 115JC(3) shall be in Form 29C. Further, in Appendix II of the said rules, Form 29C has been inserted after Form 29B. These Rules will come into force on 1st April, 2012.

The complete details of the text of the above-mentioned notification can be downloaded from the link: <http://law.incometaxindia.gov.in/DIT/Notifications.aspx>

2. Notification No. G.S.R. 868(E), dated 07-12-2011

In exercise of the powers conferred by section 1(3) of the Government Savings Certificates Act, 1959, the Central Government through this notification has specified that National Savings Certificates-IX Issue shall be the class of Savings Certificates to which the said Act applies. Accordingly, subscription to such saving certificates would qualify for deduction under section 80C.

The complete details of the text of the above-mentioned notification can be downloaded from the link: <http://www.taxmann.com/taxmannflashes/whatsnew.aspx?type=1&sid=8244>

INDIRECT TAXES



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

A. SERVICE TAX

I. Circular

1. Circular No. 148/17/2011 - ST dated 13.12.2011: CBEC has clarified the taxability of profit/revenue sharing

arrangement in case of distribution of films and exhibition of movies in the following manner:

i. Where the arrangement between the distributor/sub-distributor/area distributor and the movie exhibitor/theatre owner in exhibiting the film produced by the producer (the original copyright holder) is on principal to principal basis, service tax liability would be as under:

(a) If the movie is exhibited by theatre owner or exhibitor on his account - i.e., the copyrights are temporarily transferred - Service tax would be levied under copyright service to be provided by distributor or sub-distributor or area distributor or producer etc., as the case may be.

(b) If the movie is exhibited on behalf of distributor or sub-distributor or area distributor or producer etc. i.e., no copyrights are temporarily transferred - Service tax would be levied under business support service/renting of immovable property service, as the case may be, to be provided by theatre owner or exhibitor.

ii. Where the arrangement between the distributor/sub-distributor/area distributor and the movie exhibitor/theatre owner is on unincorporated partnership/joint collaboration basis, services provided by each of the person i.e., the 'new entity'/theatre owner or exhibitor/distributor or sub-distributor or area distributor or producer etc. as the case may be, would be liable to service tax based on the nature of transaction under applicable service head.

B. CENTRAL EXCISE

I. Notification

1. Notification No. 24-29/2011-CE (NT) dated 05.12.2011: With effect from 01.03.2012, the procedures prescribed for export under claim for rebate vide Notification No. 19/2004 CE (NT) dated 06.09.2004 and export without payment of duty under bond vide Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001 would apply to Nepal as well. This has been done in view of the revised treaty between India and Nepal.

As per the existing provisions, procedures prescribed for export under claim for rebate vide Notification No. 19/2004 CE (NT) dated 06.09.2004 and export without payment of duty under bond vide

Notifications Nos. 42 to 44/2001 CE (NT) all dated 26.06.2001 apply to countries other than Nepal and Bhutan. For Nepal and Bhutan separate procedures are prescribed for export under claim for rebate vide Notification No. 20/2004 CE (NT) dated 06.09.2004 and export without payment of duty under bond vide Notification No. 45/2001 CE (NT) dated 26.06.2001.

C.CUSTOMS

I. Notification

1. Notification No. 81/2011 Cus.(NT) dated 25.11.2011: Central Board of Excise and Customs has issued new Customs (Provisional Duty Assessment) Regulations, 2011. The new regulations provide that duty can be provisionally assessed by the proper officer if an importer/exporter is unable to make self-assessment under section 17(1) of the Customs Act, 1962 or if the proper officer is not able to verify the self-assessment or make re-assessment of the duty on the imported/export goods.

The importer/exporter will have to execute a bond of an amount equal to the difference between the duty that may be finally assessed or re-assessed and the provisional duty and deposit twenty per cent of the provisional duty with the proper officer. The proper officer may require the bond to be executed along with such surety or security, or both. Any contravention to these regulations would attract penalty which may extend to ₹50,000/-.

The complete text of the above-mentioned notifications and circulars can be downloaded from the following link: www.cbec.gov.in

FEMA



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

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

A. P. (DIR Series) Circular No. 44 dated November 15, 2011

The all-in-cost ceiling for Trade Credits has been revised as under, with

immediate effect:

Maturity Period	All-in-cost over 6 month LIBOR*	
	Existing	Revised
Upto one year	200 bps	350 bps
More than one year and upto three years		

*for the respective currency of credit or applicable benchmark.

The enhancement in all-in-cost ceiling is applicable upto March 31, 2012 and subject to review thereafter.

2. Foreign Direct Investment – Reporting of issue / transfer of ‘participating interest/right’ in oil fields to a non resident as an Foreign Direct Investment transaction

A.P. (DIR Series) Circular No. 45 dated November 16, 2011

RBI has, in consultation with the Government, decided to treat the issue / transfer of ‘participating interest/ rights’ in oil fields to a non-resident as Foreign Direct Investment (FDI) transaction under the extant FDI policy and the FEMA regulations. Accordingly, these transactions have to be reported as FDI transactions in terms of the provisions of Regulations 9 and 10 of the Foreign Exchange Management (Transfer of Issue of Security by a Person Resident outside India) Regulations, 2000.

Accordingly, transfer of ‘participating interest/ rights’ will be reported as ‘other’ category under Para 7 of revised Form FC-TRS and issuance of ‘participating interest/ rights’ will be reported as ‘other’ category of instruments under Para 4 of Form FC-GPR.

3. Overseas forex trading through electronic / internet trading portals

A.P. (DIR Series) Circular No. 46 dated November 17, 2011

RBI, vide A.P. (DIR Series) Circular No. 53 dated April 07, 2011, advised Authorised Dealer Category – I (AD Category I banks) to exercise due caution and be extra vigilant in respect of the margin payments being made by the public for online forex trading transactions through credit cards / deposits in various accounts maintained with banks in India. Further, AD Category-I banks were also advised to exercise due caution in respect of the accounts being opened in the name of individuals or proprietary concerns at different bank branches for collecting the margin money, investment money, etc. in connection with such transactions.

It is again reiterated that AD Category - I banks should exercise due caution and be extra vigilant in respect of the transactions that require residents to make margin payments for online forex trading transactions through credit cards / deposits in various accounts maintained with banks in India. Any person resident in India collecting and effecting / remitting such payments directly /indirectly outside India would make himself/ herself liable to be proceeded against with for contravention of the FEMA besides being liable for violation of regulations relating to Know Your Customer (KYC) norms / Anti Money Laundering (AML) standards.

4. “Set-off” of export receivables against import payables - Liberalization of Procedure

A.P. (DIR Series) Circular No. 47 dated November 17, 2011

Based on the requests received from the exporters through their AD branches for set-off of export

receivables against import payables are considered by the RBI and as a measure of further liberalisation, the powers to deal with the cases of "set-off" of export receivables against import payables has been delegated to AD Category – I subject to the terms and conditions as specified in the circular.

The above circular is available on RBI website at:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=6822&Mode=0>

5. Mid – Sea Trans-shipment of catch by Deep Sea Fishing Vessel

A.P. (DIR Series) Circular No. 48 dated November 21, 2011

In terms of the Comprehensive Marine Fishing Policy, the Ministry of Agriculture, GOI, issues Letter of Permission (LOP) to wholly owned Indian Enterprises for acquisition of resource-specific fishing Vessels and regulates the operation of these Vessels. Since deep sea fishing involves continuous sailing outside the territorial limit, trans-shipment of catches takes place in the high sea leading to procedural constraints in regulatory reporting requirement viz. the Declaration of Export in terms of Notification No.FEMA.23/2000/RB dated May 3, 2000.

With a view to rationalise the procedures, it has been decided in consultation with the GOI that for mid-sea trans-shipment of catches by Indian owned vessels, as per the norms prescribed by the Ministry of Agriculture, GOI, the GR declaration procedure as outlined in the circular should be followed by the exporter in conformity with Regulation 3 of Notification No.FEMA.23/2000-RB dated May 3, 2000.

The above circular is available on RBI website at

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=6825&Mode=0>

6. Foreign Investments in Infrastructure Debt Funds

A.P. (DIR Series) Circular No. 49 dated November 22, 2011

RBI has allowed investment on repatriation basis by eligible non-resident investors in (i) Rupee and Foreign currency denominated bonds issued by the Infrastructure Debt Funds (IDFs) set up as an Indian company and registered as Non-Banking Financial Companies (NBFCs) with the Reserve Bank of India and in (ii) Rupee denominated units issued by IDFs set up as SEBI registered domestic Mutual Funds(MFs), in accordance with the terms and conditions stipulated by the SEBI and the Reserve Bank of India from time to time.

These investments would be subject to the terms and conditions specified in the circular.

The above circular is available on RBI website at:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=6833&Mode=0>

7. Comprehensive Guidelines on Over the Counter (OTC) Foreign Exchange Derivatives –Foreign Currency – INR swaps

A. P. (DIR Series) Circular No. 50 dated November 23, 2011

A limit of USD 100 million placed for net supply of foreign exchange in the market in swap transactions vide A.P. (DIR Series) Circular No. 32 dated December 28, 2010 has been removed.

8. External Commercial Borrowings (ECB) Policy

1. All-in-cost ceiling:

A.P. (DIR Series) Circular No. 51 dated November 23, 2011

The all-in-cost ceiling for ECB has been revised as under, with immediate effect:

Average Maturity Period	All-in-cost over 6 month LIBOR*	
	Existing	Revised
Three years and up to five years	300 bps	350 bps
More than five years	500 bps	500 bps (no change)

**for the respective currency of borrowing or applicable benchmark.*

The enhancement in all-in-cost ceiling is applicable upto March 31, 2012 and subject to review thereafter.

2. Parking of ECB proceeds:

A.P. (DIR Series) Circular No. 52 dated November 23, 2011

Based on a review of the current macro economic conditions, it has been decided that henceforth the proceeds of the ECB raised abroad meant for Rupee expenditure in India, such as, local sourcing of capital goods, on-lending to Self-Help Groups or for micro credit, payment for spectrum allocation, etc. should be brought immediately for credit to their Rupee accounts with AD Category I banks in India. In other words, ECB proceeds meant only for foreign currency expenditure can be retained abroad pending utilisation. The rupee funds, however, will not be permitted to be used for investment in capital markets, real estate or for inter-corporate lending, as hitherto.

9. Issue of equity shares under the FDI scheme allowed under the Government route

A.P. (DIR Series) Circular No.55 dated December 09, 2011

RBI vide A.P. (DIR Series) Circular No. 74 dated June 30, 2011 allowed issue of equity shares/ preference shares under the Government route by conversion of import of capital goods / machineries / equipments (including second-hand machineries) and pre-operative / pre-incorporation expenses (including payments of rent, etc.), subject to terms and conditions stated therein. It has

now been decided to amend the following conditions of the said Circular:

Ref. Para of A.P.(DIR Series) Circular No. 74 dated June 30, 2011	Earlier condition	Revised condition
Para 3 (I) (d) – w.r.t. Import of capital goods/ machineries / equipments (including second-hand machineries)	All such conversions of import payables for capital goods into FDI should be completed within 180 days from the date of shipment of goods.	Applications complete in all respects, for conversions of import payables for capital goods into FDI being made within 180 days from the date of shipment of goods.
Para 3 (II) (d) – w.r.t. pre-operative/pre-incorporation expenses (including payments of rent, etc.)	The capitalisation should be completed within the stipulated period of 180 days permitted for retention of advance against equity under the extant FDI policy.	The applications, complete in all respects, for capitalisation being made within the period of 180 days from the date of incorporation of the company.

10. Foreign Investment in Pharmaceuticals Sector - Amendment to the Foreign Direct Investment Scheme A. P. (DIR Series) Circular No.56 dated December 09, 2011

The Government of India has vide Press Note 3 of 2011 dated November 8, 2011, reviewed and amended the policy for pharmaceuticals sector. Accordingly, the RBI has issued a circular to give effect to the following amendments made in Consolidated FDI Policy - Circular 2 of 2011 dated September 30, 2011:

- FDI, upto 100% would continue to be permitted for green field investments in the pharmaceuticals sector, under the automatic route.
- FDI, upto 100%, would be permitted for brownfield investment (i.e. investments in existing companies), in the pharmaceutical sector, under the Government approval route.

CORPORATE LAWS



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

MCA

1. Master Circular on Cost Accounting Records and Cost Audit www.mca.gov.in

The MCA has issued Master Circular

No. 22/2011 dated 11.11.2011 consolidatedly giving all the circulars issued by the MCA from time-to-time with regard to various matters concerning cost accounting records and cost audit in corporate sector. After reviewing all these circulars, and in supersession of all the earlier 15 circulars as listed in the Appendix to the above master circular, this Master Circular is issued. One may refer to the above citation and website for further details.

2. Registrar of Companies-cum-Official Liquidator established

www.mca.gov.in

The MCA has issued Notification No. F. No. 2/14/2011 -CL.V dated 13.11.2011 in exercise of powers under Sections 448 and 609 of the Companies Act, 1956 establishing the offices of the Registrar of Companies-cum-Official Liquidator at the places having territorial jurisdictions for discharging the functions of the Registrar of Companies as well as Official Liquidator under the various provisions of the said Act. The offices notified are the ones at Nainital (State of Uttarakhand), Bilaspur (State of Chattisgarh), Shimla (State of Himachal Pradesh), Ranchi (State of Jharkhand), Cuttack (State of Orissa), Patna (State of Bihar) and Jaipur (State of Rajasthan). Hence, the existing office of the Official Liquidator at Ranchi shall stand upgraded as the office of the Registrar of Companies-cum-Official Liquidator and the separate offices of Registrar of Companies and Official Liquidator at Cuttack, Patna and Jaipur shall stand merged as the office of the Registrar of Companies-cum-Official Liquidator. One may refer to the above citation and website for further details.

3. Extension of Date of Filing Financial Statements in XBRL Mode

www.mca.gov.in

The MCA has issued General Circular No: 69/2011 dated 30.11.2011 clarifying that the last date for filing financial statements in XBRL mode without any additional fee due to delay by those phase-I class of companies (excluding exempted class) whose balance sheet date for FY 2010-11 was on or after 31.03.2011, has been extended up to 31.12.2011 or within 60 days of their due date of filing, whichever is later. One may refer to the above citation for further details.

4. Notification of Cost Accounting Records Rules

www.mca.gov.in

The MCA has issued six Notifications Nos. G.S.R. 869(E) to 874(E) all dated 07.12.2011 notifying the (a) Cost Accounting Records (Electricity Industry) Rules, 2011, (b) Cost Accounting Records (Fertilizer Industry) Rules, 2011, (c) Cost Accounting Records (Sugar Industry) Rules, 2011, (d) Cost Accounting Records (Petroleum Industry) Rules,

2011, (e) Cost Accounting Records (Telecommunication Industry) Rules, 2011, and, (f) Cost Accounting Records (Pharmaceutical Industry) Rules, 2011. One may refer to the above citation and website for further details.

5. Allotment of Director's Identification Number (DIN) – timeline extended

www.mca.gov.in

The MCA has issued General Circular No. 70/2011 dated 15.12.2011 extending the timeline upto 29.02.2012 for filing form DIN-4 by DIN holders for furnishing IT PAN and to update IT PAN details. One may refer to the above citation and website for further details.

6. Company Law Settlement Scheme, 2011 – timeline extended

www.mca.gov.in

The MCA has issued General Circular No. 71/2011 dated 15.12.2011 extending the timeline upto 15.01.2012 for the filing of documents under the Company Law Settlement Scheme, 2011. The MCA has also clarified that this Scheme will not be extended beyond 15.01.2012 and that all the terms and conditions of the previous General Circulars No. 59/2011 dated 05.08.2011 and No. 60/2011 dated 10.08.2011 will remain the same. One may refer to the above citation and website for further details.

RBI

7. Increase in FII Debt Limit in Government & Corporate Debt Category

www.rbi.org.in

The RBI has issued Circular No. CIR/IMD/FIIC/20/2011 dated 18.11.2011 increasing the current limit of FII investment in government securities by US \$ 5 billion thereby raising the cap to US \$ 15 billion. The incremental limit of US \$ 5 billion can be invested in securities without any residual maturity criterion. Also increased is the current limit of FII investment in corporate bonds by US \$ 5 billion thereby raising the cap to US \$ 20 billion. The incremental limit of US \$ 5 billion can be invested in listed corporate bonds. More details about the allocation of increased limit to government debt and to corporate debt as also allocation of Government debt long-term category for the unutilised part is also provided in the circular. One may refer to the above citation and website for further details.

8. Foreign Investments in Infrastructure Debt Funds

www.rbi.org.in

The RBI has issued Circular No. A.P. (DIR Series) No. 49 dated 22.11.2011 whereby it has stated that a SEBI registered foreign institutional investor (FII) and a non-resident Indian (NRI) may invest in securities other than shares or convertible debentures, subject to such

terms and conditions mentioned therein and limits as prescribed for the same by the RBI and the SEBI from time to time. The circular now provides and allows investment on repatriation basis by eligible non-resident investors in (i) rupee and foreign currency denominated bonds issued by the infrastructure debt funds (IDFs) set up as an Indian company and registered as Non-Banking Financial Companies (NBFCs) with the RBI, and, in (ii) rupee denominated units issued by IDFs set up as SEBI registered domestic Mutual Funds (MFs), in accordance with the terms and conditions stipulated by the SEBI and the RBI from time to time. This circular provides more details on (a) who can be eligible non-resident investors, (b) the eligible instruments/securities for non-resident investment in IDFs, (c) the original/initial maturity of all securities at the time of first investment by a non-resident investor shall be five years, (d) the lock-in period for all non-resident investment in the securities to be a period of three years though all non-resident investors can trade amongst themselves within this lock-in period of three years, (e) that the foreign currency denominated bonds issued by IDFs would have to comply with all the terms and conditions (including all-in-cost) under the extant FEMA guidelines/regulations for External Commercial Borrowing (ECB), other than reporting requirements, (f) the quantitative limits for non-resident investment in IDFs, and (g) other conditions like end use and foreign exchange hedging. One may refer to the above citation and website for further details.

9. Introduction of New Category of NBFC-MFIs

www.rbi.org.in

The RBI has issued Notification No. DNBS.CC.PD.No. 250/03.10.01/2011-12 dated 02.12.2011 whereby based on recommendations of the YH Malegam Committee which was constituted to study issues and concerns in the Micro Finance Institutions (MFI) sector and hence a new category of NBFCs are created 'Non Banking Financial Company - Micro Finance Institutions' (NBFC-MFIs). Consequently there would be seven categories of NBFCs and which are, (i) Asset Finance Company (AFC), (ii) Investment Company (IC), (iii) Loan Company (LC), (iv) Infrastructure Finance Company (IFC), (v) Core Investment Company (CIC), (vi) Infrastructure Debt Fund- Non-Banking Financial Company (IDF-NBFC), and, (vii) Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI). One can refer to this Notification for further details and three notifications enclosed with this notifications which contains the regulatory framework for NBFC-MFIs, and amendments to Non-Banking Financial (Non-Deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007, and the Non-Banking Financial Companies Auditor's Report (Reserve Bank) Directions, 2008. One may refer to the above citation and website for further details.

SEBI**10. Amendment to Takeover Regulations of 2011**

www.sebi.gov.in

The SEBI has issued Circular No. SEBI/CFD/DCR/SAST/3/2011/11/22 dated 22.11.2011 amending the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 wherein the format for submitting Draft Letter of Offer to SEBI under Regulation 16(1) of the Regulations was specified. In that format, certain additional instructions have been now inserted and one should follow the new format for the purpose. Merchant bankers are advised to follow the updated format while submitting the draft letter of offer to SEBI. One may refer to the above citation and website for further details.

11. Annual System Audit

www.sebi.gov.in

The SEBI has issued Circular No. CIR/MRD/DMS/13/2011 dated 29.11.2011 stating and recalling that keeping in view that the rapid technological developments in the securities markets does not overshadow the risks that these innovations pose to the efficiency and integrity of markets, it had earlier mandated that exchanges shall conduct an annual system audit by a reputed independent auditor and that a similar framework was also prescribed for depositories. Now, based on discussions with the stock exchanges and the depositories, and on recommendations of the Technical Advisory Committee (TAC), the present system audit framework has been reviewed encompassing the system audit process, auditor selection norms, terms of reference (TOR) and audit report guidelines. Now, the annual system audit would be conducted as per the System Audit Framework enclosed to this circular. The systems audit reports and compliance status should be placed before the governing board of the stock exchanges / depositories and the system audit report along with comments of stock exchanges / depositories should be communicated to SEBI. Further, along with the audit report, the stock exchanges / depositories are advised to submit a declaration from the MD / CEO certifying the security and integrity of their IT Systems. In case the exchanges / depositories have commenced their annual system audit, they may follow the existing annual system audit framework and the exchanges / depositories who are yet to commence annual system audit would carry out their annual system audit as per the framework given in this circular. One may refer to the above citation and website for further details.

12. SEBI (KYC (Know Your Client) Registration Agency) Regulations, 2011

www.sebi.gov.in

The SEBI has issued Notification No. LAD-NRO/GN/2011-12/29/36772 dated 02.12.2011 notifying

the above Regulations which has a mechanism for centralisation of the KYC records in the securities market. Under the regulations it is provided that an intermediary shall perform the initial KYC of its clients and upload the details on the system of the KRA. When the client approaches another intermediary, the intermediary can verify and download the client's details from the system of the KRA. As a result, once the client has done KYC Registration Agency (KYC) with a SEBI registered intermediary, he need not undergo the same process again with another intermediary. One may refer to the above citation and website for further details and the regulations.

13. Amendment to SEBI (Debenture Trustees) Regulations, 1993

www.sebi.gov.in

The SEBI has issued Notification No. LAD-NRO/GN/2011-12/30/37715 dated 14.12.2011 amending the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993 in relation to capital adequacy requirement (CAR) providing for the CAR requirement shall not be less than the net worth of Rs. two crore for the debenture trustees. A debenture trustee, who was granted a certificate of initial or permanent registration, as the case may be, under the regulations prior to the commencement of this amendment under this notification, it shall raise its net worth to the said minimum within a period of two years from the commencement of this amendment. One may refer to the above citation and website for further details.

14. Guidelines on Outsourcing of Activities by Intermediaries

www.sebi.gov.in

The SEBI has issued Circular No. CIR/MIRSD/24/2011 dated 15.12.2011 where SEBI has noted that under SEBI Regulations for various intermediaries, it is required that they shall render at all times high standards of service and exercise due diligence and ensure proper care in their operations. It is observed by SEBI that often the intermediaries resort to outsourcing with a view to reduce costs, and at times, for strategic reasons. SEBI has considered the definition of 'outsourcing' as the use of one or more than one third party – either within or outside the group - by a registered intermediary to perform the activities associated with services which the intermediary offers. SEBI has provided by this circular the principles for outsourcing, the nature activities that shall not be outsourced, other obligations like reporting to financial intelligence unit (FIU) and need for self assessment of existing outsourcing arrangements. SEBI has provided in the Annexure to the circular the principles for outsourcing for intermediaries. One may refer to the above citation and website for further details. ■

Treatment of Tax Expense on Deemed Income Under Section 56(2)(viiia) of the Income-tax Act, 1961 Arising on Purchase of Investments.

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') in which public is not substantially interested is incorporated on May 5, 2010 under the Companies Act, 1956 with the object to generate, receive, purchase, develop, use, sell, supply, distribute, transmit and accumulate electrical or any other form of power and energy in general by conventional or non-conventional methods, from any source whether hydro, water, wind, solar, thermal, gas, oil, diesel, nuclear or otherwise at power stations, plants, establishments, works and other ancillary facilities of every kind and description and transmit, distribute and supply such power through transmission lines, cables, wires and other facilities on a commercial basis to cities, towns, streets, docks, factories, markets, buildings and other places both public and private. The company is a wholly owned subsidiary of a company, B Limited, which holds 15% of the equity shares of another unlisted company, C Limited.
2. During the financial year 2010-11, it was decided by the Board of the company to acquire, if possible, all the balance 85% equity shares of C Limited, which were held by other not related shareholders. The company intends to hold this for long term purposes being a strategic investment. Accordingly, the company has acquired additional equity shares (representing balance 85%) from various unrelated parties in separate trenches for an agreed consideration (excluding stamp duty and tax under section 56(2)(viiia) of the Income-tax Act, 1961). The acquisitions were at a price lower than the fair value of the said shares calculated in accordance with manner prescribed under Rule 11 (UA) of the Income Tax Rules, 1962.
3. Under the provisions of section 56(2)(viiia) of the Income-tax Act, 1961, in the instances, where shares of a company in which the public is not substantially interested are acquired for a consideration which is less than the aggregate fair value of the shares by an amount exceeding ₹50,000/-, the excess of the aggregate fair value over the consideration is an income under the head 'Income from Other Sources'.
4. The querist has stated that the company has paid tax on the the excess of the aggregate fair value over the consideration paid in accordance with the requirements of section 56(2)(viiia). In addition to the above, the company has also incurred expenses on account of stamp duty, franking and bank charges in connection with the said acquisition.
5. According to the querist, the payment of income tax under section 56(2)(viiia) has arisen out of the transaction of acquisition of shares and the company would not have incurred such an expense otherwise. The internal business case for acquisition of these shares was justified to the Board by considering the basic cost of acquisition, the transaction costs like stamp duties, the cost of transfer of shares and the tax payable under section 56(2)(viiia), i.e., deemed income arising from purchase of investments, which would be directly associated with purchase of such shares.
6. The querist has further stated that the provision of tax under section 56(2)(viiia) is a recent addition to the Income-tax Act, 1961, and such a situation of taxes payable due to acquisition is not covered directly in paragraph 9 of existing Accounting Standard (AS) 13, 'Accounting for Investments', which deals with various costs that could be considered as part of cost of acquisition of an investment. In view of this, the querist has referred to relevant technical material from notified* Indian Accounting Standards (Ind ASs) for technical guidance on the subject matter.
7. The querist has stated that as per paragraph 11 of Indian Accounting Standard (Ind AS) 32, 'Financial Instruments: Presentation', definition of financial assets includes an equity instrument of another entity. Paragraph 38 of Indian Accounting Standard (Ind AS) 27, 'Consolidated and Separate Financial Statements' provides, inter alia, as follows:

"38 For preparing separate financial statements the entity shall account for investments in subsidiaries, jointly controlled entities and associates either:

 - (a) at cost, or
 - (b) in accordance with Ind AS 39"

Paragraph 43 of Indian Accounting Standard (Ind AS) 39, 'Financial Instruments: Recognition and Measurement', provides as follows:

"43 When a financial asset or financial liability is recognised initially, an entity shall measure it at its fair value plus, in the case of a financial asset or financial liability not at fair value through profit or loss, transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability."

As per paragraph 9 of Ind AS 39, **"Transaction costs are incremental costs that are directly attributable**

* The Committee wishes to point out that although Ind ASs have been placed on the website of Ministry of Corporate Affairs, these Standards have not yet been notified by the Ministry.

to the acquisition, issue or disposal of a financial asset or financial liability (see Appendix A paragraph AG13). An incremental cost is one that would not have been incurred if the entity had not acquired, issued or disposed of the financial instrument."

Paragraph AG 13 of Appendix A, Application Guidance to Ind AS 39, states as follows:

"AG13 Transaction costs include fees and commissions paid to agents (including employees acting as selling agents), advisers, brokers and dealers, levies by regulatory agencies and securities exchanges, and transfer taxes and duties. Transaction costs do not include debt premiums or discounts, financing costs or internal administrative or holding costs."

8. The querist has stated that in view of the above, especially paragraph 9 of Ind AS 39 and paragraph AG13 of Appendix A to Ind AS 39, the company is of the view that the tax on this notional deemed income is a transaction cost, which otherwise would not have been incurred by the company and should be treated as acquisition cost of the investment and hence, has capitalised the said tax cost.

B. Query

9. The company has considered the basic consideration, stamp duty charges and tax under section 56(2)(viiia) as cost of investment in shares in its accounts. The querist believes that the purchase has resulted in a cash outflow on account of tax under section 56(2)(viiia) and that this cost is a direct result of the acquisition of these said shares as also it was a part of the business case which justified the overall purchase at the all inclusive price. Had the acquisition of these shares not been made, the company would not have incurred such costs. On the basis of the above, the querist is seeking opinion of the Expert Advisory Committee on the following issues:
 - (i) whether the payment of tax under section 56(2)(viiia) would qualify to be treated as part of the cost of investment in the balance sheet of the company in view of the explanation provided in paragraphs 9 and 43 of Ind AS 39 read along with paragraph AG13 of Appendix to Ind AS 39.
 - (ii) If answer to (i) is no, what is the correct accounting treatment of such tax expenses on deemed income under section 56(2)(viiia) of the Income-tax Act, 1961?

C. Points considered by the Committee

10. The Committee notes that the basic issue raised in the query relates to accounting for tax paid under section 56(2)(viiia) in the separate financial statements of the company. The Committee has, therefore, considered only this issue and has not considered any other issue

that may arise from the Facts of the Case, such as, accounting for stamp duty, franking and bank charges, cost of transfer of shares and other costs incurred, accounting in the consolidated financial statements and accounting in the books of holding company or company C, applicability of Ind AS 39 or other Ind ASs in the instant case, etc. Further, the opinion expressed hereinafter, is purely from accounting point of view and not from interpreting any legal enactment, such as, Income-tax Act, 1961.

11. The Committee notes paragraph 56(2)(viiia) of the Income-tax Act, 1961, which provides, inter alia, as follows:

"Where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested, –

- (i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;
 - (ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration"
12. The Committee wishes to point out that although Ind ASs have been placed on the website of the Ministry of Corporate Affairs, these Standards have not yet been notified by the Ministry. Accordingly, till the Ind ASs are notified by the Ministry, the existing notified Accounting Standards would be applicable. Therefore, in the instant case, the Committee is of the view that the transaction of acquisition of investment in shares would be governed by the existing notified AS 13.
 13. With regard to accounting for the tax levied under section 56(2)(viiia) of the Income-tax Act, 1961, the Committee notes paragraph 9 of AS 13, which provides that "the cost of an investment includes acquisition charges such as brokerage, fees and duties". Keeping in view the nature of the items of acquisition charges mentioned in AS 13, the Committee is of the view that the cost of acquisition should include only those direct charges which are incurred 'on' acquisition of investment, i.e., the expenses, without the incurrance of which, the transaction could not have taken place, such as, share transfer fees, stamp duty, registration fees, etc. The Committee notes that tax paid under section 56(2)(viiia) is levied when consideration paid for acquisition of investment is lower than its fair market value for an amount exceeding ₹50,000 and such lower consideration paid is deemed as income of the assessee acquiring such investment. Thus, this tax is not a tax 'on' acquisition of shares rather it is a

tax on 'deemed income' under Income-tax Act, 1961. Accordingly, the Committee is of the view that such tax expense is not a cost incurred 'on' acquisition of investment rather it is incurred after the transaction of the acquisition of investment. In other words, it is not a means of acquiring such investments; rather it is a result of such acquisition. Accordingly, such tax cannot be considered as acquisition-related cost and, therefore, cannot be capitalised as cost of investment. The Committee is further of the view that such tax paid should be treated as normal tax and charged off to profit and loss account in the year in which it is incurred.

14. Since the querist has sought to take support in this regard from Ind ASs, the Committee has also examined this issue in the framework of Ind ASs independently without relating it to AS 13 or any other existing notified Standard. Under the framework of Ind ASs, the Committee notes that paragraph 38 of Ind AS 27 provides, inter alia, as follows:

"38 For preparing separate financial statements the entity shall account for investments in subsidiaries, jointly controlled entities and associates either:

- (a) at cost, or
(b) in accordance with Ind AS 39"**

15. The Committee notes from the above that Ind AS 39 would be relevant only if the entity exercises the option to account for investment in subsidiary under that Standard. It may be noted that if that option is exercised, the Committee notes paragraph 43 of Indian Accounting Standard (Ind AS) 39, 'Financial Instruments: Recognition and Measurement', provides as follows:

"43 When a financial asset or financial liability is recognised initially, an entity shall measure it at its fair value plus, in the case of a financial asset or financial liability not at fair value through profit or loss, transaction costs that are directly attributable to the acquisition or issue of the financial asset or financial liability."

16. Presuming that the investment is not a financial asset at fair value through profit or loss, the Committee notes that paragraph 9 of Ind AS 39 provides, "**Transaction costs are incremental costs that are directly attributable to the acquisition, issue or disposal of a financial asset or financial liability (see Appendix A paragraph AG13). An incremental cost is one that would not have been incurred if the entity had not acquired, issued or disposed of the financial instrument.**"

17. The Committee further notes that paragraph AG 13 of Appendix A, Application Guidance to Ind AS 39, states as follows:

"AG13 Transaction costs include fees and commissions paid to agents (including

employees acting as selling agents), advisers, brokers and dealers, levies by regulatory agencies and securities exchanges, and transfer taxes and duties. Transaction costs do not include debt premiums or discounts, financing costs or internal administrative or holding costs."

18. The Committee notes from the above provisions of Ind AS 39 that only those transaction costs that are directly attributable to the acquisition of investment can be capitalised with the investment. The Committee is of the view that although the tax levied under section 56(2)(viiia) may be considered as an incremental cost of acquisition of investment, it cannot be considered as 'a directly attributable cost' due to the reasons stated in paragraph 13 above. Accordingly, even on considering the relevant provisions of Ind AS 39, such tax levied cannot be capitalised as cost of investment.

D. Opinion

19. On the basis of the above, the Committee is of the following opinion on the issues raised by the querist in paragraph 9 above:
- The payment of tax under section 56(2)(viiia) does not qualify for capitalisation as a cost of investment in the balance sheet of the company as mentioned in paragraphs 13 and 18 above.
 - Tax paid under section 56(2)(viiia) should be treated as normal tax and charged off to profit and loss account of the year in which it is incurred as discussed in paragraph 13 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 12.08.2011. 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 twenty eight volumes. A CD of Compendium of Opinions containing twenty eight 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 .

Revenue Recognition under International Financial Reporting Standards (IFRS)



As companies prepare for their transition to Ind-AS (IFRS converged accounting standards), there may be several GAAP differences which may require an adjustment to the existing accounting principles applied. Measurement, recognition of revenue and timing thereof is one key area which would be a topic of significant debate irrespective of the actual impact. Companies may have to look the principles considering that they have been applying certain principles over the years. This article aims to discuss some of the aspects of the revenue recognition standard under Ind-AS 18 and certain areas of impact.

Requirements under Ind-AS 18 (IAS 18) and Comparison to Existing Principles in Indian GAAP

■ **Objective:** Similar to the requirements of AS 9, IAS 18 deals with the accounting for revenue from sale of goods, rendering of services and use by others of assets belonging to the entity and giving rise to interest, royalties and dividends. Specific guidance on certain aspects such as revenue in case barter transactions, customer loyalty programmes and transfer of asset from customers is contained

in Appendix A, B and C respectively.

Ind-AS 11 provides for guidance on the accounting treatment of revenue and costs associated with construction contracts. In this article we do not aim to discuss the requirements of Ind-AS 11.

IFRIC 12 Service Concession Arrangements and IFRIC 15 Agreements for construction of real estate were not adopted by the ICAI in the issuance of Ind-ASs. These provide guidance specific to revenue recognition in an industry.

■ **Scope:** Ind-AS 18 shall be applied in the accounting



CA. Ashish Gupta

(The author is a member of the Institute. He can be reached at eboard@icai.org)

of revenue arising from the following transactions and events: a) sale of goods, b) rendering of services and c) the use by others of entity assets yielding interest, royalties and dividends. The scope of Ind-AS 18 is not significantly different from the requirements under AS 9.

- **Measurement of revenue:** Fair value: Revenue under IAS 18 is required to be measured at fair value of consideration received or receivable. Fair value takes into consideration trade discounts/volume rebates, other incentives which may include cash settlement discounts. Similarly, when inflow may be deferred, the fair value may be less than the nominal value.

No specific measurement principles are contained under AS 9 with respect to measurement at fair value.

Also see the discussion on customer loyalty programmes below.

- 1 **Extended credit:** Under AS 9, revenue is recognised at the contractual value of the consideration receivable. Ind AS requires measurement of revenue at fair value of the consideration receivable i.e., if the company offers an extended credit period to customers, revenue is recognised at the present value of future cash inflows. Interest income is recognised over the credit period.
- 2 **Cash discounts:** Under the existing practice, cash discounts are generally reported as expenditure as incurred. Under Ind-AS, applying the fair value principles, cash discounts would also need to be netted against the revenue.

In summary, if it is probable that a rebate or discount will be passed on to the customer, and the amount can be measured reliably, then the rebate or discount is recognised as a reduction of revenue as the sales are recognised.

- **Identifying a transaction:** Recognition principles under IAS 18 are applied separately to each transaction or a component of a transaction.

For instance: sale and subsequent servicing would be two separate components in a transaction. Therefore, if a transaction comprises of more than one activity then revenue is allocated to each identifiable component.

Conversely, the recognition criteria are applied to two or more transactions together when they are linked in such a way that the commercial effect cannot be understood without reference to the series of transactions as a whole. While there is no detailed guidance under IAS 18 on how to separate components, guidance may be drawn from Ind-AS 11. This principle is also dealt with in Appendix A, B and C of Ind-AS 18.

Based on the above, the following tests may be applied:

- 1 The component has stand-alone value to the customer;
- 2 The fair value of the component can be measured reliably.

These arrangements are commonly referred to as

If it is probable that a rebate or discount will be passed on to the customer, and the amount can be measured reliably, then the rebate or discount is recognised as a reduction of revenue as the sales are recognised. ☺☺

multiple element arrangements. Components identified in the contract with the customer and prices attributed to such components, may not be determinative and allocation of the total sale consideration to such separate components. Accordingly, an allocation would be required to each component. This would become relevant when the timing of recognition of revenue is different for various components.

Application of the above principles would result in differences from the existing accounting practices considering that there is limited guidance considering that companies generally account for such transactions in accordance with the terms of the contract.

Illustration:

Company X, an IT/ITES services provider, sells equipment with installation services for a sum of ₹1,000. The cost of installation services provided by other vendors is at ₹100. Company X also sells equipment without installation services at ₹925.

In this case, the sale of equipment and installation would be regarded as separate components. Revenue from the sale ₹900 (₹1,000 less ₹100) will be recognised when delivered and other recognition principles are met. Revenue of ₹100 from installation will be recognised as and when installation services are provided.

Allocation of Revenue: The method discussed in the illustration above for allocation of revenue is generally referred to *residual fair value approach*. Applying the principles outlined in Appendix B of Ind-AS 18, the total consideration may also be allocated using the relative fair value approach.

Linking transaction: Similar to separating a transaction or component, it is possible that two

The general criteria for revenue recognition are: a) it is probable that the economic benefits of the transaction will flow to the entity, b) the revenue can be measured reliably; and c) the costs (both incurred to date and expected future costs) are identifiable and can be measured reliably. There is no significant difference in the criteria for revenue recognition under AS 9 in comparison to Ind-AS 18.☺☺

or more transactions need to be linked. This may arise when the commercial effect of each of the transactions cannot be understood without reference to a series of transactions as a whole.

Illustration

A club services provider company may charge an initial fee upfront with periodic payments for future services. The initial fee may, in substance, be wholly or partly an advance for future services or the future services are essential to the customers receiving the expected benefit of upfront payment.

In such cases, both the upfront fee and continuing performance

obligation should be assessed together. Even though the upfront fee may be non-refundable, such fee would generally be deferred and recognised systematically over the period of contractual obligation or an expected period of providing such obligation.

■ **Criteria for revenue recognition:** The general criteria for revenue recognition are: a) it is probable that the economic benefits of the transaction will flow to the entity, b) the revenue can be measured reliably; and c) the costs (both incurred to date and expected future costs) are identifiable and can be measured reliably. There is no significant difference in the criteria for revenue recognition under AS 9 in comparison to Ind-AS 18.

■ **Timing of recognition of revenue:** Revenue from sale of goods shall be recognised when

- 1 an entity has transferred to the buyer significant risks and rewards of ownership of goods and
- 2 the entity retains neither continuing managerial involvement to the degree usually

associated with ownership nor effective control over the goods sold.

Generally, transfer of the significant risks and rewards of ownership will correspond to the transfer of legal title or physical delivery. In other cases, the transfer of risks and rewards of ownership occurs at a different time from the transfer of legal title or the passing of possession. In this evaluation, one of the key considerations is shipment terms, evaluation of abnormal warranty obligations, revenue contingent to the buyers subsequent sale, goods subject to installation or when there is a right to return by the buyer.

Under the current reporting requirements, companies are generally recognising revenue from domestic sales on dispatch from the factory, and on export sales on the bill of lading date. On convergence with Ind-AS, the terms of the sale arrangement may need to be evaluated to determine the timing of recognition.

For instance: We discuss the above mentioned conditions for the timing of recognition of revenue with the help of the following examples:

1 **Goods shipped subject to right to return:** When the buyer has a right of return and there is uncertainty about the possibility of return, revenue is not recognised until the shipment has been accepted by the customer, or the goods have been delivered and the time period for rejection has elapsed. (Appendix E to Ind-AS 18). IFRS lacks the extensive prescriptive guidance of US GAAP, focusing its requirements on the ability to make a reliable estimate of future



returns based on prior experience. Guidance therefore for estimation can be taken from US GAAP.

Companies in the pharmaceutical sector provide their customers a right to return. Going by the past experience of an entity, it should be considered in the timing of recognition of revenue.

- 2 **Bill and hold sales:** (Appendix E to Ind-AS 18) For bill and hold transactions revenue is not recognised until it is probable that delivery will be made of items already in hand, the buyer has acknowledged the deferred delivery instructions and the usual payment terms apply.

Such bill and hold sales are generally noted in the FMCG sector. An evaluation of whether the conditions above are met would need to be made in order to ensure that revenue can be recognised, specifically an evaluation may be required if the condition of usual payment terms apply.

For example: Companies offer financial incentives to place purchase orders before they need goods. In addition, companies are offered to provide storage and insurance of such goods as the customers cannot store these. In such case, the company may not be in a position to recognise revenue as significant risks and rewards have not passed.

- 3 **Upfront payments/milestone payments:** Several pharmaceutical companies enter into transactions for sale or license of dossiers and arrangements to subsequently supply related drugs over a certain period of time. Timing of the revenue recognition on sale or license of dossiers would need to be evaluated in accordance with

the terms of the arrangement i.e., depending upon the extent of flexibility available to the buyer. Under Ind-AS 18, companies should recognise such revenues from sale/license of dossier on completion of the performance obligation under the agreement. An evaluation of the terms of the arrangement would be required if revenue from sale of dossiers should be recognised upfront or should it be linked to the supply transaction and revenue be recognised over the period of the arrangement.

In the evaluation of the timing of recognition of revenue, one of the conditions which needs to be evaluated is the continuing managerial involvement of an entity:

"Continuing managerial involvement to the degree usually associated with ownership" is less straightforward. It is unlikely that an entity would retain such involvement without retaining the economic benefits of the asset nor is it likely that a buyer would accept continuing involvement where it had acquired the asset for fair consideration.

Commercially, continuing involvement to the degree envisaged

A **ppendix B to Ind-AS 18 provides guidance on accounting for award credits. Applying the principles of identifying a component, the standard requires that the fair value of the consideration received in respect of the initial sale should be allocated between the award credits and the components of the sale.**

would not normally occur where a genuine sale has taken place. If it does, it is likely that there are other features of the arrangement that need to be considered. Indicators include:

- 1 The seller can control the future price.
- 2 The seller is responsible for the management of the goods.
- 3 The terms of the transaction allow the buyer to compel the seller, or give an option to the seller, to repurchase the item at an amount not equal to fair value.
- 4 The seller guarantees the return of the buyer's investment or a return on that investment for a significant period.

For instance: Entity ABC manufactures and supplies specialised equipments. The equipment have an expected life of five years. Entity ABC enters into arrangements with its customers for the sale of the equipment. Under the arrangement, the entity sold equipment and in turn the customer leases the equipment to third parties for three years. At the end of the lease term, entity ABC guarantees that the residual value will be ₹ 500,000. Entity ABC has the right of first refusal to repurchase at the end of the three year lease term. If the entity declines to repurchase them, it is liable to pay its customer for the difference between the guaranteed price and the recovery earned by the customer.

In this situation, the entity should not recognise revenue on sale. The substance appears to be that entity has leased equipment to its customers.

- **Customer loyalty programmes:** Appendix B to Ind-AS 18 provides guidance on accounting for award credits. Applying the principles of identifying a component, the

standard requires that the fair value of the consideration received in respect of the initial sale should be allocated between the award credits and the components of the sale.

Currently, there is limited guidance in this area and the practice varies in this area. For instance: based on the publicly available financial statements of two large listed airline companies, it is evident that frequent flyer programmes operated are accounted as costs in the financial statements i.e., provisions are considered based on incremental costs.

■ Transactions involving exchange of goods/services:

In certain cases, transactions may be undertaken other than by way of cash i.e., transactions involving swapping of goods or services. IAS 18 provides that when goods are sold in exchange for similar goods, the exchange is not regarded as a transaction which generates revenue. Revenue in other cases is measured at the fair value of goods received, unless this cannot be measured reliably.

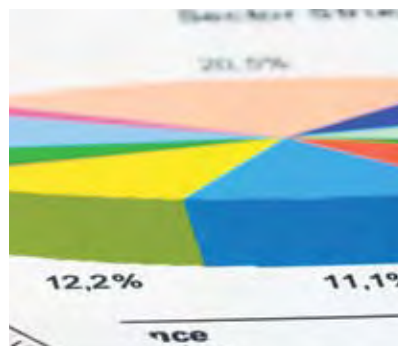
As of date, practice in this area varies for different companies.

For instance: Accounting for such swapping of goods/services may be relevant for several companies including telecom companies. Generally, telecom companies engage in exchange of network or bandwidth capacity in a particular location with network or capacity in an alternate location. The transaction's commercial substance must be considered. To the extent that the swap does not have substance, companies should not record revenue or costs in respect

of the capacity exchanged. To the extent that the transaction has substance, it may be appropriate to recognise revenue.

■ **Service contracts:** Revenue in case of contracts involving rendering of services are recognised in the same manner as in construction contracts i.e., if the outcome can be measured reliably then revenue is recognised using the percentage completion method, else recognised only to the extent expenses have been incurred.

Fees for providing *continuing services*, whether they are part of an initial fee or are charged as a separate fee, are recognised as revenue as the services are



If it is determined that some or all of the revenue arising from the customer contribution relates to the ongoing supply of goods or services, then revenue is recognised as those services are delivered. Typically such revenue is recognised over the term specified in the agreement with the customer. If, however, no such term is specified, then the period of revenue recognition is limited to the useful life of the transferred asset.

rendered. Any initial or entrance fee is recognised as revenue when there is no significant uncertainty as to its collection and the entity has no further obligation to perform any continuing services. This has also been discussed in the illustration on fee charged by the club services provider, above.

In continuation with the illustration, in some cases an initial fee is levied followed by, or including, separate fees for services, but the separate fees do not cover the cost of the continuing services together with a reasonable profit. In these cases part of the initial fee, sufficient to cover the costs of continuing services and to provide a reasonable profit on those services, is deferred and recognised as revenue as the services are rendered. This is also discussed in the Appendix E(18b) of Ind-AS 18.

When services are performed through an indefinite number of repetitive acts over a specified period of time, revenue is recognised on a straight-line basis over the specified period unless some other method better represents the stage of completion. When a specific act is much more significant than any other acts, revenue is recognised only after the significant act is performed.

For instance: Upfront loan processing charges: It is necessary to distinguish between fee that is an integral part of the effective interest rate of a financial instrument (for example: a loan transaction) or fee earned for providing a service. Fee received which is an integral part of the effective interest rate is treated as an adjustment to the effective interest computations in accordance with Ind-AS 39.

1 Commitment fee paid towards origination of loan would be outside the scope of Ind-AS

39 and consequently, no treated as an adjustment to the effective interest computations.

Specific Matters in Connection with Revenue Recognition

■ **Software revenue recognition:**

Ind-ASs do not contain any specific guidance on accounting for revenue from software transactions. Accordingly, the general guidance discussed above would be applied in the recognition of revenue from software transactions.

We discuss the criteria for different kinds of software transactions below:

- 1 When software is only sold: The criteria for sale of goods would apply,
- 2 When services are provided for software sold such as upgrades, the revenue from providing these services should be deferred and recognised when the services are provided,
- 3 When customised software services are provided i.e., software provided is customised to the requirements of the buyer, revenue is recognised with reference to the percentage of completion,
- 4 When the software entity enters into a licensing arrangement, the revenue is accounted for in accordance with the substance of the arrangement i.e., in accordance with Ind-AS 18 (para 20).

For instance: license provided for use of technology over a specified period of time is recognised on a straight line basis over the life of the arrangement. Alternately, in case where rights are provided for a non-refundable fee under a non-cancellable arrangement and the licensor has no further

performance obligations, the arrangement would in substance qualify as a sale transaction.

■ *Transfer of assets from customers (Appendix C of Ind-AS 18)*

Appendix C (equivalent to IFRIC 18 issued by the IASB) provides guidance on transfers of property, plant and equipment (or cash to acquire these assets) for entities that receive such assets from their customers in return for a network connection and/or an ongoing supply of goods or services. This may apply in case of companies in the utility industry such as auto and auto components or the FMCG industry where tools, dies are provided to the contractor.

In connection with such transfers, the entity receiving should consider the following to ascertain the timing of recognition of revenue.

- 1 Is the definition of an asset met: an assessment is required if the transferred item meet the definition of an asset in accordance with the framework. If the conditions are met, the asset would be recognised in accordance with Ind-AS 16.
- 2 What are the performance obligations as a result of receiving the asset and can these obligations be separated for revenue recognition purposes i.e., are there separately identifiable services?

Once an asset is recognised, the credit is recognised if there is one or more services are provided in connection with the transferred item. There is no detailed guidance in Appendix C on identifying whether there is a separate

Convergence with IFRS and adoption of Ind-ASs would require companies to revisit their accounting policies under the existing reporting requirements and make an assessment of areas where there would be a change or where a detailed evaluation may be required. Revenue recognition is one area which may have a pervasive impact on the financial statements of the entity or the manner in which contracts or transactions are perceived by an entity. IFRS contains general principles for revenue recognition that would need to be applied for different types of transactions.”

performance obligation. Facts and circumstances of each case would need to be considered in arriving at a conclusion.

If goods or services are provided to the customer at a price lower than would be charged without the transfer of property, plant and equipment then such transfer can be identified towards future performance obligations.

- 3 When should revenue related to the identifiable performance obligation be recognised?

If it is determined that some or all of the revenue arising from the customer contribution relates to the ongoing supply of goods or services, then revenue is recognised as those services are delivered. Typically such revenue is recognised over the term specified in the agreement with the customer. If, however, no such term is specified, then the period

IFRS contains general principles for revenue recognition that

would need to be applied for different types of transactions. While the general guidance is largely similar to the requirements under Indian GAAP, various differences exist including differences in the application of current accounting requirements specifically relating to the accounting for contracts involving multiple deliverables or accounting of revenue at fair value.

of revenue recognition is limited to the useful life of the transferred asset.

Forthcoming Requirements

As Indian companies prepare to converge with the revenue standard and other IFRSs, IASB and FASB had earlier during 2010 issued an exposure draft to replace the existing revenue recognition standards under the Memorandum of Understanding.

As per the exposure draft, IASB intends to replace the existing guidance. The new model provides for the following in comparison to the existing requirements under IAS 18:

- **Identification and segmentation of contracts into performance obligations:** Specific guidance is contained in the exposure draft on identifying a contract and identifying separate performance obligations in the contract.

Indicators that the contracts are inter-dependent are:

- 1 the contracts are entered into at or near the same time;

- 2 they are negotiated as a package with a single commercial objective; and
- 3 they are performed either concurrently or consecutively.

- **Determination of transaction price:** The exposure draft proposes that an entity also include variable consideration from the time that it can be estimated. In addition, there is specific guidance on a) the effect of the time value of money i.e., imputed interest is required to be considered even on advance payments, b) the effect of customer credit risk.

- **Allocation:** The exposure draft provides for specific guidance on allocation of transaction price to the different components. The entity would allocate the transaction price to separate performance obligations in proportion to their relative stand-alone selling prices. Such guidance is not contained explicitly in the existing standard.

- **Recognition of revenue:** Specific guidance is contained in relation to when a performance obligation is satisfied. This is in case where the transfer of a good or service to the customer will take place at one point in time.

In other cases, it will take place continuously over a period of time. It may be difficult to determine whether the entity transfers control of the goods or services continuously or at a point in time, particularly when the entity promises to produce, manufacture or construct an asset specifically for a customer. In such cases, the entity would evaluate whether the customer controls the asset as it is produced,

manufactured or constructed, meaning that the customer has the present ability to direct the use of and receive the benefit from the work in progress. If it is the case, control of promised goods or services is transferred continuously. Otherwise, it would be transferred at one point of time, generally when the asset is completed. In summary, the Percentage of completion method is withdrawn but similar methods could be applied when control is transferred continuously.

Conclusion

Convergence with IFRS and adoption of Ind-ASs would require companies to revisit their accounting policies under the existing reporting requirements and make an assessment of areas where there would be a change or where a detailed evaluation may be required. Revenue recognition is one area which may have a pervasive impact on the financial statements of the entity or the manner in which contracts or transactions are perceived by an entity. IFRS contains general principles for revenue recognition that would need to be applied for different types of transactions. While the general guidance is largely similar to the requirements under Indian GAAP, various differences exist including differences in the application of current accounting requirements specifically relating to the accounting for contracts involving multiple deliverables or accounting of revenue at fair value. An early preparation for the convergence would enable companies to work towards revisiting their existing transactions and ensuring that the requirements of IAS 18 are met.

As companies prepare for the convergence with IFRS, there is a continuous change in the International Standards. ■

Simply Payment of Sales Tax Will Not Absolve From Service Tax Liability Unless That Aspect Is Not Covered by Centre's Power



There are so many circumstances under which both Sales tax under respective VAT law as well as Service tax under the Finance Act'1994 are levied. After the judgement delivered by Honourable Supreme Court of India in *BSNL Vs. Union of India* (2006) 3 SCC 1, a lot of confusion was prevailing on the interpretation of the judgement. Honourable Supreme Court's decision dated 4th August, 2011 in the case of *Idea Mobile Communications Ltd Vs. Commissioner of C. C. E & C.*¹ has become a benchmark decision in so far as the interpretation of BSNL judgement is concerned.

Introduction

After the judgement delivered by Honourable Supreme Court of India in *BSNL Vs. Union of India* (2006) 3 SCC 1 (hereinafter referred to as BSNL judgement), the ratio of the judgement was being interpreted in different manner. Some people have harped upon the aspect theory discussed in the judgement and interpreted that same transaction can be taxed by both Centre and State if it is covered by different aspects as per the powers given to them. Some have harped upon payment theory where tax has already been levied, viz, sales tax and other authority did not have power to tax it, viz, service tax.

It is in the back drop of these interpretations that a lot of confusion was prevailing on

the interpretation of the BSNL judgement. Honourable Supreme Court's decision in the case of *Idea Mobile Communications Ltd Vs. Commissioner of C. C. E & C. Cochin* [Civil Appeal no. 6319 of 2011 arising out of SLP (c) No. 24690 of 2009 delivered on 4th August' 2011] (hereinafter referred to as *Idea Mobile judgement*), has become a benchmark decision in so far as the interpretation of BSNL judgement is concerned. This article is an attempt to unveil the interpretation made by Honourable Supreme Court in the case of *Idea Mobile judgement*.

Issues which were and are still being debated

There are so many circumstances under which both sales tax under



CA. Pradeep Mehta

(The author is a member of ICAI. He can be reached at mpradeep@icai.org)

¹ Reported in Volume 60, Page no 548 (LD/60/45) of *The Chartered Accountant Journal*.

respective VAT law as well as service tax under the Finance Act'1994 are levied. One of the examples is taxability on the Annual Maintenance Contracts (AMCs). Annual maintenance contract is being treated as works contract on account of material being used therein and hence being subjected to VAT under respective State VAT legislations. At the same time the same is chargeable to service tax and has been covered under the taxable services under clause (64) of Section 65 of the Finance Act' 1994 as amended from time to time. One may argue as to when service tax has been paid on AMCs, why sales tax should be paid on the same transaction. But, it is because of two different aspects, i.e., sale involved in AMC as well as provisioning of service in the same AMC, which have allowed both Centre and State to subject the same to tax under their respective powers. However, taxation of AMC has been one of the more clarified transactions where both trade/legal as well as departmental authorities has more or less consensus except on a few points. But there were some transaction where there were debate and were subjected to judicial scrutiny. One of those much debated transaction as was discussed in BSNL judgement was transaction charges recovered

In BSNL judgement the Honourable Supreme Court enunciated the

principles to decide on the issue and stated that if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax.

on sale of SIM cards as well as activation charges. This transaction was subjected to both sales tax as well as service tax not only on a part but on the whole transaction. The sales tax authorities not only subjected the sale of SIM cards to sales tax but also activation charges to sales tax. Similarly, the service tax authorities not only subjected the activation charges to service tax but also on sale of SIM cards. The matter went upto the Honourable Supreme Court. There it was not finally decided but provided certain guidelines to be followed by the assessing authorities.

BSNL Judgement

The Honourable Supreme Court had the occasion to deal with this issue and discussed at para 87 as follows:-

87. It is not possible for this Court to opine finally on the issue. What a SIM card represents is ultimately a question of fact, as has been correctly submitted by the States. In determining the issue, however the assessing authorities will have to keep in mind the following principles: if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. It would depend ultimately upon the intention of the parties. If the parties intended that the SIM card would be a separate object of sale, it would be open to the Sales Tax Authorities to levy sales tax thereon. There is insufficient material on the basis of which we can reach a decision.

However we emphasise that if the sale of a SIM card is merely incidental to the service being

idea Mobile judgement has put to rest various kinds of interpretations

being given to the BSNL judgement and paved the way to the departmental authorities to find out the real nature of the transactions and allowed them to subject the same to service tax even if sales tax has been paid.

provided and only facilitates the identification of the subscribers, their credit and other details, it would not be assessable to sales tax. In our opinion the High Court ought not to have finally determined the issue. In any event, the High Court erred in including the cost of the service in the value of the SIM card by relying on the "aspects" doctrine. That doctrine merely deals with legislative competence. As has been succinctly stated in Federation of Hotel & Restaurant Assn. of India v. Union of India: (SCC pp. 652-53, paras 30-31)

"... subjects which in one aspect and for one purpose fall within the power of a particular legislature may in another aspect and for another purpose fall within another legislative power".

There might be overlapping; but the overlapping must be in law. The same transaction may involve two or more taxable events in its different aspects. But the fact that there is overlapping does not detract from the distinctiveness of the aspects."

(Italics supplied)

Hence, the Honourable Supreme Court was of the view that it is

not possible to finally opine on the issue but enunciated the principles to decide on the issue and stated that if the SIM card is not sold by the assessee to the subscribers but is merely part of the services rendered by the service providers, then a SIM card cannot be charged separately to sales tax. Hence, the matter was remanded back to Assessing authorities to decide the issue after taking into consideration the principles laid down.

Decision of Assessing/Appellate authorities upon remand

After remanding back the matter by the Honourable Supreme Court, given the facts that sales tax was already paid on the whole transaction, the assessee took up the matter before the Honourable CESTAT to drop the levy of service tax in view of sales tax already paid on the whole transaction and as per the guidelines provided by the Honourable Supreme Court in the BSNL judgement. The Honourable CESTAT-Bangalore decided in the case of Idea Mobile Communications Ltd Vs. Commissioner of Central excise, Trivendrum, 2006-TIOL-857-CESTAT-Bang that, *"On a careful consideration, we notice that the assessee is not contesting the levy of sales tax. They have already paid the sales tax. It follows that service tax is not leviable on the item on which sales tax has been collected. In terms of the Apex Court judgment and the paragraph quoted (supra) the appellant's contention is required to be accepted and no service tax is payable in view of the sales tax already paid on the whole transaction."* (Italics supplied)

This judgement of Honourable CESTAT in the case of Idea Mobile Communications (Supra) became a landmark judgement in so far as the interpretations of BSNL judgement (Supra) was concerned so as to interpret that if sales tax has already

been paid on a transaction, service tax will not be leviable.

In a way, it was a relief to the assessee also who could rest assured that if sales tax has been paid on a transaction, there will not be double taxation, as no service tax could have been levied in view of the CESTAT judgement.

Idea Mobile judgement

The decision of the CESTAT-Bang in the case of Idea Mobile Communications (supra), was challenged by the department and the appeal was allowed in favour of the department by the Honourable High Court of Kerala vide its order dated 4.9.2008. This order was challenged by the assessee in the Supreme Court.

The Honourable Supreme Court in its order has held that "----- But we cannot accept a position in law that even if tax is wrongly



If required and possible, matter should be referred to Advance Ruling

Authorities to bring the clarity instead of getting into litigation and blocking the huge funds with either of the authorities.

remitted that would absolve the parties from paying the service tax if the same is otherwise found payable and a liability accrues on the assessee. The charges paid by the subscribers for procuring a SIM Card are generally processing charges for activating the cellular phone and consequently the same would necessarily be included in the value of the SIM Card."

(Italics supplied)

The judgement delivered by the Honourable Supreme Court in Idea Mobile judgement has put to rest various kinds of interpretations being given to the BSNL judgement and paved the way to the departmental authorities to find out the real nature of the transactions and allowed them to subject the same to service tax even if sales tax has been paid. Though, the sufferer is, no doubt, assessee who will be caught in between the interpretations made by Central and State tax authorities leaving the matter to be interpreted by the judiciary.

Concluding Remark

It appears from all these judicial developments that crux of the matter lies in identifying the real nature of the transaction. Simply payment with one authority, either sales tax or service tax, will not help in not paying to other authority as per this judgement.

Though, in this world of business complexities, particularly in the era of IT, E-Commerce, there are certain transactions which are yet to be put to judicial test, yet brainstorming amongst the in-house subject experts as well as legal fraternity will bring some idea about the nature of transactions. If required and possible, matter should be referred to Advance Ruling Authorities to bring the clarity instead of getting into litigation and blocking the huge funds with either of the authorities. ■

Provisional Attachment of Refund Under Section 281B



The residents doing business with the non-resident is required to withhold tax under Section 195 of the Income-tax Act. The non-resident files its Indian income tax return to claim the refund of excess tax withheld. However, the Assessing Officer provisionally attached the refund by applying the provisions of Section 281B of the Act, with the presumption that demand would arise or reduction in refund after assessment under Section 143(3) of the Act. This article analyses the legal framework of provisional attachment of refund under Section 281B of the Act.



CA. Akash Bansal

(The author is a member of the Institute. He can be contacted at akash.ca@gmail.com)

Presently business opportunity in India is more than any other country in the world. Hence, many multinationals have invested in India. The incidence of carrying business in India, attract income tax implications, making the non-resident liable to follow the provisions of advance tax and withholding tax. Hence, the residents doing business with the non-resident is required to withhold tax under Section 195 of the Income-tax Act (the Act). It so happens that the tax withheld on the income of non-resident is much more than the actual tax liability of the non-resident. Hence, the non-resident files its Indian income tax return to claim the refund of excess tax

withheld. However, the Assessing Officer after processing the return under Section 143(1) of the Act, do not issues refund; but provisionally attached the refund by applying the provisions of Section 281B of the Act, with the presumption that demand would arise or reduction in refund after assessment under Section 143(3) of the Act. This action by the Assessing Officer has raised concern amongst the non-residents. This article analyses the legal framework of provisional attachment of refund under Section 281B of the Act.

Legal Analysis

Section 241 of the Act: The omitted Section 241 of the Act, enabled the

Assessing Officer to withhold refund with the prior approval of Chief Commissioner or Commissioner. Before its omission Section 241 of the Act reads as under:

“Power to withhold refund in certain cases

Where refund of any amount becomes due to the assessee as a result of an order under this Act or under the provisions of sub-section (1) of Section 143 after a return has been made under Section 139 or in response to a notice under sub-section (1) of Section 142 and the Assessing Officer is of the opinion, having regard to the fact that—

- (i) a notice has been issued, or is likely to be issued, under sub-section (2) of Section 143 in respect of the said return; or*
- (ii) the order is the subject-matter of an appeal or further proceeding; or*
- (iii) any other proceeding under this Act is pending, that the grant of the refund is likely to adversely affect the revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine.”*

Section 241 of the Act, was omitted by the Finance Act, 2001 with effect from 01 June, 2001

Refund determined under Section 143(1) of the Act, cannot be termed as “property” within the meaning of Section 281B of the Act. ☹☹

merely by saying that “*It is proposed to omit the said section to withdraw the powers conferred upon the Assessing Officer to withhold the refund*”.

Section 281B of the Act: Section 281B of the Act was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from October 01, 1975. Provisions of Section 281B read as under:

“Provisional attachment to protect revenue in certain cases

- (1) Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.*

Explanation.— For the purposes of this sub-section, proceedings under sub-section (5) of Section 132 shall be deemed to be proceedings for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment.

- (2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):*

Provided that the Chief Commissioner, Commissioner, Director General or

Rule 26 shows that the Assessing Officer, who himself is in possession/ custody/control of a “property” cannot issue an attachment order, prohibiting himself from making payment to the assessee because it is not possible to do so following the procedure laid down in the Rule. ☹☹

Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

.....
.....”

[Emphasis supplied]

From the perusal of the aforesaid provisions of Section 281B of the Act, it is important to note the following factors:

- (i) There must be existence of opinion of the Assessing Officer that for the purpose of protecting the interest of the revenue, it is necessary to provisionally attach any property belonging to the assessee in the manner provided in the second schedule.
- (ii) Previous approval of the Chief Commissioner, Commissioner, Director General or Director (i.e. the prescribed authority) has to be obtained by an order in writing to attach provisionally any property belonging to the assessee.

In this regard it is important to note that in the year 2001 and earlier years, the Act contains both Section 241 and Section 281B of the Act. Attachment of refund was specifically being dealt in Section

241 and Section 281B of the Act, provides for attachment of other movable and immovable properties. As stated earlier, Section 241 of the Act was omitted with effect from 1st June, 2001 and after its omission there was no such amendment to Section 281B to cover the provisions of Section 241 of the Act. Hence, after omission of Section 241 of the Act, refund cannot be withheld by taking recourse to Section 281B of the Act, which does not provide for provisional attachment of refunds.

Moreover, as per the provisions of Section 281B of the Act, it is mandatory to obtain previous approval of the prescribed authority, by an order in writing, for provisionally attaching any property belonging to the assessee. In this regard, it has now become important to decide whether refund can be termed as “property” within the meaning of Section 281B.

In this regard, it is important to refer to Rule 4 (Mode of recovery) of Part I of the second schedule of the Act. Rule 4 of second schedule reads as under:

“4. If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes :—

(a) by attachment and sale of the defaulter’s movable property;

- (b) by attachment and sale of the defaulter’s immovable property;*
(c) by arrest of the defaulter and his detention in prison;
(d) by appointing a receiver for the management of the defaulter’s movable and immovable properties.”

[Emphasis supplied]

From the perusal of the above rule, it is important to note that movable property can be attached, only when amount mentioned in the demand notice is not paid within the specified time and movable property could be sold for the recovery of amount mentioned in the notice.

However, in the present case, the attachment is of refund amount due to the assessee and there is no ascertained demand by the Income Tax authorities. Further, attachment should be of the property which could be sold. However, in the present case it is not possible to sale the refund determined vide intimation under Section 143(1) of the Act. Hence, refund determined under Section 143(1) of the Act, cannot be termed as “property” within the meaning of Section 281B of the Act.

Moreover, Rule 26 (Attachment and sale of movable property – Debt and shares, etc.) of Part II of the second schedule provides for attachment of debts and shares, etc. Sub-rule (1) of Rule 26 of the second schedule of the Act, reads as under:

“(1) In the case of—

- (a) a debt not secured by a negotiable instrument,*
(b) a share in a corporation, or
(c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court,

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt—the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;*
(ii) in the case of the share—the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;
(iii) in the case of the other movable property (except as aforesaid)—the person in possession of the same from giving it over to the defaulter.”

From the reading of Rule 26, the issue that arises is whether, the property, to be attached should be with someone else, other than the person exercising the power of attachment or whether such a person could attach something, which is in his own possession, command or custody. In this regard it has now become important to define the word “attachment”. The word “attachment” has been defined as “taking into custody of the law the person or property of one already before the court; a writ issued at the institution or during the progress of an action commanding the Sheriff or other proper officer to attach the property, right, credits or effects of the defendant to satisfy the demands of the plaintiff” [**Samta Construction Vs. Pawan Kumar Sharma & Ors. (1999) 155 CTR 405 (MP)**]. It postulates property, being in the possession of some person, other than the person, who makes the attachment.

The above analysis of Rule 26 shows that the Assessing Officer, who himself is in possession/

A

ttachment permitted in terms of Section 281B of the Act, has to be one

as provided in the Rules 20, 21, 22 and 26 of Part II of the second schedule of the Act. ”

F or the purpose of attachment the property should be in the possession of the person other than the person exercising the power of attachment. ”

custody/control of a “property” cannot issue an attachment order, prohibiting himself from making payment to the assessee because it is not possible to do so following the procedure laid down in Rule 26.

Further, attachment permitted in terms of Section 281B of the Act, has to be one as provided in the Rules 20, 21, 22 and 26 of Part II of the second schedule of the Act. These rules speak as under:

- (i) The Tax Recovery Officer shall furnish a warrant to the person, authorised to make an attachment with necessary particulars (rule 20);
- (ii) The authorised office will serve the warrant to the defaulter (rule 21);
- (iii) The authorised officer shall proceed to attach the property of the defaulter if, after service of the copy of warrant, the amount is not paid (rule 22).

The statutory requirements, as provided in these rules, are apparently not compatible with the manner of self-imposed prohibition by the Assessing Officer. None of these requirements can be fulfilled when the refund due to an assessee is attached by the Assessing Officer himself if there is no demand in existence. And if the procedure laid down in Rule 26 cannot be complied with or is not complied with, attachment under Section 281B of the Act is not possible.

Conclusion:

The above analysis makes it ample clear that refund cannot be provisionally attached under Section 281B of the Act. Since, refund could have specifically been attached under Section 241 of the Act, after omission of which recourse could not be made to Section 281B of the Act, which was not amended in line with the provisions of erstwhile Section 241 of the Act. Further, for the purpose of attachment the property should be in the possession of the person other than the person exercising the power of attachment. However, the refund is already in the possession of the Assessing Officer, who himself is exercising the power of attachment. Moreover, the attachment should be of property which could be sold. However, it is not possible to sale the refund determined by the Assessing Officer. ■

Special Provisions Relating to Certain Limited Liability Partnerships



The Finance Act, 2011 inserts a new Chapter XII-BA consisting of Section 115JC to 115JF, w.e.f 1-4-2012, i.e., A.Y: 2012-2013 for levying a special tax, viz., AMT or Alternate Minimum Tax @ 18.5% of the Adjusted Total Income, if tax payable in case of Limited Liability Partnerships [LLP] as computed under the provisions of the Act (excluding such 115JC) is less than 18.5% of Adjusted Total Income. Read on to know more...

Special Provisions for Payment of Tax by Certain Limited Liability Partnerships [Section 115JC]

(1) *Notwithstanding anything contained in this Act, where the regular income-tax payable for a previous year by a limited liability partnership is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of the limited liability partnership for such previous year and it shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.*

■ Comments

(A) Limited Liability Partnership: As per Section 115JF(c): "limited liability partnership" has the same meaning as assigned to it in Section 2(1)(n) of the Limited Liability Partnership Act, 2008, i.e., a partnership formed and registered under this Act. Accordingly, AMT would be applicable only in case of LLP formed and registered in India. In other



CA. Thakur Repudaman

(The author is a member of the Institute. He can be reached at eboard@icai.org)

words, AMT would not apply to a foreign LLP as per Section 2 (m) of LLP Act, 2008, i.e., LLP formed, incorporated or registered outside India, which establishes a place of business within India.

(B) Regular Income Tax: As per Section 115JF (d): “Regular Income-Tax” means

- the income-tax payable
- for a previous year
- by LLP
- on its total income (or Regular total income)
- in accordance with the provisions of this Act (other than the provisions of this Chapter).

(C) Regular Total Income: It is computed as under:

- Computation of income under respective heads;
- Set-off losses, if any, under the said head (inter-head/intra-head) and determine carry forward of loss, if any, under respective head;
- Reduce deduction, in any, under Section 10AA, from the profit of the qualifying business; and
- Reduce deduction, if any, under Chapter VI-A including “Part C” thereof ;

(D) Income-Tax Payable: On Regular total income, tax chargeable to LLP at applicable rate [30%] would constitute income-tax payable, without any deductions for the payments made (self – assessment or advance tax or TDS) or any credits available.

Example

Regular income-tax payable by LLP is ₹100,000. It has paid advance tax, say, of Rs.60,000; T.D.S. is ₹20,000; credits available (of AMT and/or Foreign Tax Credit) are ₹10,000.

Here, Regular income-tax payable is ₹1,00,000 and not amount of tax payable on self assessment, i.e., ₹10,000 [1,00,000 – (60,000 + 20,000 + 10,000)].

(E) Alternate Minimum Tax or “AMT”: As per Section 115JF (b): “Alternate Minimum Tax” means:

- the tax computed @ 18.5%;
- on adjusted total income ;

(2) *Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by—*

- (i) *deductions claimed, if any, under any section included in Chapter VI-A under the heading “C.—Deductions in respect of certain incomes”;* and
- (ii) *deduction claimed, if any, under Section 10AA.*

■ Comments

(A) Adjusted Total Income: As per Section 115JC (2), Adjusted Total Income is computed after increasing “Regular total income” by:

- (i) deductions claimed, if any, under Chapter VI-A – “Part C.—Deductions in respect of certain incomes”
- (ii) deduction claimed, if any, under Section 10AA

Example

For A.Y.: 2012-2013, Regular total income of LLP is ₹1,00,000. In computing regular income, apart from claiming various allowances permitted and setting of the unabsorbed losses, etc., it has deducted an amount of ₹5,00,000 by way of deduction under Section 10AA of the Act.

- Adjusted total income = 1,00,000 + 5,00,000 = ₹6,00,000

(B) Computation of Adjusted Total Income and Related Aspects:

(1) *Malayala Manorama Co. Ltd. Vs. CIT [2008] 169 Taxman 471 (SC)*

The Assessing Officer has only limited power to examine whether books of account have been certified by authorities under the Companies Act, as having been properly maintained in accordance with said Act. Thereafter, he does not have jurisdiction to go behind net profit shown in profit and loss account except to extent provided in Explanation to Section 115JB.

Akin to Section 115JB, in computing the Adjusted Total Income, Regular Total Income should not be increased by other deductions (not being deduction, if any, under Section 10AA or Part C), e.g., exemption under Section 10(34) – dividend income or under Section 10(38)(long term capital gains).

The other deduction(s), if any, may impact determination of deduction under Section 10AA or Part C, e.g., remuneration to a partner may impact deduction under Section 10AA or Part C. However, it will not affect computation of Adjusted Total Income as starting point for its computation is Regular Total Income.

- (2)** The additions in respect of the deduction, in any, under Section 10AA or Part C are confined or restricted to the amount ‘claimed’ in computing Regular total income. In the context of Section 115JC (2), claimed would mean actually taken into account in computation of Regular total income to determine regular income-tax payable. Thus, the actual amount of the deduction considered for computing regular total income needs to be deducted.

Example

Regular total income of LLP is nil. Its gross total income is ₹2,00,000 (after setting-off losses, etc.). It is eligible to the deduction under Part C of ₹5,00,000. However,

only ₹2,00,000 is claimed, as it can be claimed only to the extent of gross total income.

In this case, to determine Adjusted Total Income, Regular total income should be increased by ₹2,00,000, i.e., the amount claimed and not ₹5,00,000, being the amount eligible for deduction.

- Similarly, if during the course of scrutiny assessment, if the deduction under 'Part C', as claimed by LLP is reduced, then, the amount actually allowed in computing regular total income in the assessment order (not the amount claimed in the return) should be considered.

(C) Deductions under "Part C" of Chapter – VIA: For the A.Y.: 2012-2013, the following deductions are available to LLP under "Part C" Of Chapter – VIA:

Section	
80-IA	Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.
80-IAB	Deductions in respect of profits and gains by an undertaking or enterprise engaged in development of special economic zone
80-IB	Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertaking
80- IC	Deduction in respect of certain undertakings in Himachal Pradesh, Sikkim, Uttarakhand and north eastern states
80-ID	Deduction in the case of hotels and convention centers in NCR
80-IE	Deduction in respect of certain undertakings in north eastern states
80JJA	Deduction in respect of profit and gains from business of collecting and processing of bio-degradable waste
80LA	Deductions in respect of certain incomes of offshore banking units and international financial services centre

(3) Every limited liability partnership to which this Section applies shall obtain a report, in such form as may be prescribed, from an accountant certifying that the adjusted total income and the alternate minimum tax have been computed in accordance

with the provisions of this Chapter and furnish such report on or before the due date of filing of return under Section 139 (1).

■ Comments

Section 115JC (3) obliges LLP to obtain a REPORT in the prescribed form from an "accountant", as per Section 115JF (a), i.e., having the same meaning as in the explanation below Section 288 (2).

Such REPORT should certify that Adjusted Total Income has been computed in accordance with Section 115JC (2) and AMT has been computed in accordance with Section 115JC.

Such REPORT has to be furnished on or before the due date of filing return of income under Section 139(1).

Tax Credit for Alternate Minimum Tax [Section 115JD]

(1) The credit for tax paid by a limited liability partnership under Section 115JC shall be allowed to it in accordance with the provisions of this Section.

- Credit available under Section 115JD(1) is based on AMT paid by LLP under Section 115JC.

(2) The tax credit of an assessment year to be allowed under sub-section (1) shall be the excess of alternate minimum tax paid over the regular income-tax payable of that year.

- Amount of credit as per Section 115JD(2) would be the excess of AMT over Regular Income-tax on its Regular total income.

(3) No interest shall be payable on tax credit allowed under sub-section (1).

- On such credit, no interest is allowable.

(4) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (5) and (6) but such carry forward shall not be allowed beyond the tenth assessment year immediately succeeding the assessment year for which tax credit becomes allowable under sub-section (1).

- Excess credit determined under Section 115JD(2) shall be carried forward for set-off in 10 succeeding assessment years from the assessment year in which tax credit becomes allowable.

(5) In any assessment year in which the regular income-tax exceeds the alternate minimum tax, the tax credit shall be allowed to be set-off to the extent of the excess of regular income-tax over the alternate minimum tax and the balance of the tax credit, if any, shall be carried forward.

- The credit is allowed to be set-off in the year in which Regular Income-tax is payable. The credit allowable as set-off would be to the extent of

excess of Regular Income-tax over AMT and the balance would be carried forward.

- Further, the provision nowhere specifies that for carry forward and set-off any other condition has to be complied with, e.g., unlike loss, there is no provision for filing return in time or paying tax in time, etc.

(6) *If the amount of regular income-tax or the alternate minimum tax is reduced or increased as a result of any order passed under this Act, the amount of tax credit allowed under this Section shall also be varied accordingly.*

- If there is a variation in the Regular Income-tax or AMT pursuant to any orders of the assessing authorities, then the tax credit shall also be varied. However, it does not list the provisions under which the order may be passed.
- Section 115JAA(6) of the Act, while dealing with variation in MAT credit, lists the order under various provisions of the Act. For the purpose of Section 115JD(6) orders passed under the Act, pursuant to which the variation may be made, could be:

Section	Order
143(3)	Scrutiny Assessment Order
153A to 153C	Assessment order in search cases
154	Order of rectification
155	Order of rectification
245D(4)	Final order passed by Settlement Commission
250	First Appellate Authority
254	Income-tax Appellate Tribunal
260	High Court
262	Supreme Court
263 or 264	CIT, pursuant to Revision Jurisdiction

Example: X LLP details are given infra:

Assessment Year 2012-2013		₹
Regular total income		1,000
Adjusted total income		5,000
AMT payable [5,000 x 18.5%]	925	
Regular income-tax payable [1,000 x 30%]	300	
Credit available under Section 115JD(1) is based on AMT paid by LLP under Section 115JC		925

Amount of credit as per Section 115JD(2) [925 – 300]	625
As per Section 115JD(4), the credit so available shall be carried forward up to 10 succeeding assessment years, i.e., A.Y.: 2012-13 + 10 = A.Y.: 2022-23	

Assessment Year 2013-2014		₹
Regular total income		1,000
Adjusted total income		1,100
Regular income-tax payable [1,000 x 30%]	300.00	
AMT payable [1,100 x 18.5%]	203.50	
Credit allowed to be set off under Section 115JD(5) [300.00 – 203.50]		96.50
Amount of Tax to be paid		203.50
X LLP shall carry forward the balance under Section 115JD(5) [625 – 96.50]		528.50

Notes:

(1) Tax credit, whether available with reference to all types of taxes?

Under Section 115JD(4), tax credit is to be set off in the credit year when tax is paid on Regular total income.

Under Section 115JD(5) as said above, the tax credit allowable for set-off is to be quantified with reference to tax on regular total income, and tax on adjusted total income.

As per the definition of total income, it would include all incomes irrespective of the fact that some items of income may suffer at specified rate, whether concessional or otherwise, in the Act or at a general rate specified by the Finance Act, from year to year.

In a given case, total income of LLP could include income by way of capital gains, which may suffer tax at specified rate in the Act or at a concessional rate under Section 112 (which prescribes tax rate on long term capital gains).

Thus, the computation of credit will be with reference to regular income tax including tax on capital gain.

(2) Whether credit can be considered for payment of advance tax?

Yes, as held by Supreme Court in *CIT Vs. Tulsyan NEC Ltd.* (2011) 196 Taxman 181 (in the context of Section 234B and 234C).

Section 234B and 234C were amended by the Finance Act, 2006 to provide that in determining



assessed tax, MAT credit under Section 115JAA shall be reduced. However, those Sections are not amended to provide for reduction of MAT credit under Section 115JD.

In spite of that, it appears, having regard to the decisions of Apex Court, AMT credit can be reduced for determining 'assessed tax', being such status is reserved only for the decisions of the Supreme Court which are binding on all courts in the country by virtue of Article 141 of the Constitution.

Application of Other Provisions of this Act [Section 115JE]

Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to a limited liability partnership referred to in this Chapter.

■ Comments

All the provisions of the Act, which are not in conflict with the provisions of the Chapter, would apply, as stated broadly, *infra*:

- Collection, payment and recovery of tax.
- Assessment procedures.
- Interest, penalties, prosecution, etc.
- All other provisions of the Act, not related to computation of regular total income or income.

(A) Application of the Other Provisions of the Act, Consequences and Scope

In the scheme of the Chapter, LLP has to make two computations (of Regular total income and adjusted total income); show total income as per both computations in the return; and finally adopt either as a total income.

Accordingly, while complying with the provisions of the Act, LLP may have to comply with the provisions relating to both. While doing so it will have to comply with the necessary requirement stipulated in that behalf.

Example

If LLP is entitled to a deduction under Section 10AA, it

will have to file the necessary report of the Accountant as required by that provision. Further, if the net result of Regular total income is a loss, it will have to ensure that the return is filed in time.

In the course of scrutiny assessment, LLP will, not only have to provide information and details in connection with both the computations, but also substantiate its claims accordingly. In the assessment, there could be additions or adjustment in both the computations.

In a given case, it may also be possible that LLP may have paid AMT; but it is finally assessed on an amount as per computation of Regular total income. Accordingly, LLP may have to agitate in the appropriate proceedings, addition and adjustment in respect of both the computations because such a computation may have ultimate effect either in the same assessment year or in respect of carry forward of AMT credit.

(A) Advance Tax: The Supreme Court has recently settled the controversy about liability to pay advance tax in case of companies where MAT provisions applied and held that a company liable to MAT is obliged to pay advance tax – *Jt. CIT Vs. Rolta India Ltd. (2011) 330 ITR 470 (SC)*.

CBDT through its Circular No.13 of 2001, dated 9-11-2001, after analysing the provisions of Section 115JB and other provisions of the Act has taken a view that the companies liable to MAT are obliged to pay advance tax.

Section 2(9) of the Finance Act, 2011, *inter alia*, provides for the rates for payment of advance tax. First proviso thereof provides, *inter alia*, that the rate for payment of advance tax in case of applicability of Section 115JC shall be the rate specified in the Section.

Having regard to the above, as well as the similarity of language of Section 115JE and 115JB(5) of the Act, LLP liable to AMT would be obliged to pay advance tax.

(C) Surcharge and Education or Higher Secondary

Education Cess: As per the provisions of Section 4 of the Act, the levy is subject to the rates which may be prescribed by the Finance Act every year. AMT rate is contained in Section 115JC itself.

Section 2(11) and 2(12) of the Finance Act, 2011, respectively, provide that the income tax calculated under sub-sections (1) to (10) shall be increased by the surcharge and by an additional surcharge, viz., Education Cess (2%) and Secondary and Higher Education Cess (1%).

LLP is not liable to surcharge.

Accordingly, for discharging the liability of AMT, LLP will have to also consider Education Cess & Secondary and Higher Education Cess. Accordingly, the effective rate of AMT would be 19.055%.

Example

XY & Co. is a Limited Liability Partnership. For the previous year 2011-12, income of the LLP is calculated as follows:

	As claimed in the return of income	As deter- mined by the Assessing Officer
	₹	₹
Net profit as per P&L A/c	35,00,000	35,00,000
Add: Excess depreciation (i.e., excess of depreciation debited to P&L A/c over depreciation available under Section 32)	4,000	80,000
Add: Disallowance under Section 37(1) and 43B	20,000	1,70,000
(Total)	35,24,000	37,50,000
Deductions -		
Under Section 10AA	22,00,000	16,60,000
Under Section 10B	2,60,000	1,80,000
Business income under Section 28	10,64,000	19,10,000

Long-term capital gain (on transfer of Plot)	3,00,000	3,00,000
Long-term capital gain (on transfer of equity shares in stock exchange) : Rs.18,00,000/- under Section 10(38)	Exempt	Exempt
Gross total income	13,64,000	22,10,000
Less: Deductions		
Under Section 80G	20,000	16,000
Under Section 80-IB	8,50,000	2,34,000
Net Income	4,94,000	19,60,000

Ans:

(1) Tax computation under normal provisions

	₹
Tax on long term capital gain of ₹3,00,000/- @ 20%	60,000
Tax on remaining income of ₹16,60,000/- @ 30%	4,98,000
Total	5,58,000
Add: EC + SHEC	16,740
Tax liability	5,74,740

(2) Tax computation of adjusted total income

	₹
Net income	19,60,000
Add: Deduction claimed under Section 80-IB	8,50,000
Add: Deduction claimed under Section 10AA	22,00,000
Adjusted total income	50,10,000

(3) Computation of Alternate Minimum Tax and Credit

	₹
18.5% of adjusted total income	9,26,850
Add: EC + SHEC	27,805
Alternate Minimum Tax (rounded off)	9,54,660
Alternate minimum tax credit (i.e., 9,54,660 - 5,74,740)	3,79,920

Recent AAR Rulings - Indirect Transfer of Shares: The Controversy Continues



In recent years, tax authorities have started taking aggressive positions on the issue of income arising on indirect transfer of Indian company shares. In other words, tax authorities are adopting a position that income arising on sale of shares of Special Purpose Vehicle (SPV) holding Indian company's shares is taxable in India as by transferring SPV's shares, ultimately shares of underlying Indian company are getting transferred. In recent times, this issue has stirred much controversy in the cases of Vodafone, Aditya Birla Nuvo, E*Trade, etc. In this article, we have analysed two recent rulings of Authority of Advance Rulings (AAR) on the above mentioned issue of indirect transfer. The AAR rulings in this article are applicable only to the applicants and tax department but they do have persuasive value before the courts and tax authorities. Going forward, the proposed Direct Tax Code (DTC) does contain provisions for taxing indirect transfers. In addition, the DTC also seeks to introduce provisions of General Anti Avoidance Rules ('GAAR') that seek to deny tax benefits arising from a transaction which lacks commercial substance or results in misuse of the DTC. The provisions of GAAR would also override the tax treaties. Read on...

The Indian economy growing at around 7% is currently one of the fastest growing economies of the world. The liberalisation and economic reforms process initiated by the Indian government in 1991 after completing two successful decades has leapfrogged the country on path of growth and development.

Since 1991, investors from various countries have invested in Indian economy which offers them vast growth potential. Accordingly, with advent of foreign investors, there have been numerous transactions of inbound structuring of investments into India through special purpose vehicles (SPVs) located in tax friendly jurisdictions.

(Contributed by the Committee on International Taxation of the ICAI. Comments can be sent to citax@icai.org)

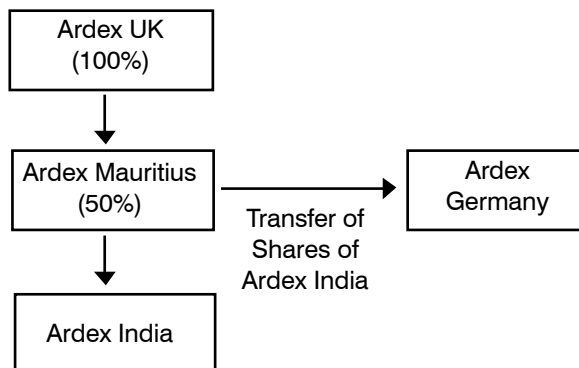
In recent years, tax authorities have become increasingly aware of the above structure and have started taking aggressive positions on the issue of income arising on indirect transfer of Indian company shares. In other words, tax authorities are adopting a position that income arising on sale of shares of SPV holding Indian company's shares is taxable in India as by transferring SPV's shares, ultimately shares of underlying Indian company are getting transferred.

In recent times, this issue has stirred much controversy in the cases of Vodafone, Aditya Birla Nuvo, E*Trade, etc. In this article, we have analysed two recent rulings of Authority of Advance Rulings (AAR) on the above mentioned issue of indirect transfer.

1. Ardex Investments Mauritius Limited – AAR No. 866 of 2010

Facts of the case:

- Ardex Investments Mauritius Limited ('Ardex Mauritius'), incorporated in Mauritius was a wholly owned subsidiary of Ardex Holdings U.K Limited ('Ardex UK').
Ardex Mauritius held 50% equity share capital in Ardex Endura (India) Private Limited ('Ardex India').
- Ardex India was engaged in the business of manufacturing flooring adhesives.
- Ardex Mauritius proposed to sell its 50% stake in Ardex India to its other group company Ardex Beteiligungs – GmbH Germany ('Ardex Germany') at fair market value.
- The transaction is pictorially represented as under:



Questions raised before the AAR

- Whether capital gains on proposed transfer of shares of Ardex India by Ardex Mauritius would be taxable in India under the India Mauritius DTAA?
- Whether Ardex Mauritius would be entitled to receive sale proceeds from Ardex Germany without deduction of tax at source?
- Whether Ardex Mauritius is required to file its return

of income in India in respect of proposed transfer of shares to Ardex Germany?

Contentions of the tax authority

- Ardex Mauritius was the wholly owned subsidiary of Ardex UK and it did not have any income in prior years. The only asset held by Ardex Mauritius was investment in Ardex India.
- Hence, the sole purpose for incorporating Ardex Mauritius was to hold shares of the Indian company on behalf of the parent company.
- The source of all funds for Ardex Mauritius was its holding company and further, the decision to sell shares of Indian company was taken by Ardex UK with Ardex Mauritius expected to follow the decision.
- Ardex UK incorporated the Mauritius company only to take advantage of beneficial capital gains provisions under the India-Mauritius tax treaty.
- In the above circumstances, corporate veil had to be pierced and upon piercing the corporate veil, it was clear that as Ardex UK had invested funds for purchasing shares of Ardex India, it was the beneficial owner of shares. Hence, gains arising on sale of shares of Ardex India was taxable as per India-UK treaty and not as per India-Mauritius treaty.

Applicant's Contentions

- Ardex Mauritius [earlier known as Norcros Investments (Mauritius) Limited] was created in 1998 by another UK company named Norcros (Holdings) Limited for holding shares in BAL Building Adhesives India Private Limited (currently known as Ardex India).
- In November 2001, with a view to expand its business, Ardex group decided to acquire Norcros Investments (Mauritius) Limited. Thus, Ardex UK never created Ardex Mauritius.

In a short span of 15 days, the AAR gave two different views on similar facts. In one case, the AAR held that the corporate veil need not be lifted as the transaction is covered by the Supreme Court judgment in the case of Azadi Bachao Andolan whereas in the subsequent judgment, the AAR lifted the corporate veil and distinguished the Supreme Court judgment in the case of Azadi Bachao Andolan by relying on the earlier judgment of McDowell and other English case laws on the subject.

- Further, Ardex Mauritius had made the investment in Ardex India as share certificates were issued in the name of Ardex Mauritius. Further the decision to transfer the shares of Ardex India to Ardex Germany was taken by the board of directors of Ardex Mauritius and not by Ardex UK.
- As the subsidiary was a separate legal entity, the beneficial ownership of shares held by it also vested in the subsidiary. Hence, there was no justification to pierce the corporate veil as contended by the tax authorities.
- Ardex Mauritius was a tax resident of Mauritius and the tax residency certificate issued by the Mauritian tax authorities in respect of the same was a sufficient evidence to justify the same. Reliance in this regard was placed on the SC decision of Azadi Bachao Andolan (263 ITR 706) and AAR judgment in the case of E-Trade Mauritius (324 ITR 1)

Ruling of the AAR

- The AAR agreed that funds for acquiring the shares of the Indian company were sourced from UK company. However, the first purchase was done in the year 2000 and the shareholding had steadily increased in 2001, 2002 and 2009. Thus, the arrangement had not come into existence all of a sudden. In such a situation, the theory of beneficial ownership could not be invoked to come to a conclusion that the holder of shares in the Indian company is the UK company.
- Also shares were held for a considerable length of time (for more than ten years) before they were sold, hence, it may not be possible to go into the inquiry that who made the original investment and the consequences arising therefrom.
- Further, the current transaction was not a case of so called gift or transfer of shares without consideration but involved sale of shares at market rate.

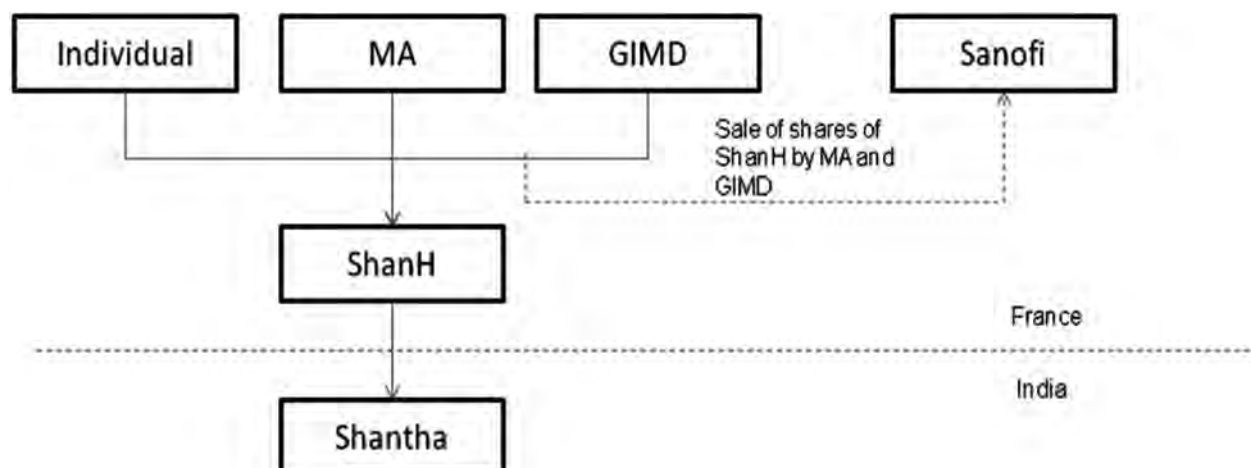
It would also be pertinent to note the judgment of AAR in the case of E*Trade Mauritius Ltd. (324 ITR 1) wherein the AAR after relying on the Supreme

Court judgment of Azadi Bachao Andolan held that legal structure of Mauritius company cannot be ignored. Accordingly, the AAR held that capital gains arising on sale of shares of an Indian company by Mauritian company would accrue to Mauritius company and not to its US parent.

- The AAR held that even if it is contended that the Mauritius company was formed to take advantage of the India Mauritius Treaty, in view of the Supreme Court decision in the case of Azadi Bachao Andolan (supra), the same cannot be viewed as objectionable treaty shopping.
- Thus, the AAR held that the above transaction of sale of Ardex India's shares by Ardex Mauritius would be governed by India – Mauritius treaty and not India – UK treaty. Accordingly, the AAR held that capital gains arising on sale of shares of Ardex India by Ardex Mauritius would not be chargeable to tax in India in view of the Article 13 of India Mauritius tax treaty. Hence, Ardex Mauritius will be entitled to receive the sale proceeds without deduction of tax at source.
- However as the transaction of sale of shares of Indian company was otherwise chargeable to tax in India, Ardex Mauritius would be required to file its return of income in India.

2. Group Industrial Marcel Dassault and Merieux Alliance – AAR No. 846 of 2009 and 847 of 2009

Facts of the case





- Group Industrial Marcel Dassault ('GIMD') and Merieux Alliance ('MA') [collectively referred here as Applicants] are companies incorporated in France.
- MA on 31st October, 2006 incorporated a wholly owned subsidiary in France named ShanH. Thereafter on 6th November, 2006 MA entered into a share purchase agreement for acquiring shares of Shantha Biotechnics Limited ('Shantha'), an Indian company. ShanH was shown as permitted assignee for the above shares acquired of Shantha.
- Subsequently, in March 2007, GIMD acquired 20% shares of ShanH from MA. Thus, GIMD and MA collectively held ShanH which in turn held shares of Shantha. Thereafter, another individual also purchased few shares of ShanH from GIMD and MA.
- In 2009, MA and GIMD transferred their shareholding in ShanH to another French Company Sanofi Pasteur Holding ('Sanofi').
- A survey under Section 133A of the Act was conducted in the office premises of Shantha. The tax officer subsequently issued a show cause notice under Section 195 of the Act asking Sanofi to show cause as to why it should not be treated as an assessee in default under Section 201(1) of the Act in respect of payments made to MA and GIMD for acquiring shares of Shantha through transfer of shares of ShanH.

Recently, Bombay High Court in the case of *Aditya Birla Nuvo* after observing specific facts and circumstances of the transaction held that tax authorities have a **prima facie case for lifting the corporate veil and considering taxing capital gains arising on sale of shares of an Indian company by Mauritius company in the hands of its US parent. The Bombay High Court after analysing contracts, agreements and operations of Mauritius company observed that it was US parent company and not its Mauritius subsidiary which was beneficial owner of the shares of Indian company and accordingly, gains arising on sale of shares of Indian company by Mauritius company may not be covered by provisions of India-Mauritius tax treaty.** ”

- In view of the above facts, MA and GIMD approached to AAR for determining whether sale of shares of ShanH to Sanofi is liable to tax in India.

Questions raised before the AAR

- *Whether capital gains arising on sale of ShanH's shares by the Applicants to Sanofi are liable to tax in India in view of the India France Tax Treaty?*
- *Whether the transfer of controlling interest is liable to be taxed in France under Article 14(6) of the India France Tax Treaty?*

Contentions of the Applicants

- The transaction involved transfer of shares of a ShanH a French Company to another French

Going forward, the proposed Direct Tax Code (DTC) does contain provisions for taxing indirect transfers. In addition, the DTC also seeks to introduce provisions of General Anti Avoidance Rules ('GAAR') that seeks to deny tax benefits arising from a transaction which lacks commercial substance or results in misuse of the DTC. The provisions of GAAR would also override the Tax treaties. tax treaty. ”



company and accordingly, capital gains arising on sale of shares can be taxed only in France as neither the applicants nor Sanofi are tax residents in India. The said transaction cannot be taxed either under the Income Tax Act or under the tax treaty. Thus, as shares of Shantha were not being transferred, there were no tax implications in India.

- Setting up a subsidiary for making acquisitions was a legal permissible route and a known method of business.
- There is no treaty shopping or tax evasion as capital gains arising on the said transaction are chargeable to tax in France. Further in view of the Supreme Court decision of Azadi Bachao Andolan, and the tax

residency certificate produced, it was not possible to ignore the existence of properly incorporated companies and tax the said transaction in India.

- The fact that asset of the company is located in another country is irrelevant as the India – France tax treaty does not contain any 'see through' provision
- The shares of company being sold is a company incorporated in France in which the applicant held more than 10% and hence, as per provisions of Article 14(5) of the India – France tax treaty, capital gains are liable to taxed only in France. Additionally, as per provisions of Article 14(6) of the India – France tax treaty, as the company is resident in France, the transaction would be taxable in France.

Tax Authority's Contentions

- AAR was barred from admitting the application as withholding tax proceedings were already initiated and an order was passed under Section 201 of the Act treating Sanofi as an assessee in default.
- As per proviso to Section 245R(2) of the Act, AAR will not allow the application if the question raised in the application relates to transaction which is designed prima facie for the avoidance of the income-tax. In the instant case, as the entire transaction was designed to avoid tax in India, in terms of proviso to Section 245R(2) of the Act, AAR was barred from admitting the application.
- ShanH was created only for the purposes of dealing with the assets of Shantha and its creation was merely to avoid tax that may be due while dealing with shares of Shantha. Hence, although ShanH was created on 31st October 2006, the share purchase agreement was entered by MA and not ShanH on 6th November, 2006.
- ShanH had no office and employees. Thus, ShanH had no other business and it held no assets other than shares in Shantha. MA had appointed one of its own director as a director in ShanH. Further, MA also had a right to nominate directors on the board of Shantha.
- The word 'alienation' is of wide import and read with the words participation of at least 10% in a company, it would mean that conveying of such rights of participation would also attract tax in India, if the interest of participation is of an Indian company.
- Transfer of the right of participation in an Indian company even by a non-resident, outside India which allows the transfer of participation interest in an Indian company would be taxable in India as per paragraph 5 of Article 14 of the Convention. Participation in a company, would mean, the right

to vote, the right to nominate Directors, control and management, day to day decision making and right to get distribution of profits. As all these rights in respect of the Indian company, Shantha are with MA or with MA and GIMD, the transfer is taxable in India in terms of paragraph 5 of Article 14.

- Section 9 of the Act and provisions of tax treaty also permit a see through of the transaction to ascertain its true purpose.
- Thus, as assets and shares of an Indian company are being indirectly transferred, gains arising on the said transaction would be taxable in India as per Article 14(5) of the India-France tax treaty.

Ruling of the AAR

- Withholding proceedings are not conclusive and are only preliminary in nature. Hence, initiation of withholding proceedings under Section 201 of the Act against Sanofi would not bar AAR from entertaining the application for advance ruling.
- Even after the application is admitted, at the time of final hearing, objection against the maintainability of the application can be taken by the revenue authorities and the AAR is required to consider the said objection.
- Even though, gains arising from sale of shares of ShanH are taxable in France, the question for tax avoidance has to be considered under India tax laws. Hence, argument of the Applicant that as capital gains tax on the transaction has already been paid in France where companies have been incorporated, there can be no tax avoidance cannot be accepted as the tax avoidance has to be seen from Indian viewpoint.
- ShanH had no other business and its only assets were shares of the Indian company. Hence, by selling shares of ShanH, in reality, the underlying

assets and control of the Indian company were transferred.

- Accordingly, if the transaction is accepted at face value, the control over the Indian assets and business can pass from hand to hand without incurring any tax liability in India.
- The AAR observed that the Supreme Court judgment in the case of Azadi Bachao Andolan was not the final word and relied on earlier Supreme Court judgment in the case of McDowell & Co. (154 ITR 148) along with the line of reasoning adopted by English courts in Ramasay and subsequent decisions.
- The entire chain of transactions beginning from incorporation of ShanH till transfer of its shares to Sanofi were pre-determined to deal with assets and control of Shantha without actually dealing with its shares, assets or business. Thus, this scheme had to be seen as one for avoiding payment of taxes on capital gains, which would otherwise arise if the shares of Indian company were transferred.
- Thus, AAR held that as the entire transaction is intended to avoid payment of capital gains tax in India, following the Supreme Court decision in the case of McDowell and as per clause (iii) of the proviso to Section 245R(2) of the Act, it declined to give a ruling on the questions raised in the application.
- However, for the purpose of completion of proceedings, the AAR proceeded to answer the questions raised in the application.
- The AAR further held that in the instant case, the transaction involves alienation of assets and controlling interest of an Indian company. Accordingly, as transactions are part of scheme for tax avoidance, the scheme had to be ignored and gains from the transaction were taxable in India.



The AAR rulings in this article are applicable only to the applicants and tax department but they do have persuasive value before the courts and tax authorities.

The issue of indirect transfer of shares has been argued in detail in the case of Vodafone before the Supreme Court for which hearings have already been concluded. Hence, we hope that after the judgment of Supreme Court is delivered in the case of Vodafone, the issue of indirect transfer of shares would settle and till that time, the issue of taxability of indirect transfer of assets will continue to remain a contentious one baffling both the tax department as well as the taxpayers. ☞

- On a literal interpretation of Article 14(5) of India – France tax treaty, as the company was resident of France, the gains would be taxable in France. However, upon purposive construction of the said article, the AAR held that as the essence of transaction was change in controlling interest of an Indian company having assets, business and income in India, capital gains arising therefrom is taxable in India.

Way Forward

Thus, in a short span of 15 days, the AAR has given two different views on similar facts. In one case, the AAR held that the corporate veil need not be lifted as the transaction is covered by the Supreme Court judgment in the case of Azadi Bachao Andolan whereas in the subsequent judgment, the AAR lifted the corporate veil and distinguished the Supreme Court judgment in the case of Azadi Bachao Andolan by relying on the earlier judgment of McDowell and other English case laws on the subject.

Here it would also be pertinent to note the judgment of AAR in the case of E*Trade Mauritius Ltd. (324 ITR 1) wherein the AAR after relying on the Supreme Court judgment of Azadi Bachao Andolan held that legal structure of Mauritius company cannot be ignored. Accordingly, the AAR held that capital gains arising on sale of shares of an Indian company by Mauritian company would accrue to Mauritius company and not to its US parent.

Recently, Bombay High Court in the case of Aditya Birla Nuvo after observing specific facts and circumstances of the transaction held that tax authorities have a prima facie case for lifting the corporate veil and considering taxing capital gains arising on sale of shares of an Indian company by Mauritius company



in the hands of its US parent. The Bombay High Court after analysing contracts, agreements and operations of Mauritius company observed that it was US parent company and not its Mauritius subsidiary which was beneficial owner of the shares of Indian company and accordingly, gains arising on sale of shares of Indian company by Mauritius company may not be covered by provisions of India-Mauritius tax treaty.

Going forward, the proposed Direct Tax Code (DTC) does contain provisions for taxing indirect transfers. In addition, the DTC also seeks to introduce provisions of General Anti Avoidance Rules ('GAAR') that seeks to deny tax benefits arising from a transaction which lacks commercial substance or results in misuse of the DTC. The provisions of GAAR would also override the Tax treaties.

Although, the above AAR rulings are applicable only to the applicants and tax department, it does have persuasive value before the courts and tax authorities. The issue of indirect transfer of shares has been argued in detail in the case of Vodafone before the Supreme Court for which hearings have already been concluded. Hence, we hope that after the judgment of Supreme Court is delivered in the case of Vodafone, the issue of indirect transfer of shares would settle and till that time, the issue of taxability of indirect transfer of assets will continue to remain a contentious one baffling both the tax department as well as the taxpayers. ■

How to Structure an External Commercial Borrowing?



In a country like India, where the interest on the domestic bank loan is distinctly higher than the overseas loan, there is a natural inclination by the business houses to explore the possibility of mobilising the fund through the external commercial borrowing (ECB) route to leverage the interest burden. However, the choice is not so easy to implement as there is specific circular by the Reserve Bank of India stipulating various conditions and covenants which need to be satisfied before taking a call. In this article, the author has made an attempt to highlight the issues which a company should look into before availing an ECB so that it could be structured in the best interest of the company.



CA O. P. Jagati

(The author is a member of the Institute. He can be reached at eboard@icai.org)

At the outset, I wish to touch upon the eligibility criteria enabling a company to avail ECB under automatic approval route, i.e. without seeking specific approval from the RBI. The most important criteria is that the borrowing should be investment in new projects, modernisation/expansion of existing production units, infrastructure sector, specified service sectors (namely, hotel, hospital, software in India), overseas direct investment in joint venture or wholly owned subsidiaries. However, the end use is not permitted for real estate sector, working capital funding, general corporate purpose, and repayment of existing rupee loans. It is interesting to note that whereas

acquisition of land for setting up a new industrial unit or expansion of an existing one is eligible for ECB, it is not permitted where land is purported to be acquired for real estate. Usually, the banks adopt a conservative approach by putting a covenant that ECB granted cannot be disbursed for payment of land cost and it can be disbursed only for construction of factory and acquisition of related plant and machinery. This puts a lot of hardship on the companies where it involves purchase of large plot of land involving a high proportion of total fund cost. ^ After introduction of RBI Master Circular no. 9/2011-2012 dated 1st July, 2011, there is no embargo on utilisation of ECB

^ Recently, the government has increased the automatic route borrowing up from \$500 million to \$750 million. Service sector can raise up to \$200 million. NGOs and MFIs can borrow upto \$ 10 million.

The eligibility criteria enabling a company to avail ECB under automatic approval route, i.e. without seeking specific approval from the RBI. The most important criteria is that the borrowing should be investment in new projects, modernisation/expansion of existing production units, infrastructure sector, specified service sectors (namely, hotel, hospital, software in India), overseas direct investment in joint venture or wholly owned subsidiaries. After introduction of RBI Master Circular no. 9/2011-12 dated 1st July, 2011, there is no embargo on utilisation of ECB on acquisition land for real estate sector, i.e. industrial use. ”

on acquisition land for real estate sector, i.e. industrial use and as such, CFOs should try suitably to convince the prospective lender of ECB to disburse the proportionate amount towards purchase of land after company puts its share of contribution. However, considering the frequent social and political confrontation and dispute arising in context of land acquisition, it is the obligation of the company to convince the lender about the *bonafide* title and undisputed possession of the underlying land. Further, the real estate restriction for ECB does not include development of integrated township for an industrial unit.

The second criterion for automatic route is the threshold limit of the ECB. A corporate other than those in hotel, hospital and software can raise ECB of maximum \$ 500 million or its equivalent during a financial year. In case of service sector mentioned, it is \$ 100 million or its equivalent during a

financial year. NGOs and MFIs can raise ECB to the extent of \$ 5 million per annum. Further, for ECB up to \$ 20 million, the minimum average maturity should be of three years, for above \$ 20 million and up to \$ 500 million, it should be five years. A corporate can raise additional amount of \$ 250 million in a financial year provided the average maturity is more than ten years.

The third criterion is regarding all-in-cost ceilings. Where the average maturity period is up to five years, the all-in-cost ceiling over six months LIBOR should be 300 basis points, i.e. 3%. In case of average maturity period more than five years, it can go up to 500 basis points, i.e. 5%. All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee and fees payable in Indian rupees. The payment of withholding tax in Indian Rupees is excluded for calculation of the all-in-cost.

TCs Become ECB If They Exceed Maturity Limit

TCs (Trade Credits) refer to credits extended for imports either by the overseas supplier or its banker (known as suppliers' credit) or directly by the importer itself through its banker (known as buyer's credit) for original maturity of less than three years. In case of buyer's credit also, the local bank of the importer has to tie up with some overseas bank for the credit. It may be noted that buyers' credit and suppliers' credit for three years and above come under the category of ECB which are governed by ECB guidelines.

In order to keep the discussion simple and focused, we will keep the cases of ECB requiring for RBI specific approval from RBI outside the purview of our discussion from since these are basically refinancing borrowing by financial institutions or specific purpose mega borrowing.

Commandments of Prudent Structuring of ECB

1. Fair and Realistic Cash Flow Projection

The company should draw a fair and realistic cash flow projection of the underlying project since it is the basis of making loan draw down as well as repayment schedule. Banks charge commitment charge unless the draw down does not take place as per sanction letter which is eventually an additional cost to the company. Further, in case of hedged ECB (discussed in details later on), there is no scope of subsequent reshuffle since the hedged rate is worked out at the beginning based on the committed draw down and repayment. Default will only result in uncovering the hedging as well as there may be additional cost as per terms of the sanction authority.

2. Keep in Mind Benchmark Ratios

The CFO should prepare the historical as well as the projected ratios, e.g. DSCR (debt servicing coverage ratio), Debt to TNW (Total

While comparing the offer given by the bank, the CFO should consider all elements of cost which will be borne by the company. Interest on ECB is subject to deduction of withholding tax at source. However, many a times, banks insist that withholding tax should be borne by the company. In this case, such tax is an additional cost for the company although it is not revenue for the bank. Similarly, CFO should also ascertain whether there is any commitment charge, which is of course contingent in nature. ”



Net Worth) Ratio, Asset Coverage Ratio, EBITDA (Earning before interest, taxes, depreciation and amortisation) to Sales Ratio etc. and compare with the financial covenants stipulated by the Bank. This will validate the fairness of the cash flow to ensure timely debt servicing. If required, the repayment schedule may be reshuffled suitably. Although, different banks may have different financial covenants, usually DSCR of not below 1.5, Debt/TNW not exceeding 1, Asset Coverage not below 1.5 and EBITDA to Sales not below 13% are considered sound.

3. Negotiate for a better 'SPREAD'

Banks quote the interest on ECB in format of LIBOR + SPREAD. For example, one bank may quote like three months' LIBOR + 300, i.e. the interest rate will be 3.00% over and above the prevailing three months' LIBOR rate. If the LIBOR is 0.32%, the final interest on the proposed ECB will be 3.32%. Whereas, LIBOR rate is available in the public domain, the spread is a bank specific, i.e. it can vary from bank to bank. The spread depends on cost of fund for the particular bank, its risk assessment about the prospective customer and the credit charge (profit margin). As such, the

spread may vary from one bank to another and even one bank also has different spreads for different customers depending upon their financial health and rating. The CFO should negotiate with banks for a competitive spread. Similarly, the one time upfront/arrangement fees charged by the bank on loan sanctioned amount are also a matter for negotiation.

4. Ensure No Hidden Cost

While comparing the offer given by the bank, the CFO should consider all elements of cost which will be borne by the company. Interest on ECB is subject to deduction of withholding tax at source. However, many a times, banks insist that withholding tax should be borne by the company. In this case, such tax is an additional cost for the company although it is not revenue for the bank. Similarly, CFO should also ascertain whether there is any commitment charge, which is of course contingent in nature.

5. Understanding of Variable Elements of Borrowing Cost

Cost of borrowing through ECB has three variable components, viz., 1. LIBOR rate, 2. Spread and 3. Exchange rate. Any variation in any such components will impact the overall cost of borrowing either

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way. Let's examine with an example. Company X intends to avail ECB of \$100 million with an interest cost of three months' LIBOR + 300. Assume that three months' LIBOR is 0.32% and the exchange rate for \$1 as ₹45. No need to be surprised for such assumption as \$ was hovering around ₹45 till mid September, 2011. As such, Company X will get ₹4,500 million as ECB at an interest of 3.32% p.a. There should be all reason for rejoice for such a low interest rate whereas in present money market, interest rate on term loan in rupees is hovering around 15%. Let's us assume that after a year, the LIBOR rate becomes 3.50%. It may look hypothetical but not impossible, since this was the rate ten years ago. After a year, the lending bank also increases the spread to 5%. Also assume that dollar rupee exchange rate becomes ₹55. It may be noted that the dollar has already touched ₹54 in second week of December 2011 at the time of writing this article. The

P rincipal Only Swap (POS) is a contract between two parties to exchange only principal cash flows in two different currencies on pre set dates. This can be used for hedging the principal repayment both under bullet (single transaction) and staggered (multiple transactions) repayment schedule. The cost of POS is the forward premium considered while arriving at the fixed exchange rate for repayment in future on pre set dates. Forward premium is calculated on basis of difference of interest rates difference between two currency, e.g. the dollar and Indian rupee. ”

Term	Interest Rate
1 year	0.68
2 year	0.24
3 year	1.68
4 year	34.83
5 year	
6 year	
7 year	
8 year	
9 year	
10 year	
12 year	
15 year	
20 year	
25 year	
30 year	

effective rate of interest will become 10.39% against initial rate of 3.32%. If you consider additional principal repayment due to weakening of rupee by 22%, the impact will be more severe and ultimately it may be costlier than a rupee denominated loan. CFO should deeply analyse such risk factor while availing any ECB and make necessary hedging arrangement. I feel that it is appropriate to discuss about the hedging mechanism from corporate perspective while availing the ECB.

RBI permits swap be used for hedging of interest servicing and principal repayment of ECB. Swap is a contract between two parties, i.e. lending bank and borrowing corporate to exchange a set of interest and/or principal cash flows in two currencies on pre-set dates. In case of hedging of ECB, there can be three types of swaps, namely, (i) Principal Only Swap (POS), (ii) Interest Rate Swap (IRS) and (iii) Cross Currency Interest Swap (CCIS).

(i) Principal Only Swap (POS)

POS is a contract between two parties to exchange only principal cash flows in two different currencies on pre set dates. This can be used for hedging the principal repayment both under bullet (single transaction) and staggered (multiple transactions) repayment schedule. The cost of POS is the forward premium considered while arriving at the fixed exchange rate for repayment in future on pre set dates. Forward premium is calculated on basis of difference of interest rates difference between two currency, e.g. the dollar and Indian rupee. However, like any other international transactions, there is also some degree of speculation, like political and financial stability, government

policy etc. which is factored while arriving at the final forward cover rate. Further, the forward premium rate will vary from bank to bank depending on its ability to take the exposure and margin expectation.

(ii) Interest Rate Swap (IRS)

IRS is a contract between two parties to exchange only interest cash flows, to convert the floating interest rate liability into fixed interest rate liability. Although, the principle of arriving at forward premium rate and fixed interest rate is same, there is difference on its application. In POS the repayment of principal amount of the ECB is calculated as per the forward exchange rate agreed upon. However, the periodic interest calculation is subjected to floating interest rate prevailing from time to time. Further, the payment of such interest is tendered as per the prevailing spot exchange rate. In IRS, on the other hand, interest liability

A lthough, it is prudent to draw the ECB just before utilisation thereof, it is always not possible particularly where it is intended for execution of some time consuming project like setting up a new factory. Further, in case of an ECB having hedging mechanism, the draw down has to take place strictly as per the agreement executed at the beginning. As such, efforts to be made to park such idle borrowed fund in form of temporary investment as allowed as per RBI guidelines so that the cost of borrowing for such idle period is minimised. ”

will be calculated on the notional outstanding principal amount at a fixed rate of interest. However, the repayment of principal will be made applying the prevailing spot exchange rate. Interest although calculated at a fixed rate, it will be tendered at prevailing spot exchange rate.

(iii) Cross Currency Interest Swap (CCIS)

CCIS is a contract between two parties to exchange a set of interest and principal cash flows in two different currencies on pre set dates. The objective of this arrangement is to convert synthetically the foreign currency denominated ECB into INR loan for the tenure of the loan. This is the most comprehensive swap arrangement since it hedges completely the foreign currency liability into Indian rupee, i.e. both principal and interest. In atypical CCIS, the resultant interest rate covers both forward premium and interest rate swap. Let's explain it with a simple illustration. Company Y has been sanctioned with an ECB of \$ 100 million with interest cost of three months LIBOR +300. The prevailing interest spot rate of the dollar is ₹45/-. Company Y intends to go for CCIS. The bank gives a consolidated interest rate of 9.85% p.a. As per this hedging arrangement, Y will pay interest on the notional amount of outstanding principal at a fixed interest rate of 9.85%. Further, Y will repay the identical amount of principal received by it in Indian rupee while taking the disbursement. In this case, ECB will become a fixed rate rupee loan. As such, the company Y need not worry

about if there is any adverse fluctuation in LIBOR rate, spread by the bank and the exchange rate between the dollar and Indian rupee.

Now the question arises whether there is any bench mark reference rate on basis of a CFO can broadly arrive at the likely CCIS rate. In this context, Mumbai Inter-bank Forward Offer Rate (MIFOR) is the most popular and prevalent benchmark. MIFOR is a mix of the London Inter-bank Offer Rate (LIBOR) and a forward premium derived from Indian forex market. For example, if the five year MIFOR rate is 6.70%, it would be reasonable to expect that a corporate looking to swap an ECB from floating LIBOR and the dollar to fixed Indian rupee, can assume a swap cost of 6.70%. In CCIS, first of all a floating LIBOR is converted into fixed LIBOR for the underlying tenure of the borrowing. Then the fixed LIBOR is converted into INR by interest rate swap. Like LIBOR, the MIFOR rates for various tenures are also available in public domain.

RBI Circular no. 30 dated 27th September, 2011, permitting Indian entities to borrow ECB in Chinese Yuan (Renminbi) is a welcome step. Indian companies in the infrastructure sector are now allowed to avail of ECBs in Yuan, under the approval route, subject to an annual currency cap of \$ 1 billion. The approval of the RBI will be valid for a period of three months and the loan agreement should be executed within the validity period. ”

Usually, there is a gap of at least 2% between domestic term loan and ECB comprehensively hedged. As such, CFO should explore ECB with competitive terms and conditions for new project or expansion of existing project.

Remember Idle Money Has a Cost!

Although, it is prudent to draw the ECB just before utilisation thereof, it is always not possible particularly





where it is intended for execution of some time consuming project like setting up a new factory. Further, in case of an ECB having hedging mechanism, the draw down has to take place strictly as per the agreement executed at the beginning. As such, efforts to be made to park such idle borrowed fund in form of temporary investment as allowed as per RBI guidelines so that the cost of borrowing for such idle period is minimised. As per RBI circular no 52 dated 23rd November, 2011, borrowers are permitted to keep ECB proceeds abroad meant only for foreign currency expenditure pending utilisation for permissible end-uses. However, such ECB proceeds parked overseas can be invested in liquid assets, such as, (a) deposits or Certificate of Deposit or other products offered by banks rated not less than AA (-) by Standard and Poor/Fitch IBCA or Aa3 by Moody's; Treasury bills and other monetary instruments of one year maturity having minimum rating as indicated above and (c) deposits with overseas branches/subsidiaries of Indian banks abroad. The funds should be invested in

such a way that the investments can be liquidated as and when funds are required by the borrower in India.

It may be noted that ECB funds raised abroad meant for rupee expenditure in India should be brought immediately to India for credit to the borrowers' Rupee accounts with AD Category I banks in India pending utilisation for permissible end-uses. Although, RBI has not specified any particular types of assets or rating condition for temporary investment of such idle borrowed funds, it has categorically prohibited for investment in capital markets, real estate or for inter-company lending. However, it can reasonably be construed that investment in liquid assets devoid of any speculation and capable of being liquidated as and when required may be the borrower, may be considered with consent from the lender. From practical experience, it may be shared that lending bank will prefer the investment in form of short term deposit with the bank itself.

RBI Circular no. 30 dated 27th September, 2011, permitting Indian entities to borrow ECB in

Chinese Yuan (Renminbi) is a welcome step. Indian companies in the infrastructure sector are now allowed to avail of ECBs in Yuan, under the approval route, subject to an annual currency cap of \$ 1 billion. The approval of the RBI will be valid for a period of three months and the loan agreement should be executed within the validity period. Hope that in due course, ECB in Yuan will be allowed for automatic approval cases also.

I will like to conclude by quoting an extract from Kautilya's *Arthashastra* which says: "No one shall recover interest without agreeing on the rate with the debtor at the time of making the loan. Once agreed upon any interest rate shall not be changed during the course of the loan." The basic importance of fixed rate principle advocated by the great scholar, strategist, diplomat, and economist Chanakya during the rule of Chandragupta Maurya (322-298 BC) holds good today also although, the means of borrowing in modern days has become quite complex in view of dependence on a number of factors, both domestic and international. ■

Interest Rates – A New Facet: Time to Dodge the Market



When we compare loan rates offered by various lenders including banks, our motive basically is to get the lowest fixed or floating interest rates. We decide our loans normally by calculating the options based on the loan amount we want and on the amount we might afford to pay back each month towards the amount of our loan. Interest rate is the most fundamental and crucial factor that lets us decide our favoured lender or bank. The author in this article practically presents various aspects of interest rates from a consumer perspective. Read on...

Background

Indian economy is in a growth phase which may bring extremely exciting times in the years ahead, unless it is dampened by the rampant corruption in future. People's purchasing power goes up in such times resulting in more demand and if the supply does not match the demand, this situation would lead to inflation. However, the Government's solution to combat inflation is to increase the interest rates, and the logic is that high interest rates would discourage people in borrowing money leading to less expenditure which would eventually reduce the effects of inflation. Repo and reverse Repo rates are important tools with the RBI to tackle inflation.

We have witnessed many instances of increased interest rates in the past few months.

What are interest rates?

₹1 is more valuable today than it would be a year later, therefore any lending or borrowing of money would entail a charge known as interest rate as return on the investment, i.e. lending. Increase in the interest rate sensitive financial products in markets would develop the whole market of various entities that would want to hedge or bring down/up its interest rate liability/asset to the lowest/highest possible levels as per each party's interest rate expectations.

We shall take a look at such hedging instruments which suits



CA. Chirag B. Anandwala

(The author is a member of the Institute. He can be reached at eboard@icai.org.)

If the interest rate in the market (Libor) goes up, the liability would increase, as the liability is tagged to Libor. However, Mr. X could be better off than Mr. Y, if interest rate is low. Mr. Y has no interest rate concerns, as the liability of the loan is fixed at the outset. Increase in interest rates would not affect his outflow of cash.

the expectation of interest rates of various counterparties/entities. Often investors and home-buyers complain that interest rates are too high for them to afford a house or repaying their loan. The article would focus on the issue where investors have a floating rate liability, e.g. concerns are on the rising interest rates. We would also look at banks' perspective on decreasing rates.

An example to understand the interest rate effects:

Mr. X takes a five-year loan from a bank for ₹50 lakh @ Libor + spread (Floating rate)

Mr. Y takes a five-year loan from a bank for ₹50 lakh @ 7% (Fixed rate)

Obviously, the main objective of an investor would be to reduce expenses and increase the income. Following deduction could be made in the light of inflation and increasing interest rates:

	Mr. X	Mr. Y	Bank
Floating	Int Rate concerns	NA	No Int rate Concerns
Fixed	NA	Int rate doesn't affect the Interest cash flow	Int Rate concerns

(Fig 1)

Let's think intuitively now.

Mr. X has high interest rate concerns. If the interest rate in the market (Libor) goes up, the liability would increase, as the liability is tagged to Libor. However, Mr. X

could be better off than Mr. Y, if interest rate is low. Mr. Y has no interest rate concerns, as the liability of the loan is fixed at the outset. Increase in interest rates would not affect his outflow of cash. However, Mr. Y could also lose money, if the interest rate gets lowered in future, as he would continue paying on the fixed and higher interest rate, i.e. higher than the floating interest rate.

Bank's Perspective

No Interest Rate Concerns: In case of loan to Mr. X, the bank has no interest rate concerns as it would receive its payment from Mr. X on the market rate.

High Interest Rate Concerns: However, in case of the loan to Mr. Y, the bank has high interest concerns, since the payment would be based on a fixed rate which doesn't allow the bank to earn higher in case the interest rate goes up in the market.

Mr. X's options

Here, we would like to explore what the options are with Mr. X, when the interest rate keeps on increasing and he wants to limit his exposure. Let's assume the loan bears yearly reset with interest rates likely to rise every reset period.

Yr	Mr X's Libor Expectation
1	7.0%
2	7.5%
3	8.0%
4	8.5%
5	9.0%

(Fig 2)

Some of us may think if the expectation is about increasing interest rates, it would be sensible for Mr. X to go for a fixed rate loan and not for a floating rate one. This may be correct for the current example, but, in reality, house loans or business loans normally span up to 10 to 20 years where the interest rate

might start rising at an increasing or decreasing rate from the fifth year, seventh year, or tenth year. So, at the time of entering into a loan agreement, Mr. X can have no inkling about the interest rate expectation in future. By entering into a floating rate loan scheme, we may like to take advantage of the decreasing interest rates, and, so on.

Any rational person would like to limit his/her cash outflow and increase his/her cash inflow. In times of increasing interest rate, there are some options Mr. X would have:

1) Interest rate swap: As the name suggests, the deal allows Mr. X to swap one interest rate for another. Here, he can convert his floating rate liability into a fixed rate liability by entering a "fixed-for-floating" IRS.

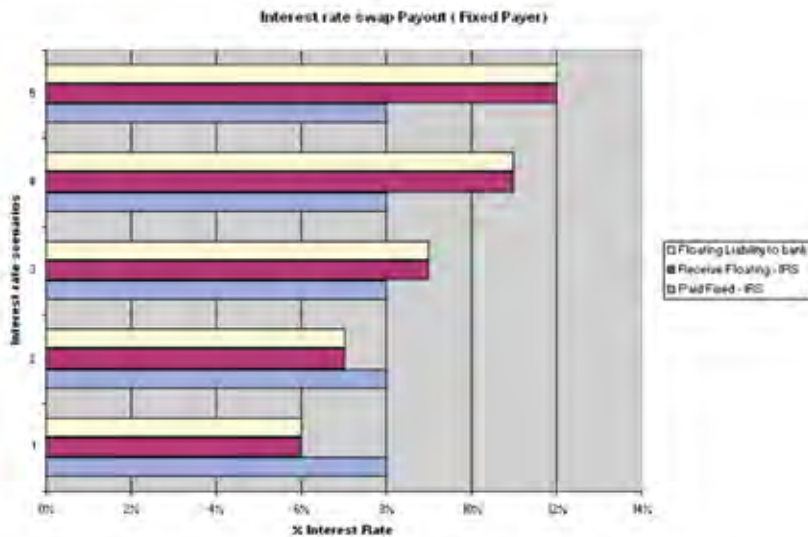
Say, in the third year, if he fears that the interest rate would go up, he would rather lock his liability at the rate of 8%, e.g. fixed rate available at the third year. The counterparty would pay Mr. X "Libor" and Mr. X would pay 8% for next three years, i.e. third, fourth and fifth. Amount received under IRS from counterparty would then be diverted to the interest payment due on loan with the bank. Here, effectively Mr. X would be paying on 8% irrespective of the market rates.

Valuation concepts of IRS, like any other financial instrument, will follow a "no-arbitrage price" principle, i.e. on the date of the contract both the parties have a value of "0" in the contract, which is on that date no party can earn by squaring off the transaction. Next day onwards, depending upon the interest rate movement, one party will have a +ve NPV and other with -ve NPV.

Interest Rates scenarios	Interest Rate swaps		Liability to bank	Net Liability
	Paid Fixed (IRS)	Receive Floating (IRS)		
1	(8.0)%	6.0%	(6.0)%	(8.0)%
2	(8.0)%	7.0%	(7.0)%	(8.0)%
3	(8.0)%	9.0%	(9.0)%	(8.0)%
4	(8.0)%	11.0%	(11.0)%	(8.0)%
5	(8.0)%	12.0%	(12.0)%	(8.0)%

(Fig 3)

As per the above figure, the net liability is same as per the fixed rate paid under IRS. We may show the same in form of a chart:



(Chart 1)

In any of the above interest rate scenarios, floating amount received under IRS contract would be “diverted” towards floating rate liability of the loan, so we see both being equal under all scenarios, i.e. *Floating receipt under IRS = floating liability towards bank*. However, what we would pay is the fixed rate under IRS, e.g. 8%, under all scenarios, which eventually becomes Mr. X's net liability under the entire portfolio of loan and IRS contract.

Mr. Y's options

Interest rate swap: If the expectation is for rates to go down, Mr. Y can enter floating for fixed IRS, where net liability would be “Libor+Spread”.

We shall also see another way of hedging our interest rate exposure.

2) Interest Rate cap option – relief to the borrower

This market is expected to grow in India in future, when the interest

Floating amount received under IRS contract would be “diverted”

towards floating rate liability of the loan, so we see both being equal under all scenarios, i.e. *Floating receipt under IRS = floating liability towards bank*.



Libor is at 8.5%. Refer to Fig 2. What will be the payoff for Mr. X in the fourth year?



(Fig 5)

Since the strike price is 8%, as the interest rate increases above 8%, Mr. X will exercise the option and Mr. ABC, the option seller, is to make the differential payment to Mr. X. Mr. X's liability is capped, i.e. upper limit fixed, under any scenario fixed at 8% (8.5%-0.5%). Here, Mr. X is protected against the increasing interest rates.

Scenario 2:

Say in the fourth year, the interest rate is at 7.5%. What will be the payoff for Mr. X in the fourth year?



(Fig 6)

Mr. X would not exercise the option and pay 7.5% to the bank.

rate sensitivity measurement will be the driving force for economic health and people would enter into bigger deals to cover their interest rate exposure.

Concept:



(Fig 4)

Here, Mr. ABC can be viewed as the option seller, who is ready to protect Mr. X – the option buyer, for a premium. Here, Mr. X is entering into an interest rate cap option with Mr. ABC at a strike of 8%.

Scenario 1:

Say in the fourth year, interest rate actually meets the expectation and

Payoff, in case interest rate expectations are met:

From Borrower's Perspective

From Borrower's Perspective

Yr	Cap / Strike Rate	Interest Rate	Payoff to bank	Received from Mr. ABC	Net Payable
1	8.0%	7.0%	(7.0)%	0.0%	(7.0)%
2	8.0%	7.5%	(7.5)%	0.0%	(7.5)%
3	8.0%	8.0%	(8.0)%	0.0%	(8.0)%
4	8.0%	8.5%	(8.5)%	0.5%	(8.0)%
5	8.0%	9.0%	(9.0)%	1.0%	(8.0)%

(Fig 7)

As we see, by entering into a cap option, we limit our maximum interest payment to 8%, which is the cap or strike rate in the agreement.

Though in this example, we have seen cap option with the counterparty, practically, these kinds of options are also present in the loan agreement wherein the cap is provided by the bank, where a premium needs to be paid to enter into such an agreement. There are more such examples under the conclusive heading in this article.

We have seen the option of getting into a floating rate loan. Now let us see the options a bank has when interest rates are decreasing in a floating rate loan agreement, as the banks will tend to be at a loss when interest rate keeps on decreasing.

Bank's options

- 1) **Interest rate Swaps:** Similar to individuals, even a bank can enter into an IRS wherein it can swap its floating rate income for a fixed rate, if it's expecting the Libor to go down in future; future period could be three months, one year or three years as per the bank's expectation. The bank would not want to exchange its floating rate income for a fixed one, if it's expecting interest rates to go up as it would want to receive high floating. In case of fixed rate loan, it will try to exchange

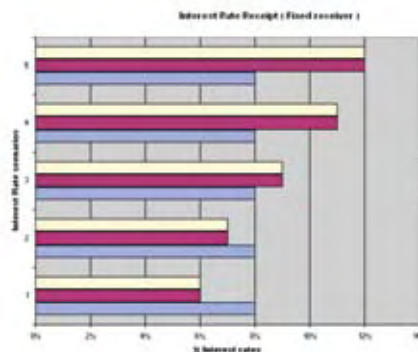
its fixed receipts with floating in case it expects interest rates to rise

Fundamentally, the IRS would

work the same way as it worked for Mr. X and Mr. Y earlier. Most of the I-banks today enter into IRS contracts to suit their interest rate expectation and hedge their interest rates accordingly.

We shall use a similar chart as used earlier to explain a bank's perspective.

In this case, the bank will continue to receive at least 8% in each case irrespective of the existing market's interest rate.



(Chart 2)

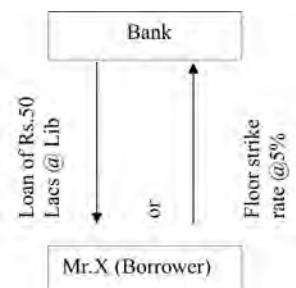
In this case, irrespective of the rates in the market, Bank will at least earn 8% (fixed). It will receive floating from loan and divert the same to the IRS contract.

We shall also see how banks can earn a minimum interest rate irrespective of the rates movement on the down side.

- 2) **Interest Rate Floor option – relief to the bank:** Conceptually exactly opposite of interest rate cap is interest rate floor. Here, the fear is with the Financial institution (bank) who has provided loan/lent money

in the floating rate segment. Here, bank wants to earn a minimum percentage. To understand the concept, let

us assume the “interest rate floor” option is present in the loan agreement itself, i.e. agreement between the bank and the borrower.



(Fig. 8)

The embedded floor option in the loan agreement makes the borrower a “by default” option writer and the bank is the option buyer who would have the right to exercise the option in case

Conceptually exactly opposite of interest rate cap is interest rate floor. Here, the fear is with the Financial institution (bank) who has provided loan/lent money in the floating rate segment. Here, bank wants to earn a minimum percentage. To understand the concept, let us assume the “interest rate floor” option is present in the loan agreement itself, i.e. agreement between the bank and the borrower.



the interest rates in the markets decrease below the floor rate. An example would explain the concept of a floor:

From Bank's perspective

Yr	Floor / Strike Rate	Interest Rate	Receive from Borrower(Loan)	Receive from Borrower(Floor)	Net Receivable
1	5.0%	7.0%	7.0%	0.0%	7.0%
2	5.0%	6.0%	6.0%	0.0%	6.0%
3	5.0%	5.5%	5.5%	0.0%	5.5%
4	5.0%	4.0%	4.0%	1.0%	5.0%
5	5.0%	3.5%	3.5%	1.5%	5.0%

(Fig. 9)

In the example, if the bank's fear comes true, in the fourth and fifth year, it will exercise the floor option and ensure that it receives at least the floor rate from the entire deal.

Say if the interest rate is 7% in the first year, then it will receive $\text{Libor} = 7\%$, but if the rate reaches 3.5% in the fifth year, the bank will exercise the floor option, as the rate has now gone below 5% (the floor rate) and the bank will recover the differential 1.5% from the borrower. In nutshell, the minimum interest expense for the borrower and the minimum income for the bank are locked at the rate of 5%. The bank will never receive less than 5% even if the interest rate goes down, hypothetically, to 0%, in case of presence of an interest rate floor option. (Such a floor option could be embedded in the loan agreement with the buyer as above

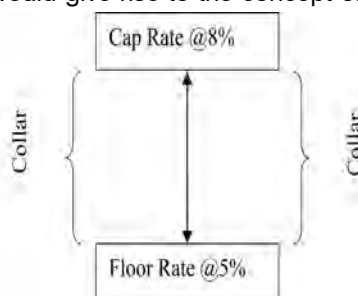
or it could be separate agreement with a third party in which case the bank would have to incur a periodic cost to keep the floor agreement alive.)

will never pay above 8% and the bank would never receive below 5%.

If the rates go above the cap, the borrower will exercise and

A Collar

Presence of the cap and the floor in the loan agreement together between the bank and the borrower would give rise to the concept of a



"collar".

(Fig. 10)

If there is a presence of both the cap at the rate of 8% and floor at the rate of 5%, the borrower

pay at the rate of a maximum 8%. Pay 10% to bank and receive 2% from bank under cap option. If the rates go below the floor, the bank exercises the options and receives at the rate of 5%. Pay 3% to the bank and additional 2% under floor option. The difference between 8% and 5% is a "collar".

So here are some of the ways in which interest rate hedging products can be used to manage the interest rate exposure on the basis of one's expectation on the interest rates in the short- and long-term. The market for these products is still at a nascent stage in our country and will inevitably grow due to the presence of huge debt capital on the balance sheet of the corporate houses. ■

Yr	Interest Rate	Cap / Strike rate	Floor / Strike rate	Payoff to bank	Receivable by Bank
1	10.0%	8.0%	5.0%	"10% - 2%" = (8.0)%	"10% - 2%" = 8.0%
2	8.0%	8.0%	5.0%	(8.0)%	8.0%
3	6.0%	8.0%	5.0%	(6.0)%	6.0%
4	5.0%	8.0%	5.0%	(5.0)%	5.0%
5	3.0%	8.0%	5.0%	"3%+2" = (5.0)%	"3%+2" = 5.0%

(Fig. 11)

Understanding Green Shoe Option in Public Offerings



Green Shoe Option is a mechanism used by companies to provide price support to investors for shares procured by them in the public offering, in the event that the prices of equity shares witness a drop immediately after listing. This article explores the regulatory provisions in relation to the implementation of Green Shoe Option in capital market offerings in India, and the processes involved in implementation thereof.

1. Overview

Introduced in 2003, Green Shoe Option is an over-allotment mechanism permitted by the Securities and Exchange Board of India (SEBI) for stabilising the prices of newly-listed shares of companies immediately after listing. A commonly used tool in international capital market transactions, Green Shoe Option is used by investment bankers, acting as stabilising agents, to provide share price support to companies for a certain small period after their public offering. Simply put, it is a price stabilisation mechanism whereby a company over-allots shares to investors participating in the issue, with a view to have the merchant banker buy them back from the open market after listing, in order to arrest any fall in the share prices below the issue price. This term has been derived from the name of a company that first implemented this mechanism in its public offering in 1960 – the Green Shoe Manufacturing Company (now Collective Brands Performance + Lifestyle Group, a subsidiary of Collective Brands Inc., USA). SEBI introduced the Green Shoe mechanism in Indian capital markets in 2003 vide a circular SEBI/CFD/DIL/ DIP/Circular No. 11 dated 14th August, 2003. Since then, a number of companies have implemented the Green Shoe Option in their initial public offerings,



CA. Cyril Paul

(The author is a member of the Institute. He can be reached at eboard@icai.org.)

e.g. Electrosteel Integrated Ltd., Indiabulls Power Ltd., Housing Development & Infrastructure Ltd., etc.

2. How Does It Work?

Regulation 45 of the SEBI (*Issue of Capital and Disclosure Requirements*) Regulations 2009 (*ICDR Regulations*) lays down the provisions regarding implementation of Green Shoe Option in public offerings.

There are three key parties involved in implementing this mechanism:

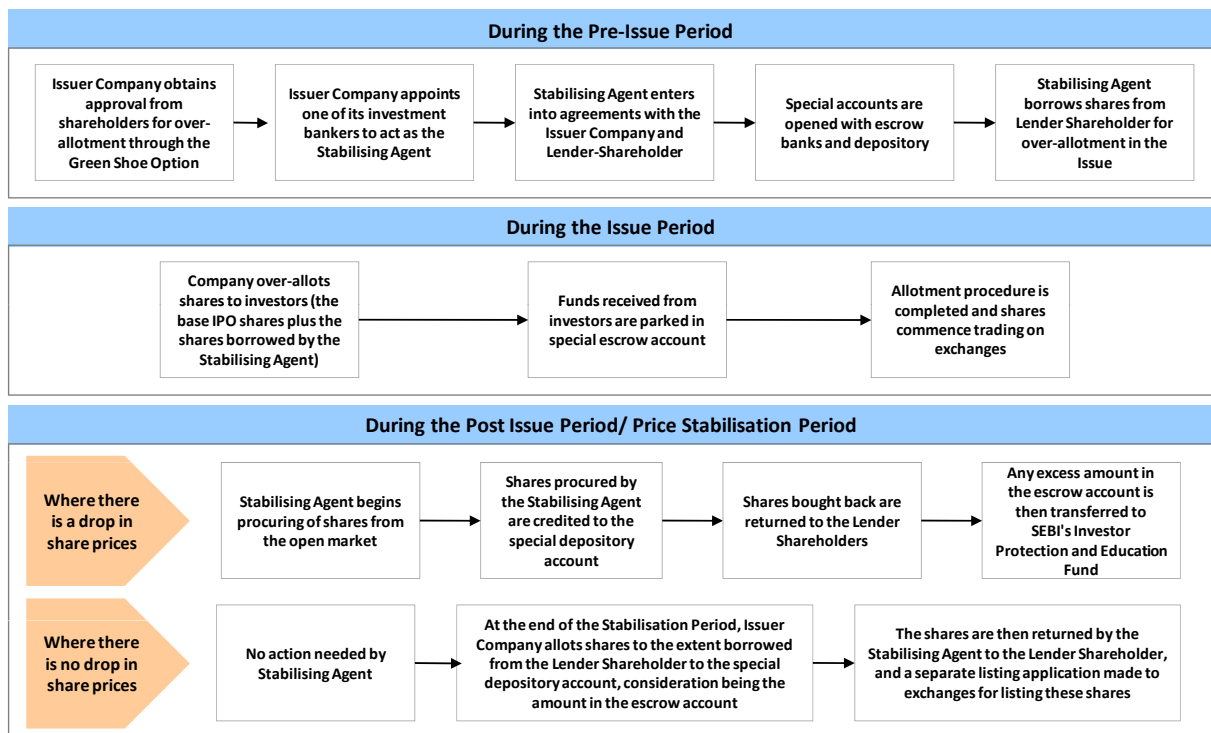
- issuer company, being the company proposing to undertake the public offering;
- stabilising agent, being one of the merchant bankers, who would be in charge of the stabilisation process; and
- lender-shareholder, being one of the pre-issue shareholders holding a significant portion of shares of the issuer company.

A pictorial depiction of its operation is:

during the stabilisation period – being a period of up to 30 days after the issuer company receives trading permission from the stock exchanges for its shares.

The issuer company enters into a contract with the stabilising agent detailing the terms and conditions relating to the Green Shoe Option, including fees to be charged by the stabilising agent, expenses to be incurred towards discharging responsibilities, etc. The stabilising agent also enters into a contract with the lender-shareholder - being any of the pre-issue shareholders in case of an initial public offering (IPO), and in case of a follow-on public offering (FPO), being any of the pre-issue shareholders holding more than five per cent of the share capital – detailing key terms, *inter alia*, the maximum number of shares that may be borrowed for over-allotment. The stabilising agent would borrow from the lender-shareholders such quantity of the equity shares proposed to be over allotted in the issue, subject to a maximum of 15% of issue size.

A special escrow account would be opened with one of the banks, where funds from the over-allotment



During Pre-Issue Period: After obtaining shareholder approval for use of the Green Shoe mechanism in its proposed public offering, an issuer company needs to appoint one of its investment bankers as the “stabilising agent”. It shall be the key responsibility of the stabilising agent to conduct price stabilisation activities and provide share price support

would be credited. These funds would later form the ‘war chest’ which would be used to procure shares from the market during the price stabilisation period. A special depository account also would be opened with the depository in order to credit any shares that may be bought back during the stabilisation period.

During Issue Period: The issuer company would

The stabilising agent also enters into a contract with the lender-shareholder - being any of the pre-issue shareholders in case of an Initial Public Offering (IPO), and in case of a Follow-on Public Offering (FPO), being any of the pre-issue shareholders holding more than five per cent of the share capital – detailing key terms, *inter alia*, the maximum number of shares that may be borrowed for over-allotment. ”

allot the total shares in the base case IPO to the investing public, along with the over-allotment component. Proceeds received from the shares forming part of the base case IPO are credited to the public issue account, while the proceeds from the over-allotment component is parked in the special escrow account mentioned above. The issuer company completes its allotment procedure and the equity shares are listed on the stock exchanges within the T+12 days timeline as prescribed by SEBI.

During Post-Issue/Price Stabilisation Period: The price stabilisation period can last up to a maximum of 30 days after the issuer company receives listing and trading permission from the stock exchanges for its shares. The role of the stabilising agent commences when the share prices of the issuer company begin to fall.

In such an event, the stabilising agent (using funds lying in the special escrow account) procures the equity shares at the prevalent market prices and credits them to the special depository account. All shares lying in the special depository account are then returned to the lender-shareholders, thereby closing the loop. The stabilising agent is required to return all shares to the lender-shareholders within a maximum period of two working days from the end of the stabilisation period.

In an event where the stabilising agent is able to procure only a part of the over-allotted shares, these shares are returned to the lender-shareholders within the specified time. Towards bridging the gap between the total shares borrowed by the stabilising agent and the shares that have been bought back, the issuer company would issue such number of shares constituting the shortfall to the special depository account at issue price, which would then be returned by the stabilising agent to the lender-shareholders.

Consideration for such issuance shall be met by the stabilising agent using funds lying in the special escrow account.

In an event where the share prices do not fall, there would be no need for the stabilising agent to conduct any share purchases. In this case, the issuer company would issue such number of shares to the special depository account at the issue price on consideration being met from the funds lying in the special escrow account, and these shares are returned by the stabilising agent to the lender-shareholders.

The issuer company would need to make a separate application with the exchanges to list all shares issued as a result of exercise of Green Shoe Option. Any amount remaining in the special escrow account after remittance of proceeds shall be transferred to the Investor Protection and Education Fund established by SEBI.

An illustration would probably explain the working of the Green Shoe mechanism better.

Illustration

Consider a company planning an IPO of say, 100,000 shares (the 'Base Case IPO'), at a book-built price of ₹100/-, resulting in an IPO size of ₹100,00,000. As per the ICDR Regulations, the over-allotment component under the Green Shoe mechanism could be up to 15% of the Base Case IPO, i.e. up to 15,000 shares, i.e. Green Shoe shares. Prior to the IPO, the stabilising agent would borrow such number of shares to the extent of the proposed Green Shoe shares from the pre-issue shareholders. These shares are then allotted to investors along with the Base Case IPO shares. The total shares issued in the IPO therefore stands at 115,000 shares. IPO proceeds received from the investors for the Base Case IPO shares, i.e. ₹100,00,000—100,000 shares at the rate of ₹100 each, are remitted to the Issuer Company, while the proceeds from the Green Shoe Shares (₹15,00,000/-, being 15,000 shares x ₹100/-) are parked in a special escrow bank account, i.e. Green Shoe Escrow Account.

During the price stabilisation period, if the share price drops below ₹100, the stabilising agent would utilise the funds lying in the Green Shoe Escrow Account to buy these back shares from the open market. This gives rise to the following three situations:

a) *Situation #1* - where the stabilising agent manages



to buyback all of the Green Shoe Shares, i.e., 15,000 shares;

- b) *Situation #2* - where the stabilising agent manages to buyback none of the Green Shoe Shares;
- c) *Situation #3* - where the stabilising agent manages to buyback some of the Green Shoe Shares, say 10,000 shares.

Let us examine each of these situations separately.

Situation #1 – where all Green Shoe Shares are bought back: In this situation, funds in the Green Shoe Escrow Account (₹15,00,000, in our case) would be deployed by the stabilising agent towards buying up shares from the open market. Given that the prices prevalent in the market would be less than the issue price of ₹100, the stabilising agent would have sufficient funds lying at his disposal to complete this operation.

The issuer company would need to make a separate application with the exchanges to list all shares issued as a result of exercise of Green Shoe Option. Any amount remaining in the special escrow account after remittance of proceeds shall be transferred to the Investor Protection and Education Fund established by SEBI. ”

Having bought back all of the 15,000 shares, these shares would be temporarily held in a special depository account with the depository participant (Green Shoe Demat Account), and would then be returned back to the lender shareholders, within a maximum period of two days after the stabilisation period.

Situation #2 – where none of the Green Shoe Shares are bought back: This situation would arise in the (very unlikely) event that the share prices have fallen below the Issue Price, but the stabilising agent is unable to find any sellers in the open market, or in an event where the share prices continue to trade above the listing price, and therefore there is no need for the stabilising agent to indulge in price stabilisation activities. In either of the above-said situations, the stabilising agent is under a contractual obligation to return the 15,000 shares that had initially been borrowed from the lending shareholder(s). Towards meeting this obligation, the issuer company would allot 15,000 shares to the stabilising agent into the Green Shoe Demat Account (the consideration being the funds lying the Green Shoe Escrow Account), and these shares would then be returned by the stabilising agent to the lending shareholder(s), thereby squaring off his responsibilities.

Situation #3 – where some of the Green Shoe Shares

Chapter 8A of the DIP Guidelines which dealt with Green Shoe Option was adopted almost in its entirety, except for a minor operational modification – any surplus fund remaining in the escrow account would need to be transferred to the Investor Protection and Education Fund, as against the Investor Protection Fund of the stock exchanges. ☞

are bought back, say 10,000 shares: This situation could arise in an event where the share prices witness a drop in the initial stages of the price stabilisation period, but recover towards the latter stages. In this situation, the stabilising agent has a responsibility to return 15,000 shares to the lending shareholder(s), whereas the stabilising activities have yielded only 10,000 shares. Similar to the instance mentioned in Situation #2 above, the issuer company would allot the differential 5,000 shares into the Green Shoe Demat Account to cover up the shortfall, and the Stabilising Agent would discharge his obligation to the lending shareholder(s) by returning the 15,000 shares that had been borrowed from them.

Both in *Situation #2 and #3*, the issuer company would need to apply to the exchanges for obtaining listing/ trading permissions for the incremental shares allotted by them, pursuant to the Green Shoe mechanism.

Any surplus lying in the Green Shoe Escrow Account would then be transferred to the Investor Protection and Education Fund established by SEBI, as required under Regulation 45(9) of the ICDR Regulations and the account shall be closed thereafter.

3. DIP Guidelines vs. ICDR Regulations - Impact on Green Shoe Option

Until September 2009, the regulatory framework governing capital market issuances in India was the SEBI (*Disclosure and Investor Protection*) Guidelines, 2000 (*DIP Guidelines*). With the notification of the ICDR Regulations on 3rd September, 2009, several clauses of the *DIP Guidelines* were amended to reflect current market dynamics. While some of the provisions underwent a complete overhaul, some other provisions were only modified to provide greater clarity, removing redundancies, etc.

Chapter 8A of the *DIP Guidelines* which dealt with Green Shoe Option was adopted almost in its entirety, except for a minor operational modification – any surplus fund remaining in the escrow account would need to be transferred to the Investor Protection and Education Fund, as against the Investor Protection Fund of the stock exchanges.

4. Criticism

Green Shoe mechanism, despite its wide usage, is not without its share of criticism. To begin with, the Green Shoe mechanism is certainly not a cure-all antidote for falling share prices. While the stabilising agent acts as a ready buyer for the shares in the post-listing period, for a company with weak fundamentals or for a badly priced IPO, sustained buying alone would not be enough to send the share prices sky rocketing upwards to match the initial IPO price. Secondly, the prescribed period for price support is rather limited at 30 days. For a savvy cartel of market operators determined to push down the share price, the stabilisation period would be a minor time pocket to weather out before making some serious play in the market. Thirdly, the ICDR Regulations already prescribe a more robust mechanism for protection of the small investor – the 'safety net arrangement' mechanism covered in Regulation 44. Under the safety net arrangement mechanism, an issuer company can appoint a third party who would offer to purchase equity shares from original resident retail individual investors up to one thousand equity shares for a maximum period of six months from date of issue. The longer time frame covered under this mechanism, and the re-purchase guarantee given to the small investors definitely provide a greater sense of comfort to the investing public. However, the key impediment in adopting this option is finding a suitable third party who would be willing to offer the commitment to shareholders.

Despite the above shortcomings, the Green Shoe mechanism has been widely used by issuer companies to provide share price support to investors in their initial public offerings.

5. Reverse Green Shoe Option

A variant of the Green Shoe Option practised in international capital markets is the Reverse Green Shoe Option. Though the end result of both Green Shoe and Reverse Green Shoe Options is to achieve the price stabilisation, both mechanisms function differently. Under the Reverse Option, in the event that there is a fall in the share prices during the stabilisation period, the stabilising agent would procure shares from the open market at the depressed prices, and sell them back to the issuer at the (higher) issue price. Procurement of large blocks of shares from the open market while exercising Reverse Green Shoe would assist in stabilising the falling share prices. However, in light of the Company Law provisions in India that prohibit a company from owning its own shares, applicability of Reverse Green Shoe mechanism in an Indian context is somewhat curtailed. ■

Reverse Innovation and the Role of a Strategist



Reverse innovation is not an isolated phenomenon but order of the day. Oxford dictionary defines innovation as 'a new method, idea, product, etc'. For all practical purposes, business innovation means a new venture put to commercial use. In the organisational context, innovation may be linked to performance and growth through improvements in efficiency, productivity, quality, competition and market share. Though the concept is not very new and was in practice since early 2000, Harvard Business Review, in an article published in September 2009 popularised the phenomenon of Reverse Innovation. A reverse innovation is any innovation likely to be adopted first in the emerging markets and then repositioned in the matured markets. It is so called because historically, nearly all innovations have been adopted first in developed countries. Reverse innovation, also called trickle-up innovation, involves creating entry-level products for developing nations and then repackaging them for sale in developed nations. It solves many woes of multinationals including considerably reduced product development costs and substantially increased revenue by diversifying globally. Read on to know more...

Scope of Reverse Innovation

Multinational companies need to change the very way they conduct business, suggests Dr. Vijay Govindarajan, noted expert on strategy and innovation. For decades the MNCs have focused innovation efforts based on the needs of developed countries and then exported products around the globe. But today, they must innovate to solve the problems of the developing world and then bring the innovations home, he emphasises. Following are three prime reasons leading to reverse innovation:

1. **Income gap** between emerging markets and matured markets. Because per-capita income is low in the developing countries, conditions are ripe for innovations that offer quality products and services at a very low price e.g. a 50% solution at a 5% price. Initially the 50% solution is unattractive in the matured markets, but eventually, performance rises to the level that it becomes attractive at an acceptable price.
2. **Infrastructure gap** - Most of the infrastructure (energy, transportation, telecom, etc.) in the developing countries are still being built. As a result, demand for new infrastructure technologies is much higher in the developing countries than it



CA. Dehdatta Bandyopadhyay

(The author is a member of the Institute. He can be reached at eboard@icai.org)

is in the developed countries where demand for infrastructure is created primarily by the need to replace existing infrastructure.

3. **Sustainability gap** - Many developing nations are confronted with environmental constraints far sooner in their path of economic prosperity than developed nations were e.g. desalination technologies are more likely to be adopted first in Africa and in the Mexican deserts.

The Indian Scenario

■ The example of GE Healthcare:

GE had a very strong healthcare franchise in the US where they researched and developed premium X-ray machines and medical scanners. These expensive products were imported by top Indian hospitals which have state-of-the-art medical imaging facility. However, the healthcare needs of rural India are completely different. More than 70% of Indians live in villages which are a huge market, but it cannot afford feature-rich expensive products. In 2008, GE innovated an ECG machine called MAC 400 to serve the rural market. It was developed keeping in mind the huge rural market starving for a basic product at an affordable price. An additional feature of this equipment was its portability. This equipment costs about ₹50,000 (\$ 1,000), a fraction of the cost of the appliance-sized premium machines sold in the US. In 2009, GE has brought an improved version of these portable low cost ECG machine into the US, which is sold as MAC 800. These machines have created new applications in the US in accidents sites and in emergency rooms where

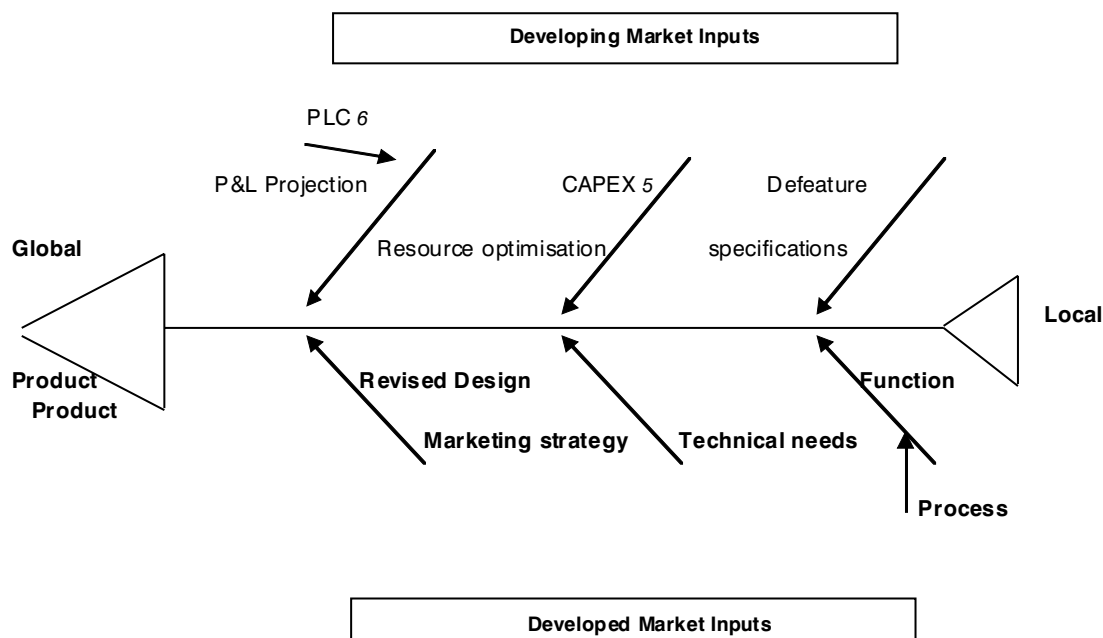
portability and small size serve critical advantages. The Obama healthcare reform is based on low cost, good quality and increased access. These are the same three pillars that will unlock the huge untapped healthcare market in countries like India.

■ The example of Tata Motors:

In 2009, Tata Motors launched the Tata Nano, the much talked about ₹1 lakh (\$ 2,000) common man's car and now relaunching the same car as Tata Pixel for the European markets. Through this car, Tata Motors has tried to unlock new markets in India. The Nano is targeted at the consumers outside the automobile segment in India, mainly the two-wheeler users. The two-wheelers are typically priced in India at \$ 1,200 to \$ 1,500. By introducing an automobile for \$ 2,000, Tata Motors plans to migrate the two-wheeler population into four-wheeler segment. Tata is now attempting to create new consumption by extending to newer markets with modified products. Tata Motors plans to introduce Tata Nano not only in other emerging markets such as Africa but also plans to bring the car into Europe and the US eventually, repackaged for matured markets.

The Framework of Reverse Innovation

Ishikawa diagram (also called fishbone diagrams or cause-and-effect diagram) was first used in the 1960s and is considered one of the important tools of TQM (Total Quality Management). We will now attempt modifying the conventional fishbone diagram in an attempt to develop a framework for reverse innovation. The below diagram is illustrative only and can be re-arranged to suit specific requirements



Another noted management expert C. K. Prahalad has highlighted five ways that developing nations should use for 'trickle-up innovation' strategy:

1. **Affordable Products** - Emerging nations cannot afford goods priced for the US and Western Europe, which pushes companies to find inexpensive materials or manufacturing options.
2. **'Leapfrog' Technologies** - Developing countries lack 20th century infrastructure and so have fast-forwarded to newer technologies such as mobile phones or solar energy.
3. **Service 'Ecosystems'** - Entrepreneurs in emerging markets often must rely on natural conditions and, therefore, should aim at building more eco-friendly products and services.
4. **Robust Systems** - Emerging markets require products that work in rugged conditions. A gadget sturdy enough to survive monsoons in India is most likely to handle weather conditions in western countries also.
5. **Newer Applications** - Customers in emerging markets have few product options thereby providing market openings for add-ons that update and extend the lives of existing merchandise.

Organisational Essentials for Reverse Innovation

In discussing some of the prerequisites in an organisation which facilitate reverse innovation, like any other organisation, Production, Marketing, Finance, HR and Logistics are the key elements. Additionally to steer reverse innovation, it is important to have a LGT (Local Growth Team) which, according to Vijay Govindarajan, operates with the following three important principles:

1. LGT needs to have a separate profit and loss statement. Additionally, the reporting system should focus on the areas of product development, supply chain, manufacturing, marketing, sales and distribution.
2. LGT needs to do a lot of experiments, learn and also unlearn. As innovation involves uncertainty and the key challenge, therefore, is to test assumptions to develop more knowledge about variables which are uncertain in different market conditions.
3. Managements need to ensure that the LGT does not function in isolation. It should be able to leverage the parent organisation's enormous global resources and technology capabilities.

Is 'Reverse Innovation' a Product of the Recession?

We have seen features of reverse innovation even before the global meltdown. Indian companies have been exporting goods and services suited to the western world since decades. The global financial

We have seen features of reverse innovation even before the global meltdown. Indian companies have been exporting goods and services suited to the western world since decades. The global financial crisis has only made the cause for reverse innovation much stronger. In years to come there is likely to be slow growth in the saturated markets and more robust growth in the emerging markets. The growth gap between the developed and the developing countries is gradually transforming into growth bridge. ”

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Also, reverse innovation should not be confused with export. China is eventually becoming the outsourced manufacturing hub to the western world. But, the Chinese goods, though they are price-efficient products, are often not quality efficient and mostly can be categorised as exports.

More examples

Some more recent examples of Reverse Innovation across various industries and geographies are as follows:

- Nokia is testing new business models with new features in its hand-held phones sold in US, based on observations in Africa.
- Procter & Gamble found that a honey-based cold remedy created for Mexico also had a profitable market in Europe and US.
- Nestlé is selling its low-cost, low-fat dried noodles originally developed for rural India as a healthy alternative in ANZ.
- HP intends to use its research lab to adapt Web-interface applications for mobile phones in Asia and Africa to other developed markets
- In February 2010, Godrej Group's appliances division test-marketed a low-cost (dubbed the world's lowest-priced model at ₹3,250) refrigerator targeted mainly at rural areas in India. The product runs without a compressor on a battery and cooling chips. The company wants to use a community-led distribution model (as an alternative channel of distribution) to push for product growth in matured markets.
- Tata launched the water purifier 'Swacch' targeting the rural market in India which is the cheapest

water purifier in the market. The product does not require running water, power or boiling and uses paddy husk ash as a filter. It can give purified water enough to provide a family of five drinking water for a year. The company feels it will open a whole new market.

Some Relevant Costing Strategies to Leverage Reverse Innovation

Following are some costing methods which the accountants and strategic planners have used in developing successful products and services, through lean innovation. The methods are briefly discussed along with some prominent examples. Adoption of these methods in appropriate cases would immensely benefit the members of the Institute.

(A) **Target Costing:** Target costing is the process of determining the maximum allowable cost for a new product and then developing a prototype that can be profitably made for that maximum target cost figure. Target costing is defined as a cost management tool for reducing the overall cost of a product over its product life cycle. Management utilises this pricing technique to meet both the demands of its customers as well as company profit goals. Target costing, in particular, emphasises the reduction of costs during the planning and design stage of the product life cycle since the majority of product cost is determined at this stage. In comparison to traditional product costing methods, target costing allocates more of the total cost to the development stage, simultaneously reducing costs during the production stage. A number of advanced cost-engineering techniques are used in the cost reduction process.

The Tata Nano illustration - Tata Nano car has been

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manufactured by utilising the Target Pricing or Target Costing methods exhaustively. Once the features and functions were finalised, target costs were assigned to each and every system – transmission system, instruments, engine, body, interiors and electrical systems. The sub-teams then designed the systems within the target cost. They looked at every bolt and nut and kept driving cost out of the system. Reducing inventory reduced the working capital cost and also reduced warehousing costs and obsolescence costs. To reduce inventory, demand fluctuation will have to be reduced and reliability of inventory replenishment had to be increased. Inventory Record Accuracy was at six sigma levels and overall supply chain length was reduced. On a strategic level, Supply Chain Network Design i.e. locating plants, contract manufacturers, distribution centers and warehouses were very important because 70% of the cost of a supply chain is fixed at the design stage.

(B) **Just In Time:** Just-in-time (JIT) is a management philosophy originally developed by Toyota in Japan, which focuses on executing tasks as and when required thereby eliminating the need of maintaining an inventory. The tasks could be anything, ranging from acquiring and supply of raw materials to processing and shipment. The basic concept involved is reduction of wastes at every step. Reducing the inventory of such materials makes the system lean and exposes its weaknesses, which can then be rectified. JIT lies in the heart of lean manufacturing. It requires effective measures at every step of the manufacturing process; right from the ordering of supplies from vendors to quality testing of the finished product. Alertness and agility are the key factors, which is why an effective information backbone is required to track the movement of items to and from the shop floor.

JIT as a philosophy is good in most environments including India. Its core philosophy is identifying and eliminating waste and continuous improvement. This is important in a country like ours where resources are scarce. There are auto component companies in India that have excelled in implementing the JIT concept in the inbound (supply side) part of the supply chain. However, JIT concept does not work well when there is a high degree of uncertainty in the system. Therefore, in certain industries such as fashion apparel, implementing JIT might be difficult and challenging.

The Oracle-TechMahindra illustration - The IT systems have been the key to consistent and speedy healthcare delivery services through

1-0-8 calls in Andhra Pradesh. TechMahindra provided the design and deployment of state-of-art emergency management solution. The IT team evaluated and selected Voice Over IP 7 capacity, computer telephony integration; interactive voice response, geographic information systems and global positioning systems as obvious technology choices given the need for distress communication and management. Oracle Financials, Oracle Human Capital Management, and Oracle Customer Relationship Management (CRM) were used extensively to provide centralised background information for providing consistent delivery and detailed patient tracking. The CRM system is used to track patients as well as hospitals to store information and uses industry best practices across the delivery chain. The 108 helpline framework runs akin to that of 191 helpline in US.

- (C) **Total Quality Management:** Total Quality is a description of the culture, attitude and organisation of a company that aims to provide its customers with improved products and services that satisfy their needs. TQM means building quality into everything in every area – design, production, purchasing, vendor relations, inspection and service after sales, market research, development, financial controls, personnel rewards, training and education. A company must first improve quality and only then should it look into cost, volume and productivity. The improvement in price, performance and services follow automatically. Once it is recognised that customer satisfaction can only be obtained



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by providing a high-quality product, continuous improvement of the quality of the product and services becomes a culture for that company.

We have already attempted using TQM fishbone diagram as an example in developing a framework for reverse innovation.

- (D) **Benchmarking:** Benchmarking is the process of identifying "best practice" in relation to both products and the processes by which those products are created and delivered. The search for best practice can take place both inside a particular industry and also in other industries. The objective of benchmarking is to understand and evaluate the current position of a business or organisation in relation to best practice and to identify areas and means of performance improvement.

Benchmarking involves looking outward (outside a particular business, organisation, industry, region or country) to examine how others achieve their performance levels and to understand the processes they use. In this way benchmarking helps explain the processes behind excellent performance. When the lessons learnt from a benchmarking exercise are applied appropriately they facilitate improved performance in critical functions within an organisation or in key areas of the business environment.

Benchmarking is key tool to facilitate designing cost structure for products adopted for reverse innovation. This involves four key steps:

- (1) Understand in detail existing business processes
- (2) Analyse the business processes of others
- (3) Compare own business performance with that of others analysed
- (4) Implement the steps necessary to close the performance gap

Benchmarking should not be considered a one-off exercise. To be effective, it must become an ongoing, integral part of an ongoing improvement process with

the goal of keeping abreast of ever-improving best practices.

A Call Centre illustration-

Indian Call Centres are typically cost centres and suffers from the perils of subjective management. The expectations from these centres are elementary services at fractional cost. Quality is low down in the priority list in managing most call centres.

Below is an illustration based on a study on benchmarking cost and profit centre measures conducted by ACA research group, a renowned educator on benchmarking. This study depicts the shift of quality when a cost centre processes are benchmarked with that of profit centre.

Typically, measurement criteria in both cost and profit centres are:

- Calls completed per hour.
- Calls received per hour.
- Average duration of a call.
- Staff hours available per day.
- Supporting staff ratios.

The key differences between cost and profit centre measures in a BPO/Call Centre is that the latter focuses more on staff behaviour than on cost cutting. The approach taken is divided between attitudes and activities that lead eventually to staff and consumer behaviour.

Cost Centres	Profit Centres
Attitudes	Attitudes
- Compliance driven - Divisively competitive or sometimes non competitive	- Customer Focused - Innovative - Healthy Competition
Activities	Activities
- Containing Cost and headcount - Budget based on call volume - No outside or additional costs factored	- Active staff turnover control - Budget based on sales growth - Value added services

From the attitudes and activities, the staff and customers react to those attitudes and activities with behaviours that affect whether or not our benchmarks are met. For a cost centre to measure and benchmark to become a successful profit centre; the focus must be on:

- Management of costs – not simply containment or cutting.
- Pursuit of beneficial productivity – effectiveness rather than efficiency.
- Motivation of staff and management – the need for

more time and effort in training and empowering all management levels to always practice motivation – not movement (except under extraordinary circumstances) and to work toward harmony within the organisation.

- Meeting management objectives – by educating and managing management's expectations. Managing up has never been so important than it is today.
- Management of quality rather than quantity.

The priority should be on putting the benchmarks where our business drivers are. To be successful with customers into this new globalisation era we must redirect our efforts in line with dynamics of changing demand and supply.

Probably it is time to revise the phrase 'reverse innovation' to 'lean innovation'. It gives tremendous opportunity for India to embrace experiments in traditional sectors like auto, banking, etc. as well in sunrise industries like telecom and insurance. The diversified nature of the vast domestic market in India offers ample scope of developing advanced products and services suited for the export markets. ”

Conclusion

Reverse innovation is not an isolated phenomenon but an order of the day. Probably it is time to revise the phrase 'reverse innovation' to 'lean innovation'. It gives tremendous opportunity to India to embrace experiments in traditional sectors like auto, banking, etc. as well in sunrise industries like telecom and insurance. The diversified nature of the vast domestic market in India offers ample scope of developing advanced products and services suited for the export markets. The model of emerging market innovation that most people have in mind is a multinational corporation that pioneers a novel product or service in their sophisticated home market, drops some features and cuts the price, and then exports the stripped-down innovation into emerging markets. Companies must continue to develop a product that appeals to the emerging market consumers who combine discerning tastes with low disposable income and then managers quickly recognise that these products would appeal to some segments within mature markets as well. However, for sustainable growth it would become indispensable for Indian companies to develop easily adaptable, but robust cost methods to propel 'lean products and services'. It is the steam forward for our Indian companies to make significant inroads into the much awaited global markets. ■

An Initiative of the Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI



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- ANNUAL RETURN PREPARATION IN MINUTES
- PREPARATION OF STATUTORY REGISTERS
- MORTGAGE AND CHARGES MANAGEMENT
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About the Arrangement

- i) The MDA Softwares Ltd (hereinafter referred to as vendor) will provide initial license for ICAI-ROC free of cost for 2 years i.e. upto 30th September, 2013.
- ii) The license renewal charges will be Rs. 1500/- after 30th September, 2013. Statutory taxes on License Renewal shall be extra as applicable.
- iii) The Vendor will provide support which would be free upto 30th September, 2013 and include all upgrades upto Assessment Year 2013-14. Thereafter, support would be provided on payment of renewal charges.
- iv) The Vendor will provide free of cost patches upto two years and till renewed.

Installation Support

The vendor will provide a web form to enable CA firms and members to request for support for Online Installation on "First Come, First Serve" basis.

Downloading the Software:

The Software may be downloaded free of cost from the website of Committee for Capacity Building of CA Firms and Small & Medium Practitioners, www.icaai.org.in on request by members.

Technical Support for software:

The vendor will provide the technical support to the users and renewed customers via Phone, email and remote PC access from the date of registering the license.

MDA Softwares Limited, E-mail: support@mdasoft.in, Ph.: 09621813973, 09621813874



Committee for Capacity Building of CA Firms and Small & Medium Practitioners
The Institute of Chartered Accountants of India
[Set up by an Act of Parliament]
New Delhi

Technology Trends for 2012 and How Chartered Accountants Could Successfully Surf This Technology Wave¹

As 2012 has just arrived and plans are being made to engage with and encash the emerging opportunities, this article uses the prediction of global experts and research firms to remove the veil from the crystal ball and bring to you predictions of the emerging technologies and assess their impact on the role of accounting fraternity in 2012 and beyond. Hopefully you will gain insights on the challenges in the road ahead and prepare your plans to leverage the technology advances for the betterment of your professional career whether you are in practice or in employment.

The Evolving Role of IT

Information technology is all pervasive and the impact is extensive for enterprises, professionals and individuals. IT encompasses all aspects of functioning of enterprises from strategy to operations, conception to completion and from ideation to value creation. Business, regulatory and competitive requirements are demanding innovation in technology deployment resulting in changing business models of delivery of services using diverse digital media. Successful enterprises in the digital age are those which create positive customer experience and make this their business lifeline. IT is crucial for delivering a positive customer experience and this in turn drives revenue and growth. Enterprises, professionals as also individuals are becoming increasingly dependent on IT and need to knowingly or unknowingly embrace IT. IT is evolving at an accelerating pace and the role of IT is transforming business processes. It is expected that role of IT in enterprises will fundamentally change from being a service provider to IT becoming a Service Broker, aggregator of services and primarily responsible for building, maintaining and sustaining the business relationship by rendering core services to the customer.

Challenges of the Future for CAs

The core competencies of a CA are a unique combination of knowledge and skills in various aspects of accounting, assurance, information systems, governance, management, risk, controls, regulatory compliances, business processes, human relations, technology and related areas relevant for enterprises of all types and oriented towards the objective of providing value and deliverables as per requirement of clients/users. Studies by reputed accounting bodies across the world suggest that continuous enhancement, upgrading and updating of the core competencies is the key to sustaining a competitive and differential advantage in the marketplace. This leads to a continuing pressure on CAs to expand their skills and services beyond traditional roles to broader based and decision-making skills by harnessing the power of technology. The dynamic changes in IT create challenges not only for the CAs as professionals but also the economic and business world.

Reshaping Our Professional Future Using IT

Global studies have shown that the traditional core competencies of CAs needs to be enhanced with increased understanding of technology systems

and there is urgent need to develop the ability to process and integrate information among various areas of business practice. CAs of the future will be called upon to provide solutions to complex issues by integrating specialised technology with their extensive experience to create new strategic business processes. CAs will have to provide assurance on the security, effectiveness, and reliability of information, applications, and new and effective business practices and processes. As IT increasingly becomes a key enabler in enterprises of all types and sizes and there is transformation from "Technology Oriented" to "Business and Technology Oriented, governance and risk management become value creators and right security is critical to strive and thrive in the highly intensive IT era. Experts predict that the most successful future for the accounting profession lies in transitioning from information-based services to higher economic value services to so as to remain relevant in the emerging knowledge age. Hence, it is important for us as accounting professionals to reorganise our IT toolbox, review our tool-kit of techniques, re-look at our processes, refine our approach, and update them by adding appropriate IT related competencies and skill-sets. The unwritten rule is we need

¹ Contributed by **CA A. Rafeq** (The Author is a member of the Institute. He can be reached at rafeq@vsnl.com.)

to evolve using IT lest we become extinct in our relevance to the IT enabled enterprises. The success mantra is: "Find the right IT related tools to use and use them effectively and efficiently to create value addition for the stakeholders".

Industrial Revolution to the Knowledge Revolution – Pervasive IT

Evolution and revolution are part of history and keep on occurring at frequent intervals. A few decades ago, we were witness to the industrial revolution which brought in significant changes through:

- 1) The invention of machines to do the work of hand tools;
- 2) The use of steam, and later of other kinds of power, in place of the muscles of human beings and of animals; and
- 3) The adoption of the factory system.

It is said the role of information technology in the evolving knowledge society is comparable to that of the railroad during the Industrial Revolution. With the aid of IT "tracks"—high-speed computers and telecommunications systems—now inter-connecting most of the world, reaching all key enterprises, government, and our homes and lives, we have the opportunity to learn about events virtually as soon as they occur and we are able to process the information in a myriad of increasingly useful ways. The magnitude of the growth of IT can be exemplified by comparison with other sectors. For example: if the automobile and airplane business had kept pace with development in IT, then a Rolls Royce would cost \$2.75 and would run for 3 million miles on one gallon of gas and a Boeing 767 would cost just \$500 and would circle the globe in 20 minutes on five gallons of gas. In terms of power of computers, the speed of the latest personal computers is about 25,000 percent faster than it was in the mid-1980s, and the computers cost half as much.

A Gartner study says that the era when IT was the passive observer

of the world are over and global politics and the global economy are being shaped by IT today and IT is becoming a primary driver of business growth and is expected to make a greater contribution to success of enterprises. Further, investment in IT is being made as it impacts business performance.

Next Wave of IT: Pervasive Connectivity and Speed

The future of IT deployment can be exemplified by this: a Dutch start up, Sparked is using wireless sensors on cattle so that when one is sick or pregnant, it sends a message to the farmer. Each cow transmits 200 MB of data per year. We can monitor ourselves this way too. Using a wireless cardiac monitor your physician can check for health risks. And this is just the beginning of embedded IT.

The CEO of Google Eric Schmidt says: "The next wave of technology-enabled business impact will come from the power of quickly connecting companies, processes, people, computers, and physical devices to collaborate in new ways. Just thinking about the impact of powerful personal devices, low-cost sensors, ubiquitous high capacity networks, vast quantities of data, and the broad array of interoperable technology services—all connected to the Internet—can make your head hurt. Everything will happen much faster . . . every product cycle, every information cycle, every bubble, will happen faster, because of network effects, where everybody is connected and talking to each other . . . The Internet levels playing fields in many ways—distribution, branding, money, and access . . . [and has] implications for the way corporations operate. They can't be as controlling. They have to let information out. They have to listen to their customers".

IT Investment and Connectivity Enabling Knowledge Revolution in India

It is said the green revolution helped

increase the productivity of wheat and rice but the knowledge revolution is expected to increase productivity in all its dimensions. As of September, 2011, India has over 850 million mobile subscribers with over 90% of villages having mobile coverage. A growing number of private sector services are now being provided either online or via mobile phone. The National e-Governance Plan, is facilitating increasing number of government services to be provided online. An m-governance policy has also been drafted covering services provided via mobile phone. Core banking enables banking from anywhere and basic banking services can be accessed via the mobile phones. E-Services are becoming seamlessly linked through mobile, internet and other modes of delivery. A pan India Broadband Plan has been initiated with the objective of providing broadband connectivity across the country by 2014 which will propel the growth in a bigger way. These are pioneering efforts across India to connect as many of the country's population as possible to the internet so that they can be part of a new knowledge revolution.

A Gartner study reveals that despite global economic challenges, enterprises will continue to invest in IT with IT spending in India projected to grow 9.1% at \$79.8 billion (₹4,154.79 billion) in 2012 against \$71.1 billion in 2011. As per the study, India is the ninth-largest economy in the world, and the pace of economic growth in India—with a mild dip during the worldwide recession in late 2008 and 2009—has brought the role of IT into sharp focus within many enterprises. India like other emerging markets continues exercising strong momentum despite inflationary pressures and appreciation of local currencies, which are expected in rising economies. The telecommunications market is the largest IT segment in India with IT spending forecast to reach \$54.7 billion in 2012, followed by the IT services market with spending of \$11.1 billion. The computing hardware market in India

is projected to reach \$10.7 billion in 2012, and software spending will total \$3.2 billion.

Growth of India-Centric IT Companies

By 2012, India-centric IT services companies will represent 20% of the leading cloud aggregators in the market (through cloud service offerings). Gartner is seeing India-centric IT services companies leveraging established market positions and levels of trust to explore nonlinear revenue growth models (which are not directly correlated to labor-based growth) and working on interesting research and development (R&D) efforts, especially in the area of cloud computing. The collective work from India-centric vendors represents an important segment of the market's cloud aggregators, which will offer cloud-enabled outsourcing options (also known as cloud services).

The 10 Rising Strategic Technology Trends of 2012

A report recently released at the Gartner symposium provides an excellent perspective of strategic technology trends of 2012. A strategic technology is defined as one with the potential for significant impact on the enterprise during the next three years. Factors that denote significant impact include a high potential for disruption to IT or the business, the need for a major investment or the risk of being late to adopt. This list could be used by enterprises and professionals as a starting point and it is to be adjusted as per specific requirements of industry, unique business needs, technology adoption model, and other factors. As accounting professionals, we are impacted by IT in terms of assessing the IT deployment of our clients for providing assurance and consulting services and harnessing IT effectively to provide services. Hence, we could use the technology trends to be better prepared so as to re-define our role in emerging technology and shape our own future as thought leaders

in the IT arena. The key technology predictions for 2012 by Gartner are:

1. Media tablets and beyond:

Employees bringing their technology to work could become the norm, not the exception. This provides challenges of providing appropriate security and management of these devices which needs to be addressed. The era of PC dominance with Windows as the single platform is expected to be replaced with a post-PC era where Windows is one of a variety of environments IT will need to support.

2. Mobile-centric applications and interfaces:

There will be increasing demand for building user interfaces for multiple screen sizes and operating systems. This requires new types of tools which can take the data feeds from applications and transform them so they are usable on the target device. This has to be done with the right engineering skills to design the right outputs as there is no automatic way of doing. Further, mobile applications will require input data input mechanisms which include not only keyboard but touch, gesture and voice.

3. Contextual and social user experience:

Multiple devices such as GPS, NFC, bar code readers, image recognition, augmented reality, and various types of digital sensors will work together to make computing devices automatically adapt to the environment and streamline things for users. This is known as context-aware computing (CAC). It uses information about an end user or objects environment, activities connections and preferences to improve the quality of interaction with that end user or object. CAC system anticipates the user's needs and proactively serves up the most appropriate and customised content, product

or service. More and more smart phone users will opt in to context service providers that track their activities on various devices and apps.

4. **Internet of Things:** We had the internet of information, audio and video. The next era will be of the Internet of things which will enable a wide range of new applications and services to be connected to each other. In 2008, the number of things connected to the internet exceeded the number of people on earth. By 2020 Internet of things will have 24 billion devices and by 2050 there will be 50 billion. These things are not just smart phones and tablets. They're every thing. This will present its own new challenges. This will result in pervasive computing where cameras, sensors, micro-phones, image recognition – everything – is now part of the environment. Remote sensing of everything from electricity to air conditioning use is now part of the network.

5. App stores and marketplaces:

There will be increasing use of apps for performing various business processes. This will lead to enterprise app stores and the role of IT will change from that of a centralised IT department planning and maintaining IT deployment to a process manager providing governance and brokerage services to users and provider of support for these apps.

6. Next-generation analytics:

Enterprises will focus on harnessing the power of information by using business intelligence and data analytics tools to monitor and improve performance and costs. Data analytics is possible not in high end data center systems but also using mobile devices. In future, IT may be required to focus on

developing analytics that enable and track collaborative decision making. Further, enterprises will use technologies for using big data for decisions, new analytic applications and pattern-based strategies.

7. Big data: Unstructured data is expected to grow by over 80% over the course of the next five years, creating a huge IT challenge. Big data has such a vast size that it exceeds the capacity of traditional data management technologies and requires the use of new or exotic technologies simply to manage the volume alone. Technologies such as in-line de-duplication, automated tiering of data to get the most efficient usage patterns per kilowatt, and flash or solid-state drives for higher-end performance optimisation are expected to increase in importance over the next few years

8. In-memory computing: In-memory applications refer to running existing applications in-memory or refactoring these applications to exploit in-memory approaches. This can result in improved transactional application performance and scalability, lower latency (less than one microsecond) application messaging, dramatically faster batch execution and faster response time in analytical applications. The relevant in-memory platforms include in-memory analytics, event processing platforms, and in-memory application servers.

9. Extreme low-energy servers: This refers to systems which will remove virtualisation and lessen the shared use of systems. These radical new systems being marketed by mostly new entrants to the server business are expected to take the buyer on a trip backward in time.

10. Cloud computing: The cloud wave is expected to change everything. By 2012, it is expected that 20% of businesses will not own IT assets but rent out IT service from the cloud as a service. Several interrelated trends such as: virtualisation, cloud-enabled services, and employees running personal desktops and notebook systems on corporate networks are driving the movement toward decreased IT hardware assets.

IT – Transition from Core Competency to Baseline Competency

The AICPA conducted research to update the CPA Vision Project to position the CPA profession for success through 2025. The findings state: "Technology is no longer a CPA Core Competency (a differentiator) for CPAs. Rather it is a part of our base — it is a tool that we must leverage as part of the way that we work on a day-to-day basis — and no longer something separate that was only the domain of a specialist. Technology competency is now a baseline skill that all CPAs need to have in order to be successful and meet the needs of our clients or coworkers". The report requires all CPAs to look at their practices or enterprises and determine whether as CPAs they have the baseline competence in utilising the technology tools available to them. Further, CPAs are required to go beyond the baseline to figure out how they can leverage technology to deliver "superior services" — a differentiator between a CPA and "just an accountant." This will empower CPAs to move up the Economic Value Chain. Some of technological expectations from CPAs are:

■ CPAs with solid IT skills will be required to design, integrate, and implement advanced software systems, as well as serve as consultants to link hardware/software solutions with sound business plans.

■ CPAs will awaken to the countless

ways that technology is reshaping, refocusing, and redesigning our lifestyles, working methods and techniques, educational experiences, communication skills and applications, and the practices and processes of the finance, economic and business world.

■ CPAs will continue to cultivate a working and strategic knowledge of current and emerging technologies and appropriately utilise technology to efficiently enhance the interface between people, procedures, structures, and systems.

Need for Assurance over IT – Rediscovering our role

Enterprises in India are continuing to invest in IT in a big way to remain globally competitive as shown by the research and there is not much difference between the IT deployments in India when compared with other countries. Hence, the challenges faced by the accounting fraternity such as CPAs are equally applicable to Chartered Accountants based in India. We need to draw our own inference from the research and formulate our plans and strategies for developing IT expertise as required. A key requirement of enterprises in IT deployment is to ensure that business objectives are achieved and not mere implementation of latest technology. A key challenge in implementing IT is: higher the technology, greater is the need for controls. The scope and objective of assurance do not change with technology but the way controls are reviewed is drastically changed. Chartered accountants their in-depth knowledge and core competencies in business process and internal control are uniquely positioned to provide assurance and consulting services in IT area. We need to encash this challenge by updating our competencies and skill-sets to successfully surf the technology wave. Happy Surfing! ■

Direct Tax Code to Come into Force from April 2012: Pranab

The long-awaited Direct Tax Code (DTC) that seeks to simplify tax laws by lowering the tax rates and bringing more people and firms within the tax net is slated to come into force from the next financial year, beginning 1st April, 2012, finance minister Pranab Mukherjee said in New Delhi recently. "The proposed Direct Tax Code brings together the policy initiatives on the direct taxes and is slated to come into force from the next financial year," Mukherjee said. Addressing the 4th International Tax Dialogue Global Conference, Mukherjee said the proposed reforms were targeted at simplification of tax system and its administration, rationalisation of tax rates and broadening of its base. He said taxation reforms were at the heart of India's economic reforms and liberalisation that started in early 1990s. "Tax reforms though gradual have been systemic in scope, particularly when we consider the proposals currently awaiting implementation. The reforms have covered both the direct taxes as well as the indirect taxes," he said. To reform the direct tax system, the government proposes to replace the archaic Income Tax Act, 1961, with a new legislation called Direct Tax Code. In a bid to reform the indirect tax system, the government proposes to introduce Goods and Services Tax (GST) that will bring uniformity in tax structure across the country. Commenting on the current progressive personal income tax system, Mukherjee said it was aimed to reduce inequalities in the society. He said the direct tax revenue has increased ten-fold in the last 14 years. Revenues from direct tax increased from \$8.62 billion in 1996-1997 to \$87 billion in 2010-2011.

(Source: <http://www.hindustantimes.com>)

SEBI Wants Listed Companies to Be Ethical

Rejecting the idea of assuming a CVC-like role of anti-corruption watchdog for the private sector, capital market regulator SEBI has said it wants listed entities to follow a nine-point disclosure norm against non-ethical business practices instead. The Securities and Exchange Board of India (SEBI), which regulates thousands of listed companies as well as hundreds of other market entities like brokers, merchant banks and ratings agencies, has informed its board that it cannot adopt a private sector role similar to that of the Central Vigilance Commission (CVC) for government entities. In a memorandum submitted to its board at its last meeting on 24th November, SEBI said a CVC-like role "is not within the mandate of SEBI under the existing legal framework". At the same board meeting, SEBI approved a new disclosure-based regime for listed companies with respect to non-ethical business practices. As per the decision, companies would need to submit a 'Business Responsibility Report', along with their annual reports, to help assess the fulfillment of their environmental, social and the corporate governance responsibilities. These disclosures, which SEBI has proposed to be based on nine key principles of responsible, transparent and ethical business practices, would initially apply to the top 100 companies. Regarding

the adoption of a CVC-like role in respect of activities of private sector companies, SEBI said its jurisdiction extends to listed companies in the private sector on certain matters delegated under the Companies Act.

(Source: <http://www.financialexpress.com/news>)

Panel on Curbing Black Money Gets Two Month Extension

The government has given a two-month extension to the term of the Central Board of Direct Taxes (CBDT) committee that is examining ways to strengthen laws to curb the generation of black money in the country, its illegal transfer abroad and its recovery. The panel was originally given time till November to submit its recommendation. But, it was yet to finish consultations, as inputs from various quarters had not received as yet, senior CBDT official said. We asked for time till 31st January. (Finance minister) Pranab Mukherjee has approved it, he said. The official said the response from most of the industry chambers and professional bodies were still awaited. In a bid to get recommendations from the income tax department officials with expertise in this area, a nodal officer has been appointed to collate the inputs, he added. The government had constituted this committee in May this year under the CBDT chairman to examine ways to strengthen laws to curb the generation of black money. Apart from the top CBDT officials, including two members of the board, the members of the committee comprise the director of the enforcement directorate, director-general of the directorate of revenue intelligence and director general (currency). The panel is examining the existing legal and administrative framework to deal with the menace of generation of black money through illegal means such as declaring wealth generated illegally as national asset. It is also entrusted with the task of enacting and amending laws to confiscate and recover such assets. Further, the body will provide for exemplary punishment against its perpetrators.

(Source: <http://www.business-standard.com/india/>)

Government Likely to Miss Direct Tax Collections Target

The economic slowdown is likely to take a toll on meeting the Budget estimate target of direct tax collections in the current fiscal. "Not at all. How can I be confident (of meeting the budget estimate) when there is a slowdown? It will be difficult... now advance tax will come, let's see what happens in the next installment," CBDT Chairman M. C. Joshi on the sidelines of an international tax conference in New Delhi recently. The Finance ministry had in October revised the Budget estimate of direct tax collection upwards by ₹53,000 crore to ₹5,85,000 crore. The revision was intended to bridge the shortfall that might occur due to reduction in customs duty on crude oil to offset the price rise. Net direct tax collection rose 8.63% during the first eight months (April to November) of the current fiscal. "Now the growth rate is 8% to 9% as compared to last year. To breach the target you need growth rate of 27% (in direct tax collection). The Income Tax department has been able to achieve only

44% of the Budget estimate till now, a senior official said.
(Source: Press Trust of India)

Black Money: Finance Ministry to Ask Tax Havens for Past Banking Info

Broadening its probe in overseas black money cases, the Finance Ministry has decided to write to tax havens and other countries to obtain past information of banking-related transactions in select cases. Top sources said that the Central Board of Direct Taxes (CBDT) has obtained data of a number of accounts in foreign locations, including tax havens, and it will now write to these countries to share information about past banking transactions under the amended and rectified provisions of the Double Taxation Avoidance Agreement (DTAA). "The CBDT has begun renegotiation with almost 75 countries to broaden the scope of exchange of information under DTAA and the Tax Information Exchange Agreement (TIEA). Banking information on select accounts of the past are now being asked from some of the countries as the I-T department has obtained reports of suspected money stashed by few entities," official sources said. The countries that will be approached include the US, UK, British Virgin Islands among others, they said. India, at present, has completed negotiation with 60 countries/jurisdictions which includes 24 existing DTAAs, 19 new DTAA's and 17 TIEAs while negotiations with 26 countries/jurisdictions are underway.

(Source: <http://www.thehindubusinessline.com/>)

India May Lose Trillion-\$ Market-Capitalisation Tag

The Indian market is on the verge of losing its membership to the elite group of countries with \$1 trillion market capitalisation thanks to the unrelenting weakness of the rupee and the slide on the bourses. With BSE's market-cap currently at \$1.03 trillion, or ₹54 lakh crore in Indian currency, India could soon exit the group of 12 countries that boast of 13-figure market value in dollar terms. This could happen if the rupee again slides past the 54 to a dollar mark, the stock market slides further, or with a combination of the two. On 28th May, 2007, when the rupee was showing unusual strength against the dollar and hovered around the 40-mark, India had first entered the \$1-trillion m-cap league. As the rupee hit a new nine year high against the dollar that day, at 40.50, and a strong rally took BSE's market cap to over the ₹40.50 lakh crore, India had entered the group of countries with trillion-dollar market value. It has since been a member of the select group. So far in 2011, the benchmark sensex has lost a little over 24% while the rupee has lost 18%. The combined effect of market slide and rupee's depreciation has been a 36.8% dip in India's market cap. Of this, India's market cap has dipped 11.2% in the last one month alone. This has also made India the worst performing market in the trillion dollar club of nations, Bloomberg data showed. The closest is France which has lost 23.6% to \$1.34 trillion while Germany has lost 20% to \$1.2 trillion to become the third worst performing in this group of 12.

(Source: <http://www.economictimes.com/>)

FICCI for Widening Direct Tax Net

In the backdrop of a falling rupee and overall downward industry sentiment, Federation of Indian Chambers of Commerce and Industry (FICCI) pushed for initiation of new reforms to widen the direct tax net and a one-time amnesty scheme for Indians to bring back overseas money, among others. "These proposals would help the government in improving tax collections and bridging the fiscal deficit. We have received a positive response from the Finance Ministry and are hopeful that at least some of our suggestions will be incorporated into the Union Budget 2012-2013, said FICCI president. He said that to promote investments, the instrument of direct taxes should be used effectively. The tax administration should be made assessee - friendly to improve compliance, and the investment allowance restored to enthuse entrepreneurs and motivate them to undertake productive investments that otherwise may not materialise.

(Source: <http://beta.profit.ndtv.com/news>)

Advance Tax Collection Flat in Q3; Target Looks Distant

Advance taxes for the third quarter from corporates headquartered in Mumbai rose by a mere 10%, rendering the targeted tax collection set by the government for 31st March, 2012, a difficult target to achieve. The advance tax collection for September to December period from 100 leading tax-paying companies contributes to about 75% of the total corporate tax collection in Mumbai, and about 35% of the all-India corporate tax collection. Experts believe that to be in tune with the projected direct tax collection of ₹5.85 lakh crore, the collection should have been at least 32% higher than the last fiscal, but is up only 10%.

(Source: <http://timesofindia.indiatimes.com/>)

No freezing of Customs Duty at Current Level, Says Sharma

India has ruled out any freezing of Custom duties at current level. It has also deflated the pressure for any dilution of the flexibilities available under the World Trade Organisation (WTO) regime for imposing export restrictions and taxes in case of the agricultural produces. Addressing a group of 20 countries ahead of the 8th Ministerial Conference of the WTO in Geneva, Commerce and Industry Minister Mr. Anand Sharma, said, Tariff standstill (freezing of the custom duties at the current levels) will amount to the developing countries ceding their policy space and being denied any recognition for their autonomous liberalisation. Besides unhinging the negotiated formula on tariff reductions, it would force the developing countries to take on commitments going much beyond what was envisaged for at the end of the Doha Round, he added. Mr. Sharma desired that WTO, while taking up all manner of the new challenges, does not forget the traditional challenge of development.

(Source: <http://www.indianexpress.com/>)

IFAC Issues Proposed International Guidance to Help Accountants Improve Internal Control

The Professional Accountants in Business (PAIB) Committee of the International Federation of Accountants (IFAC) has issued proposed International Good Practice Guidance, *Evaluating and Improving Internal Control in Organisations* for public comment. The aim of this guidance is to establish a benchmark for good practice in maintaining effective internal control in response to risk, and help professional accountants in business and their organisations create a cycle of continuous improvement for their internal control systems. With this proposed publication, the PAIB Committee aims to provide principles-based guidance that focuses on the role of professional accountants in business and how they can support their organisations in evaluating and improving internal control as an integrated part of the organisation's governance, risk management, and internal control systems. This proposed guidance can be implemented regardless of the existing internal control frameworks or standards used, as it deals with those internal control issues that are often unsuccessful because of poor implementation and design. Professional accountants, their organisations, and other interested parties are encouraged to respond to the proposed guidance to help improve its applicability to professional accountants in organisations of all sizes. The PAIB Committee invites all stakeholders to comment by 29th February, 2012. To access the exposure draft and submit a comment, visit www.ifac.org/paib.

(Source: <http://www.ifac.org/>)

Third SMP Quick Poll of IFAC Reveals Increasing Optimism Among Small Practices

The third SMP Quick Poll conducted by IFAC elicited 798 responses from practitioners who operate in small to mid-sized practices (SMPs) from all regions of the world over a month-long period (8th August, 2011 to 9th September, 2011). Results showed an increase in optimism among SMPs since the last poll was conducted; nearly 40% of practitioners expect business to be better this year than it was last year, compared to just 23% in April. The poll also showed that burden of regulation continues to be the largest challenge faced by practitioners' small- and medium-sized entity (SME) clients. Similarly, when asked about the most important issue facing their practices right now, the largest group of respondents once again indicated keeping up with regulations and standards (35%), followed by attracting and retaining clients (26%). The third edition of the poll included questions on the trend toward SMPs providing business advisory services. Results showed that even though more SMPs are now offering business advisory services, traditional accountancy-based services continue to generate the largest portion of SMPs' fee revenue. The IFAC SMP Quick Poll aims to take a snapshot of the key issues confronted by SMPs and

their SME clients.

(Source: www.ifac.org/SMP)

IFAC Proposes Revised Statements of Membership Obligations

The Board of the International Federation of Accountants recently approved proposed revisions to the Statements of Membership Obligations (SMOs) to be released for public comment. The SMOs form the basis of the IFAC Member Body Compliance Program. They serve as a framework for credible and high-quality professional accountancy organisations focused on serving the public interest by adopting, or otherwise incorporating, and supporting implementation of international standards and maintaining adequate enforcement mechanisms to ensure the professional behavior of their individual members. The SMOs are issued under the IFAC Board's authority, and the Compliance Advisory Panel (CAP), together with IFAC Compliance staff, is responsible for reviewing their continuing relevance and sufficiency. Since the SMOs were established seven years ago, the regulatory and standard-setting environments in which IFAC members and associates operate have further evolved. As a result, revisiting the SMOs was necessary to reflect those developments and their impact on the global profession. The SMOs have been redrafted to clarify what is expected of IFAC members when they have varying degrees of responsibility for an SMO area. Also the SMOs have been brought in line with IFAC's current strategic focus on adoption and implementation of international standards. In the revision project, years of experience with the Compliance Program became the guidance. It was looked at how the SMOs have been interpreted and how the compliance assessment is performed by IFAC staff. As a result, the proposed revised SMOs are easier to understand and apply. The SMOs and the Compliance Program are designed to assist IFAC in its mission of strengthening the global accountancy profession. The revised SMOs better articulate the obligations of IFAC membership, and the Compliance Program encourages IFAC members and associates in their ongoing efforts to achieve a higher quality of service.

(Source: www.ifac.org/)

SME Implementation Group Publishes Two Final Q&As

IFRS Foundation and IASB's SME Implementation Group (SMEIG) recently published two question and answer documents (Q&As) on the IFRS for SMEs: *Q&A 2011/02 Entities that typically have public accountability* and *Q&A 2011/03 Interpretation of 'traded in a public market' in applying the IFRS for SMEs*. These two Q&As contain guidance to help entities assess whether they have public accountability and, therefore, whether they meet the scope requirements in Section 1 of the IFRS for SMEs. The final Q&As reflect the input that the SMEIG received

on the publication of three draft Q&As in April 2011 on these topics. Q&As published by the SME Implementation Group are non-mandatory guidance that will help those who use the IFRS for SMEs to think about specific accounting questions. They are not intended to modify in any way the application of full IFRSs. When the IASB issued the IFRS for SMEs in 2009, it made a commitment to undertake a post-implementation review of the standard. It expects to initiate the comprehensive review in 2012. The review is expected to include a request for public comments on amendments that should be considered for the IFRS for SMEs. As part of the review, the IASB will also consider incorporating Q&As into the revised IFRS for SMEs. For that reason, the SMEIG does not expect that it will issue many, if any, additional draft Q&As before the start of the comprehensive review. Following the review, the IASB plans to consider amendments to the IFRS for SMEs approximately once every three years.

(Source: <http://www.ifrs.org>)

■ PCAOB Warns of Audit Concerns in Volatile Economy

The Public Company Accounting Oversight Board has published a staff alert cautioning auditors to beware of the risks of material misstatements in the financial statements they audit in current volatile economic environment. Staff Audit Practice Alert No. 9: Assessing and Responding to Risk in the Current Economic Environment, updates an earlier alert that was issued in December 2008, at the height of the financial crisis. The new alert notes the risks of sovereign debt default or currency volatility, and they could add a higher level of complexity in determining the ultimate collectability of sales or the appropriateness of other significant assumptions used in certain fair value determinations or estimates, including the fair value of certain financial instruments. Many of the matters discussed in the earlier Practice Alert No. 3, Audit Considerations in the Current Economic Environment — including fair value measurements, accounting estimates, going concern, and financial statement disclosures — continue to be critical in audits of 2011 financial statements, the PCAOB noted. Certain PCAOB standards referenced in that alert regarding the assessment of, and response to, risk, however, were superseded in 2010 with the board's adoption of eight new risk assessment standards in Auditing Standard Nos. 8-15. This practice alert discusses issues posed by the current economic situation and highlights certain requirements in the new risk assessment standards. The alert contains four sections: 1) considering the impact of economic conditions on the audit; 2) auditing fair value measurements and estimates; 3) the auditor's consideration of a company's ability to continue as a going concern; and, 4) auditing financial statement disclosures.

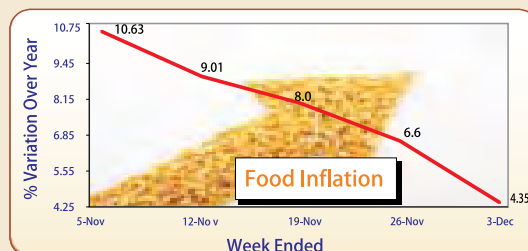
(Source: <http://www.accountingtoday.com/>)

■ Europe Proposes Splitting Audit Firms

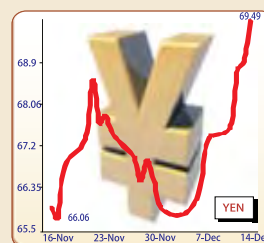
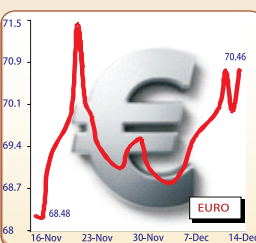
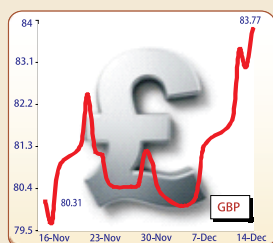
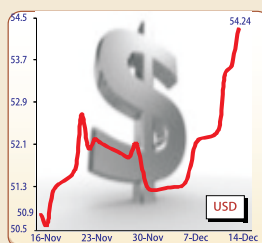
The European Commission has proposed a draft law that could split up the largest auditing firms and force them to use a separate entity and name for their advisory and non-audit practices. The draft law was introduced in the European Union's Brussels headquarters by Internal Markets and Services Commissioner. The proposals adopted by the European Commission aim to clarify the role of auditors in response to problems found during the financial crisis and during inspections of auditing firms by national regulators. The proposals would introduce more stringent rules for the audit sector to strengthen the independence of auditors and introduce greater diversity into the highly concentrated audit market, which is dominated by the Big Four. There is need to restore confidence in the financial statements of companies. Auditing firms would be prohibited from providing non-audit services to their audit clients under the European proposals. In addition, large auditing firms would be obliged to separate audit activities from non-audit activities in order to avoid all risks of conflict of interest. The European Commission is also proposing to create a single market for statutory audit services by allowing auditors to exercise their profession freely across Europe, once they are licensed in one member state. All the measures are supposed to enhance the quality of statutory audits in the EU and restore confidence in audited financial statements, particularly those of banks, insurers and large publicly listed companies. The key measures include mandatory rotation of audit firms. Under the proposals, public companies would be required to rotate their auditing firms after a maximum engagement period of six years, with some exceptions. A cooling-off period of four years would be required before the audit firm could be engaged again by the same client. The period before which rotation is obligatory would be extended to nine years if joint audits were performed, specifically if the entity being audited appointed more than one audit firm to carry out its audit, thus potentially improving the quality of the audit performed. Joint audits would not be made obligatory but would be encouraged. Under the proposals, public-interest entities would be obliged to have an open and transparent tender procedure when selecting a new auditor. The audit committee of the audited entity would need to be closely involved in the selection procedure. In addition, given the global context of the audit profession, the European Commission has proposed that the coordination of auditor supervision activities be placed within the framework of the European Markets and Securities Authority. The commission has proposed the creation of a single market for statutory audits by introducing a "European passport" for the audit profession. To this end, the commission proposals would allow audit firms to provide services across the EU and to require all statutory auditors and audit firms to comply with international auditing standards when carrying out statutory audits.

(Source: <http://www.accountingtoday.com/>)

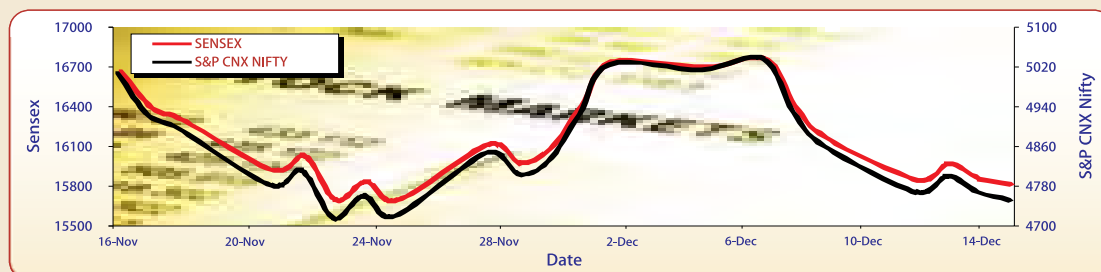
Economic Indicators



Indian Rupee vs. Major Foreign Currencies (November 16, 2011 to December 16, 2011)



Stock Markets



Selected Indicators

(per cent per annum)

Item	2010	2011					
	Dec.3	Oct.28	Nov.4	Nov.11	Nov.18	Nov.25	Dec. 2
Cash Reserve Ratio ⁽¹⁾	6.00	6.00	6.00	6.00	6.00	6.00	6.00
Bank Rate	6.00	6.00	6.00	6.00	6.00	6.00	6.00
Base Rate ⁽²⁾	7.60/8.50	10.00/10.75	10.00/10.75	10.00/10.75	10.00/10.75	10.00/10.75	10.00/10.75
Deposit Rate ⁽³⁾	7.00/8.00	8.50/9.25	8.50/9.25	8.50/9.25	8.50/9.25	8.50/9.25	8.50/9.25
Call Money Rate (Weighted Average) ⁽⁴⁾	6.45	8.40	8.47	8.60	8.57	8.67	8.54

Notes: (1) Cash Reserve Ratio relates to Scheduled Commercial Banks (excluding Regional Rural Banks).

(2) Base Rate relates to five major banks since 1st July, 2010. Earlier figures relate to Benchmark Prime Lending Rate (BPLR).

(3) Deposit Rate relates to major banks for term deposits of more than one year maturity.

(4) Data cover 90-95 per cent of total transactions reported by participants. Call Money Rate (Weighted Average) is volume-weighted average of daily call money rate for the week (Saturday to Friday).

Readers are Invited to contribute write-ups or any relevant and interesting piece of information for this feature at ebboard@icai.org.

ACCOUNTANT'S BROWSER

'PROFESSIONAL NEWS & VIEWS PUBLISHED ELSEWHERE'

Index of some useful articles taken from periodicals received during November– December 2011 for the reference of faculty/students and members of the Institute.

1. ACCOUNTING

Accounting Adjustments & the Valuation of Financial Statement Note Information in 10-K Filings by Gus De Franco etc. *The Accounting Review*, Vol. 86/5, 2011, pp. 1577-1604.

Accounting Choice & the Fair Value Option by Katherine Guthrie etc. *Accounting Horizons*, Vol. 25/3, 2011, pp.487-510.

Act Public before Going Public: How to Manage Tax Accounting When Preparing for an IPO by Douglas M. Sayuk etc. *Journal of Accountancy*, Oct. 2011, pp. 38-47.

Fair Value Measurement: Part 2 by Stephen Spector. *CGA Magazine*, Nov.-Dec. 2011, pp.44-45.

Forensic Accounting: A Useful Tool to Combat Fraud & Its Consequences - A Study of Its Development by Parimal Ray. *The Management Accountant*, Nov. 2011, pp.1038-1040.

Government Accounting & Financial Reporting by V. Gopalan. *The Management Accountant*, Oct. 2011, pp.890-891.

How Standardized is Accounting? by Paul E. Madsen. *The Accounting Review*, Vol.86/5, 2011, pp. 1679-1708.

Importance of Forensic Accounting & Prevention of Fraud by Ranjit Singh. *The Malaysian Accountant*, Sep.-Oct, 2011, pp.3-5.

Integrated Reporting by Ng Kean Kok & Tuam Kwok Choon. *The Malaysian Accountant*, Sep.-Oct, 2011, pp. 6-10.

Selling Goodwill by Mark Wardell. *CGA magazine*, Nov.-Dec. 2011, pp.12-13.

2. AUDITING

Academic Audit – A Tool of Academic Excellence by L.N. Koli. *The Management Accountant*, Oct. 2011, pp.923-925.

Auditing Derivatives: Things of What Can Go Wrong - Model Validation by Jasvin Josen. *The Malaysian Accountant*, July – Aug., 2011, pp.3-4.

CFO/CEO – Board Social Ties, Sarbanes-Oxley & Earnings Management by Gopal V. Krishnan etc. *Accounting Horizons*, vol.25/3, 2011, pp.537-557.

Fraud: The 411 on the 420s by David Malamed. *CA Magazine*, Dec. 2011, pp. 39-41.

Implementation Aspects of Compliance Report & the Cost Audit Report 2011 by V.R. Kedia & Dipti Kejriwal. *The Management Accountant*, Nov. 2011, pp.1026-1034.

The Importance of Audit Profession Development in Emerging Market Countries by Paul N. Michas. *The Accounting Review*, Vol.86/5, 2011, pp.1731-1764.

Social Audit in MGNREGP: A Strategy for Controlling Corruption in Andhra Pradesh by C. Venkataiah & A.V.R.N. Reddy. *The Indian Journal of Public Administration*, July-Sep. 2011, pp.641-652.

Voluntary Audits versus Mandatory Audits by Clive S. Lennox & Jeffrey a. Pittman. *The Accounting Review*, Vol. 86/5, 2011, pp. 1655-1678.

Was the Sarbanes-Oxley Act Good News for Corporate Bondholders? by Mark L. Defond etc. *Accounting Horizons*, Vol.25/3, 2011, pp. 465-485.

3. ECONOMICS

Changes in FDI policy – An Analysis by S.K. Noorul Hassan. *Chartered Secretary*, Nov. 2011, pp.1561-1563.

Controlling Corruption in India: Various Approaches & Their Efficacy by J.S. Verma. *The Indian Journal of Public Administration*, July-Sep. 2011, pp.393-400.

Controlling Corruption in India: Various Approaches & Their Efficacy by V.P. Kapur. *The Indian Journal of Public Administration*, July-Sep. 2011, pp.544-53.

Controlling Electoral Corruption in India by S.Y. Quraishi. *The Indian Journal of Public Administration*, July-Sep. 2011, pp.422-428.

Corporate (FIP) Financial Inclusion Plan in India – An Inclusive Growth Approach – An Empirical Study by Madan Mohan Jana. *The Management Accountant*, Oct. 2011, pp. 892-898.

Corrupt Practice Among Public Servants – Some Observations by P.C. Hota. *The Indian Journal of Public Administration*, July-Sep. 2011, pp.520-525.

Corruption: Laws, Institutions & Values by Arun Maira. *The Indian Journal of Public Administration*, July-Sep. 2011, pp. 458-63.

Exchange Rate Regime & Monetary Independence – The Indian Experience by Suvojit Lahiri Chakravarty. *Decision*, August 2011, pp. 34-49.

Financial Inclusion: A Road India Needs to Travel by K.C. Chakrabarty. *RBI Bulletin*, Nov. 2011, pp.1851-1856.

Market Concentration in Indian Manufacturing Sector: Measurement Issues by Pulak Mishra etc. *Eco. & Pol. Weekly*, Dec. 3, 2011, pp.76-80.

Most Favoured Nation: New Trade Opportunities for India & Pakistan by Nisha Taneja & Pallavi Kalita. *Eco. & Pol. Weekly*, Dec. 3, 2011, pp.14-17.

The Potential for Inflating Earnings through the Expected Rate of Return on Defined Benefit Pension Plan Assets by Brian Adams etc. *Accounting Horizons*, Vol.25/3, 2011, pp. 443-464.

Why Worry About Inequality in The Booming Indian Economy? by Thomas E. Weisskopf. *Eco. & Pol. Weekly*, Nov. 19, 2011, pp. 41-51.

4. EDUCATION

Blending of Internal Quality Assurance with External Quality Assurance for Quality Enhancement by Ganesh A. Hegde. *University News*, Oct. 31- Nov.06, 2011, pp.1-6.

Bridging Digital Divide in Higher Education through ICT by Indrajeet Dutta & Dhanajay Joshi. *University News*, Nov.07-13, 2011, pp.14-25.

New Initiatives of INFLIBNET for Higher Education Community by Jagdish Arora & P. Prakash. *University News*, Nov.07-13, 2011, pp.1-7.

Popular Open Source Software for Digital Libraries by Arundhati Kaushik etc. *University News*, Oct. 31-Nov.06, 2011, pp.12-17.

Research in Teacher Education Comparison between British rule & Free India by R.P. Singh. *University News*, Nov.28 – Dec. 04, 2011, pp.1-13.

Role of ICTs in Knowledge Management by Suresh Garg. *University News*, Nov.21-27, 2011, pp.1-6.

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Commodity Derivatives in India Challenging Tasks Ahead by Swati & M.B. Shukla. *Chartered Secretary*, Nov. 2011, pp.1581-88.

Five Steps to Successful Mergers & Acquisitions by KSB Nayar. *Chartered Secretary*, Oct. 2011, pp.1367-68.

How to Minimize the Risk of Acquisitions by Peter Howson. *Chartered Secretary*, Oct. 2011, pp. 1365-66.

Rising Trend of Cross-Border Mergers & Acquisitions in Global Corporate Restructuring by Bhagwan Jagwani. *Chartered Secretary*, Oct. 2011,

pp.1373-76.

Bancassurance: A Growing Model by Kiran Mukadam. *Chartered Secretary*, Dec. 2011, pp. 1727-1729.

Service Sector in India & Role of Foreign Direct Investment by Anirban Ghosh. *The Management Accountant*, Nov. 2011, pp. 984-987.

6. MANAGEMENT

Behavioural Finance – An Introduction by A. S. Manjulakshmi. *The Management Accountant*, Oct. 2011, pp. 862-868.

The Determinants & Performance Effects of Managers' Performance Evaluation Biases by Jasmijn C. Bol. *The Accounting Review*, Vol. 86/5, 2011, pp.1549-1575.

ERP Implementation Case Study: Role Played By Stakeholders by Smita P. Kachole. *The Management Accountant*, Oct. 2011, pp.912-915.

The Four Steps to Corporate Sustainability by Om Prakash Dani & M.S. Srinivasan. *Chartered Secretary*, Sep. 2011, pp.1197-1201.

The Great Repeatable Business Model by Chris Zook & James Allen. *Harvard Business Review*, Nov. 2011, pp. 107-114.

How to Build Your Business Advisory Practice by IFAC. *The Malaysian Accountant*, July-Aug. 2011, pp. 5-7.

How to make Your Small Practice a Big Success by Giancarlo Attolini & Paul Thompson. *The Malaysian Accountant*, Sep.-Oct. 2011, pp.13-14.

The Management Challenges of the 21st Century: An Evolutionary Perspective by Om Prakash Dani & M.S. Srinivasan. *The Management Accountant*, Nov. 2011, pp. 1053-54.

The Relationship between Corporate Governance, Global Governance & Sustainable Profits: Lessons Learned from BP by Nick Lin-Hi & Lgor Blumberg. *Corporate Governance*, Vol. 11/5, 2011, pp. 571-586.

Resources Lifeline, Challenging future by Gavan Ord. *CPA Australia*, Nov. 2011, pp.34-38.

The Role of Board & CEO in Managing Societal & Political Intangibles by Stefan Schepers. *Corporate Governance*, Vol. 11/5, 2011, pp.551-559.

Strategic Wage Planning – A Life Cycle Approach by Girish Jakhotiya. *The Management Accountant*, Oct. 2011, pp.906-910.

Understanding Behavioural Finance by Swapn Kumar Roy. *The Management Accountant*, Oct. 2011, pp. 858-859.

Full texts of the above articles are available with the Central Council Library, ICAI, which can be consulted on all working days. For further inquiries, please contact on 011-23370154 or by e-mail at library@icai.org



Contribution to the Question Bank of CPT

The Common Proficiency Test (CPT) is an entry level test meant for 10+2 students to the Chartered Accountancy Profession having multiple choice objective questions. The level of knowledge expected is basic knowledge with the objective to develop conceptual understanding of the subject concerned.

With a view to augment the Question Bank in the Subjects of Accounting/Mercantile Laws/General Economics/Quantitative Aptitude of Common Proficiency Test, it has been decided to invite questions from Chartered Accountants/Subject experts working in various Colleges/Universities/Public/Students pursuing Chartered Accountancy Course etc.

The contributor can contribute as many questions as he/she can, but in a lot of minimum of 20 questions in the subjects of Accounting/Mercantile Laws/General Economics/Quantitative Aptitude in the following manner:-

- The questions should be of objective with four probable answers for each question. The correct answer for each question is also required to be given.
- Fill in the blanks having four alternative answers.
- Small paragraph containing two to three lines followed by a question having four alternative answers.
- Numerical having four alternative answers (in Fundamentals of Accounting, Mathematics and Statistics).
- Simply worded Case studies involving multiple concepts be also prepared. The case study could be something like a practical situation described in 3 to 4 lines in simple language with application of single/multiple concepts and requiring students to choose one answer from amongst four answers whereby the analytical/logical ability and intelligence of the students is tested.

Since the CPT is an entry level Test meant for 10+2 students, the level of knowledge expected is basic knowledge and the questions should be aimed at testing the conceptual understanding and fundamentals of the subject than merely testing the memory of candidates. The difficulty level of the questions should be of 10+2 level and capable of being answered/solved in less than one minute.

While framing the questions, the questions be

framed in such a manner that each one of the four answers given for a particular question, per se, appear to be the right answer thereby requiring the candidate to use his analytical ability to find the correct answer.

- The language of the questions to be sent should be English only and is clear, correct, unambiguous and free from any doubt. The language conveys the same meaning as was intended by you.
- The copyrights of the questions so submitted shall vest with the Council of the Institute. The contributor of the questions shall ensure that the questions so submitted to the Institute are not parted with by him/her to any other Body/Person and shall be meant only for the exclusive use by the Council of the Institute.
- **It may please be noted that the questions framed by you should be original and not already published in some books or journals or study material of the Institute or reference/text books available in the market or also from question papers of any other examinations or material distributed by any coaching institution. The requirement is the questions that are original and framed with the meticulous care and genuinely.**
- For each question framed and forwarded and accepted by the Council of the Institute for augmentation of the Question Bank of CPT, ₹250/- per question selected/accepted will be paid as honorarium. In addition to honorarium payable towards questions selected, ₹100/- (fixed) will be paid for other services also. The questions may be sent in a sealed envelope superscribed "Question Bank – CPT" to Shri G. Somasekhar, Additional Secretary (Exams), The Institute of Chartered Accountants of India, Indraprastha Marg, New Delhi – 110002 by name or by e-mail to exam.development@icai.in. While sending the questions by post/mail, please mention your name and complete postal address alongwith contact details including mobile number. All correspondence on the subject should be treated as secret.

Interested persons may kindly contribute to the Question Bank of CPT.

(G. Somasekhar)
Additional Secretary(Exams)





Invitation for Contribution of Questions for ISA-AT Question Bank

The Information Systems Audit Assessment Test (ISA-AT) is an objective type test having multiple choices and contains 200 questions carrying 200 marks. The time allowed for answering 200 questions is four hours. The aforesaid Test is meant for the members of the Institute to enable them to develop understanding in the field of Information Systems Audit.

With a view to develop the Question Bank for the various Modules spread over the Syllabus of the ISA-AT, it has been decided to invite questions from Chartered Accountants/experts working in various organisations/institutions. The titles of these Modules prescribed in the Syllabus are given hereunder:

Module No.	Module Title
1.	Information Technology Infrastructure & Communication/Networking Technology
2.	Protecting Information Assets
3.	Systems Development. Life Cycle & Application Details
4.	Business Continuity Planning
5.	Information Systems Organisation & Management
6.	Information Systems Control & Audit Process

The contributor can contribute as many questions as he/she can, but in a lot of minimum of 50 questions on the aforesaid modules in the following manner:-

Name of the module:

Q.No.	Question and answer options	Answer (For example)
01	Question description..... A) Option A B) Option B C) Option C D) Option D	C
02		
.....		
50		

While framing the questions, the contributors have

to prepare the questions for individual modules in separate files/documents. The questions should cover all the sub chapters or aspects of the syllabus and be free from any ambiguity, doubt etc. The question should convey the same meaning which you intend to convey. It is also essential that proper care is taken in framing the questions and options (answers) provided below the questions. The solution (correct answer) to each option (answer) given as per the above format.

The copyrights of the questions as well as answers so submitted shall vest with the Council of the Institute. The contributor of the questions shall ensure that the questions so submitted to the Institute are not parted with by him/her to any other Body/Person and shall be meant only for the exclusive use by the Council of the Institute.

It may please be noted that the questions framed by you should be original and not already published in some books or journals or study material of the Institute or reference/text books available in the market or also from question papers of any other examinations or material distributed by any coaching institution. The requirement is the questions that are original and framed with the meticulous care and genuinely.

For each question framed and forwarded and accepted by the Council of the Institute for developing a Question Bank of ISA-AT, ₹500/- per question selected/accepted will be paid as honorarium. In addition to honorarium payable towards questions selected, ₹100/- (fixed) will be paid for other services also. The questions may be sent in a sealed envelope superscribed "Question Bank – ISA-AT" to Shri G. Somasekhar, Additional Secretary (Exams), The Institute of Chartered Accountants of India, "ICAI Bhawan", Indraprastha Marg, New Delhi – 110002 by name or by e-mail to exam.development@icai.in. While sending the questions by post/mail, please mention your name and complete postal address alongwith contact details including mobile number. All correspondence on the subject should be treated as secret.

Interested persons may kindly contribute to the Question Bank of ISA-AT.

(G. Somasekhar)
Additional Secretary (Exams.)





Invitation for Empanelment of Resource Persons for Investor Awareness Programmes

The Committee on Financial Markets and Investor's Protection (CFM&IP) is one of the Non-Standing Committees of the Institute. The functions of the Committee include spreading awareness among the investor about their rights and responsibilities besides preparing suggestions on various Regulations/Circulars relating to Financial Markets for submission to the Government/Regulators.

We are pleased and proud to state that the Institute of Chartered Accountants of India has been designated as the nodal authority by the Ministry of Corporate Affairs, Government of India to organise 4000 Investor Awareness Programmes across India through the Institute's vast network of Regional Councils and Branches during the year 2011-2012.

The Committee invites proposals from Chartered Accountants, Bankers, Capital Market experts, MBAs, professors and teachers having a flair of capital market and public speaking skills for acting as Resource Persons for conducting the aforesaid programmes. **The resource persons have to plan and organise**

such programmes of two hours duration in small towns (other than district headquarters) at their own initiative. Arranging venue, assembling at least 50 participants per programme and disseminating financial literacy will be their key responsibilities. For this, MCA will pay a lump sum amount of ₹5,000/- per programme inclusive of TA/DA and honorarium of the Resource Person.

Interested persons are requested to send their detailed profile along with name of the towns where they can conduct programmes to the following address:

The Chairman,
Committee on Financial Markets and Investors' Protection
The Institute of Chartered Accountants of India,
A-29, Sector 62,
Noida 201309
Ph: 09350799912, 0120-3045905/945
E-Mail: cfmip_rp@icai.org



Empanelment of Chartered Accountant Firms for the year 2012-2013

Applications are invited *online* from the firms of Chartered Accountants who intend to be empanelled with this office for appointment as auditors of Government Companies/Corporations the year 2012-2013. The format of application will be available on our website: www.cag.gov.in from 1st January to 15th February 2012. Chartered Accountant firms can apply/update the data showing the status of their firm as on 1st January 2012 and generate online acknowledgement letter for the year. They are also required to submit related documents (to be notified in this office website) to this office before 28th February 2012. Only the Chartered Accountant firms who have generated online acknowledgement letter for the year

2012-2013 and submitted the documents before the due dates will be considered for empanelment.

Any changes in the constitution of the firm occurring after the cut-off date of 1st January 2012 should continue to be updated in the website which will be available throughout the year. However, the changes in the firm occurring after 1st January 2012 till the time of preparing the panel that will lead to a reduction in the rank of the applicant firm shall only be taken into account for ranking the CA firms.

Sd/-
Director General (Commercial)



New Publication Study Report on Accounting on Food, Fertilisers & Oil Subsidy

The Committee on Public Finance & Government Accounting of ICAI has prepared a "**Study Report on Accounting on Food, Fertilisers & Oil Subsidy**". The Study Report deals with current methodology, drawbacks and deficiencies in the current system for accounting of subsidies



and recommendations for the improvement in the current practices and covers all the aspects from the perspective of the companies in accounting the subsidies provided in the sector of food, fertiliser & oil industry.

This is a non-priced publication of the Institute. In case the members would like to have a copy of the Study Report, they can write to the CPF&GA Secretariat at cpf_ga@icai.org. The Study Report is also freely downloadable from the URL:

http://220.227.161.86/25177publication_cpfga.rar



Committee on Public Finance and Government Accounting Invitation to Contribute Articles for E-Newsletter

The Committee on Public Finance & Government Accounting of The Institute of Chartered Accountants of India is regularly coming up with its E-Newsletter -'Prudence' featuring various articles on economic issues and measures on bi-monthly basis. The October-November 2011 issue of the E-Newsletter is available at the URL http://www.icai.org/new_post.html?post_id=3825&c_id=241.

The Committee invites experts, researchers and writers to contribute articles in different areas of Public Finance and Government Accounting preferably on *Public Debt, Public Expenditure, Fiscal Policy, Monetary Policy, Accounting Reforms, Accrual Accounting, Accounting for Intangible Assets and Restructuring of Chart of Accounts in Accrual System in Public Sector* for publication in the December-January 2012 issue of its E-newsletter. If the article is published, a token honorarium of ₹3000/- per article shall be paid. Discretion of the Committee regarding publication / non-publication of the article shall be final and abiding therewith under copyright of the Committee. Material of this E-Newsletter may not be reproduced, whether in part or in whole, without the consent of Editorial Board of Committee. Authors may only submit original

work that has not been appeared elsewhere in any publication. A formal signed undertaking in the form of a letter stating that "the article is original and does not infringe any copyright and has not been published elsewhere or has not been sent for publication" should be sent along with the article.

The articles (up to 1500 words) may be sent to us latest by 10th January 2012 in the form of soft copy through mail/CD or in printed format through post giving details of the subject matter.

Those desirous may please contact at the following address:

The Secretary
Committee on Public Finance and Government Accounting
The Institute of Chartered Accountants of India
'ICAI Bhawan', A-29, Sector-62,
Noida- 201 309
Phone: 0120-3045950(O)
Email: cpf_ga@icai.org



The Institute of Chartered Accountants of India & University of Madras Joint Education Programme



Today, in the face of globalization, the explosion of knowledge and the concomitant emergence of a knowledge-intensive economy, professional education deserve a serious re-thinking. Clearly, the globalised world also implies an enhancement in education and that should be made available through new and suitable processes of synthesis and transmission. For furtherance of Commerce and Management Education and to provide an opportunity for those who have registered for the Chartered Accountancy course to acquire Under Graduate Degree/Post Graduate Degree, both the Institute of Chartered Accountants of India (ICAI) and the University of Madras (UNOM) have entered into Memorandum of Understanding.

The Memorandum of Understanding (MoU) aims at providing an opportunity to the Members/Students of ICAI to enhance their knowledge and skills by offering Graduation and Post-graduation Courses in Commerce and Management. Recognising the subjects studied

at the entry stage (CPT), Intermediate stage (PCE/ IPCE) and Final stage of Chartered Accountancy Course, the University of Madras is launching special professional integrated courses in Bachelor of Commerce(B.Com)/ Masters in Commerce(M.Com)/ Bachelor in Business Administration(BBA)/ Masters in Business Administration (MBA) for students/members. Under a distance education system, the CA students/ members can acquire these degrees, which will bring excellent value addition to their profile, enabling them to contribute to varied areas and carve a niche for themselves. For details of the Courses offered under ICAI-UNOM Joint Education Programme please visit the link <http://220.227.161.86/25220icaimoumadras.pdf> or www.ideunom.ac.in

Director of Studies





Ref: Adv-02/Nov-2011/Parivartan

The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

ICAI Bhawan, P.B. No. 7100, IndraprasthaMarg, New Delhi – 110 002 Tel: (011) 3989 3989

ICAI requires technically par excellent professionally successful, academically brilliant, and administratively capable human resources at various levels for being part of the **Business Transformation project (Project Parivartan)**, **IT Training (ITT)** centres set up across India and **eXtensible Business Reporting language (XBRL)** for research & training.

The general details of the roles are as follow, but not limited to:

- Exceptionally self-motivated and directed
- Ability to set and manage priorities judiciously
- Excellent written and oral communication skills
- Excellent interpersonal skills
- Keen attention to detail
- Superior analytical, evaluative, and problem-solving abilities

1. Essential requirements for Project Parivartan are as under:

a) For Infrastructure Management (Server/ Networking/ Data centre)

- Hands on Networking and Server Management and
- Hands on Data Centre Management
- Networking and Information security knowledge

b) For Application Development

- Knowledge of SDLC/ Business Analysts
- Exposure to Microsoft technologies such as; Sharepoint, Microsoft Dynamics Axapta, DotNet

2. Essential requirements for ITT centres set up across country are as under:

- Administrative experience of 2-5 years of managing IT centre of a reputed institution
- Knowledge of basic troubleshooting skills – MS Windows/ Hardware/ Networking
- Knowledge of MIS reporting

3. Essential requirements for XBRL are as under:

- Finance background with functional experience in XBRL/ XBRL Taxonomy/ Development of Taxonomy/ XBRL filing

Domain	Designation	Relevant Experience	Qualification
1. Project parivartan	Assistant Director*	7+ years	Technical background with B.Tech /B.E / M.Sc. in Computer Science
	Executive Officer*	3-5 years	Technical background with B.Tech /B.E / M.Sc. in Computer Science
2. ITT Centres across India	Executive Officer	3-5 years	MCA/ M.Sc. in Computer Science/ MBA/ B.Tech in Computer Science/ IT
3. XBRL – research & training	Assistant Director	6+ years	CA/ MCA/ B.Tech./M.Sc. in Computer Science
	Executive Officer	3-5 years	CA/ MCA/ B.Tech./M.Sc. in Computer Science

* Desirable: Worked in Government or Autonomous bodies.

Candidates with impressive, consistent and proven academic/professional track record and relevant post qualification experience alone should apply. Attractive compensation and best career prospects would be offered commensurate with Technology and business process knowledge, relevant qualification, experience including competence in the respective field. Relaxation in eligibility criteria and higher start can however be considered, at the discretion of the Management for deserving candidates. Present total monthly emoluments inclusive of Basic Pay, DA at Central Govt. rates, HRA at 35% of Basic pay and Transport subsidy will be approximately:

1. Assistant Director: ₹ 53,788
2. Executive Officer: ₹ 45,680

Other usual benefits such as LTC, PF, Gratuity, Children Education Allowance, Medical Allowance, Pension etc as per rules of the Institute would also be applicable.

Further details about the Institute and the prescribed format for application is available at http://icai.org/new_post.html?post_id=7940&c_id=240. Applications may be sent to Deputy Secretary HRD (P) (adv_parivartan@icai.org) or can send it through post at the above address super scribing "Application for project parivartan", within 10 days.



E-Learning on Standards on Audit by Auditing and Assurance Standards Board

As a part of its initiatives to create awareness among the members regarding the Clarified Standards on Audit, the Auditing and Assurance Standards Board has launched the first phase of e-learning on these Standards on Audit.

Significant features of E-learning:

- Step by step coverage on all important aspects of a Standard.
- Colourful and interactive lessons.
- Learning at your speed and convenience.
- Quiz at the end of each module to test understanding.

The First Phase to the E-learning on Standard on Audit covers:

- SA 210, *Agreeing the Terms of Audit Engagements*
- SA 230, *Audit Documentation*
- SA 240, *The Auditor's Responsibility Relating to Fraud in An Audit of Financial Statements*
- SA 250, *Consideration of Laws and Regulations in An Audit of Financial Statements*
- SA 330, *The Auditor's Responses to Assessed Risks*

- SA 450, *Evaluation of Misstatements Identified During the Audit*
- SA 501, *Audit Evidence—Specific Considerations for Selected Items*
- SA 570, *Going Concern*
- SA 705, *Modifications to the Opinion in the Independent Auditor's Report*
- SA 706, *Emphasis of Matter Paragraphs and Other Matters Paragraphs in the Independent Auditor's Report*

E-learning on remaining Standards is in progress and will be released soon.

Other Details:

Duration of Course: 7 hours (Maximum time limit- 3 months)

Credit of CPE Hours: 3 Hours

Course Fees: ₹500/-

Log on to <http://elearn.icai.org> for registration and other details.



Invitation to Join Panel of Examiners

The Institute is in the process of strengthening its panel of examiners with professionals/academicians/resource persons for all the papers in CA IPCE and Final (New Course) Examinations in general and for the following subjects in particular:

- 1.Strategic Financial Management
- 2.Advanced Auditing and Professional Ethics
- 3.Advanced Management Accounting
- 4.Information Systems Control and Audit
- 5.Direct Tax Laws
- 6.Indirect Tax Laws
- 7.Taxation
- 8.Business Law, Communication and Ethics

9.Information Technology

Persons who have the requisite proficiency in the above subjects, inclination for evaluation of answer books and who can spare time may send in the Empanelment Form duly filled in to the Sr. Deputy Director (Exams), The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi – 110002. The form may be obtained by sending a request letter or in the alternative, downloaded by clicking on to link <http://220.227.161.86/15857ExaminersEmpanelmentForm.pdf>



Classifieds

- 4833** Required partners to open branch preferably in Odisha. Retired members can apply. Contact to S. Kanungo, Flat No-24, Shila Mansion, Ratha Road, Bhubaneswar-751002 or E-mail:ssahoo8998@gmail.com
- 4834** A Mumbai CA firm, having 2 partners, practicing in multiple areas, invites firms/proprietors from Mumbai and major cities to merge/affiliate for long term mutual benefit and growth. Contact:nda@gmail.com / 9322266054
- 4835** A Delhi based CA firm having offices at Mumbai, Bangalore and Jaipur seeks Merger offers from Audit based proprietorship firms in existence for about 3-7 years at Delhi & Hyderabad. Please contact Mr. Manoj Sharma at 09873485885 / manoj.sharma@snr.net.in
- 4836** Delhi NCR based CA firm, owning fully furnished

- office near Vaishali metro station, having qualified staff, seeks branch office/professional arrangements from larger firms. Contact:george.vka@gmail.com
- 4837** Required CA's in a 40 years experienced CA firm for Mumbai office. Resume may be sent at mumbaioffice12@gmail.com by CAs who are interested to associate for long time.
- 4838** A Kolkata based C.A. firm (1978) is looking for more partners / merger - place & age no bar, terms flexible. Contact - 9831039746 / s.chakravorti2k6@yahoo.co.uk
- 4839** 23 years established Lucknow based CA Firm invites proposals for Partnership from Members holding COP. Interested please contact CA S.N. Gupta , senior partner at +91-9415101759, shivnarainabha@yahoo.co.in

Committee for Capacity Building of CA Firms and Small & Medium Practitioners (CCBCAF & SMP), ICAI

CCBCAF & SMP's exclusive Website
www.icaai.org.in

(Create your own Firm's Website)



Important Features

- Brings Business and CA Firms together
- Online Directory of CA Firm's Websites
- Creates your site yourself in minutes
- Manage your site yourself using CMS tools
- Customize the site yourself
- Consolidation of CA Firms
- Code of Ethics
- Discussion Forum
- Download the various Software Initiated by the CCBCAF & SMP
- E-library facility
- Minimum recommended Scale of Fees
- Quick Insight: CA Profession
- Guidelines on RBI & CAG Empanelment
- Know about the Committee



Committee for Capacity Building of CA Firms and Small & Medium Practitioners
The Institute of Chartered Accountants of India
[Set up by an Act of Parliament]
New Delhi

Forthcoming Events¹

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Discussion Topics	Contact Person
1.	National Conference on "Empowering the Profession"	1 st & 2 nd January, 2012	Galav Sabhagar, Jiwaji University, Gwalior	12	1. Ethical Standard and Tendering in Audit 2. Code of Ethics under the Chartered Accountants Act, 1949 3. Taxation of Real Estate Transactions under Income Tax Act 4. Survey under Income Tax – How to handle 5. Revised Schedule VI under the Companies Act, 1956 6. Audit Documentation and Risk 7. Common Discrepancies in Audited Financial Statements and Audit Reports 8. Service tax – Adjudications and Appeal 9. Open House & Valedictory Session	CA. Deepak Kumar Bajpai Secretary, Gwalior Branch Phone – 09425335798 E-mail – sdsdassociates.gwl@gmail.com
2.	Residential Refresher Course	3 rd – 5 th January, 2012	Wood Castle Resort, Corbett – Ramnagar (UK)	14	1. Ethical Standards and Tendering in Audit 2. CENVAT Credit on Input, Input Service and Capital Goods 3. Interpretation of Law, Business Deeds, Agreements and Contracts 4. E-filing of Service Tax Returns 5. Service Tax – Point of Taxation 6. Survey under Income Tax – How to Handle 7. Service Tax – Classification and Scope of Levy	CA. Vinay Krishna Phone – 09837645633
3.	Workshop on Capacity Building Measures of Practitioners & CA Firms	13 th January, 2012	Alwar	6	1. Professional Ethics and Misconducts 2. Professional Issues on Income Tax 3. Professional Opportunities for Chartered Accountants 4. Capacity Building through IT Tools	CA. Rakhee Garg Chairperson, Alwar Branch of CIRC of ICAI Phone: 09829247562 Email: armca@nobl-ealw.com
4.	Workshop on Capacity Building Measures of Practitioners & CA Firms	20 th , 21 st & 22 nd January, 2012	Palakkad	14	1. Issues on Income Tax 2. Issues in Service tax/GST 3. Issues on Service Tax 4. Auditing Standards (Reporting Requirements For Small and Medium Practitioners)	CA. S.Krishnan Kutty Chairman, Palghat Branch of SIRC of ICAI Email: skkutty@gmail.com Phone: 09349617261

¹ For more details please refer the detailed announcements hosted on the ICAI website www.icai.org

Sl. No.	Title of the Seminar/Conference	Date	Place	CPE Hours	Discussion Topics	Contact Person
5.	Residential Refresher Course	21 st & 22 nd January, 2012	Nakoda Ji (Baltora), Rajasthan.	12	1. Office Management for SMP's 2. Capacity Building of SMP's 3. SMP's & Minimum Recommendatory Fees 4. Importance of Audit Documentations 5. Practical Aspects in Ethical Issue for Members 6. Practical issues in Direct Tax 7. Issues in Service Tax & Central Excise 8. Issues In Rajasthan VAT 9. Capacity Building Through IT Tools	CA. Rakesh Jhalani Chairman Jaipur Branch Email: jaipur@icai.org Mobile: 9829064513
6.	Residential Re-fresher Course	28 th & 29 th January, 2012	Shri Mahavirji, Rajasthan	8	1. New Challenges for CA Profession 2. Audit Documentations for SMP's 3. An Overview on Direct Tax 4. K doc & E Secretary 5. Tax Suite & ICAI-ROC	CA. Rakesh Jhalani Chairman, Jaipur Branch of CIRC of ICAI Email: jaipur@icai.org Mobile: 9829064513

Using Out-Of-The-Box Thinking In Everyday Life



Chartered Accountants occupy positions of power and influence in corporations - as top executives, consultants, internal auditors, etc. A lot depends on their decision making capability. In such an environment analytical, logical and linear thinking skills are not enough, they need to develop out of the box thinking capabilities to generate new ideas, solutions and adapt to the new market needs. The one who thinks outside the box is a leader in true sense. But one needs not to be a leader in order to think outside the box. Exploring the muddle is an adventure that keeps entering and exiting the journey of one's life. Out of the box thinking is having an open mind with unconventional wisdom but then such thinking exclusively shall not be reflection of one's intelligence. This article deals with certain techniques which can be used to boost creative thinking process. Read on to have a view out of the box.



CA. Debaditya Gupta

(The author is a member of the Institute. He can be reached at eboard@icai.org)

When we see 7×6 , 42 occurs to us automatically. An experienced accountant looks at the financial statements and he gets an idea about the soundness of the business plan and financial projections. An architect looks at a plan and is assured of the aesthetics of the actual building. Our mind forms patterns based on past experiences and we do most tasks almost automatically without any conscious thought. This makes our functioning efficient as it simplifies things to cope with a complex world. Additionally, these thinking patterns enable us to perform routine tasks, such as swimming or driving a car, rapidly and accurately.

But this patterning creates a mental block when we need creative solutions to problems, especially when confronted with unusual data. Consider the following examples:

- A group of ten people were each given a piece of paper and were told to create something that they could launch and would go the farthest distance. Everybody came up with different shapes of paper airplane. Each was launched and the distance it flew was measured. When all measurements were taken, the person conducting the test took a piece of paper, crumpled it up into a tight

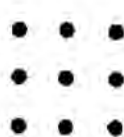
ball, and threw it across the room, far outdistancing the ten magnificent paper aircrafts.ⁱ

- A man is sentenced to death. He can make a final statement, after which he will be shot if the statement is false, or hanged if it is true. He is released after his statement. What did he say that saved his life?

He says "I will be shot". If this were true, he'd be hanged, thus not be shot. That would make his statement false, for which he would be shot, making his statement true again, and so on. So the death sentence cannot be executed, he was freed.

1.1. Concept

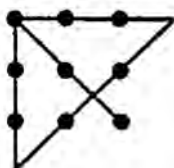
Thus, innovative thinking can help us devise creative and imaginative solutions to problems and help us spot opportunities that we might otherwise miss. Such thinking has been variously described as lateral thinking, creative thinking, out of box thinking, etc.



The terms are not synonymous but the common purpose is a new idea. The term "out-of-the-box thinking" came from solution to the "nine dot problem" – where there are three rows of three dots and the problem is to connect all the dots with just four lines.

The solution lies in drawing a line that goes outside the "box" formed by those nine dots. "Thinking out of the box" means thinking of a solution that is somehow outside of what you already now and do, coming up with something wholly new.ⁱⁱ

The "box" is the normal way



Our mind forms patterns based on past experiences and we do most tasks

almost automatically without any conscious thought. This makes our functioning efficient as it simplifies things to cope with a complex world. Additionally, these thinking patterns enable us to perform routine tasks, such as swimming or driving a car, rapidly and accurately. But this patterning creates a mental block when we need creative solutions to problems, especially when confronted with unusual data.

of looking at things, doing things, and making assumptions that almost everyone is making.ⁱⁱⁱ To think outside the box is to identify and challenge all those assumptions. However, we can't just tell people to think out of the box as pushing harder doesn't work. But we can employ certain methods to get the creative juices flowing.

1.2. Need

One may say, these thinking processes are fine for manufacturing concerns but why do professional accountants need to think creatively? Haven't we dedicated many years first in studying hard and then building out professional career from articleship to work experience? We have been busy nurturing analytical, logical and linear thinking skills. After all, these are the skills that today's successful accountants need – right? No.

In the past decade, the business environment has changed so much that these skills are woefully insufficient. The new world economy demands new skills. Some suggestions:

- Develop a new perspective to day to day work
 - Continually create new services, ideas and business solutions.
 - Reduce dependency on routine process-driven audit, accountancy, tax and statutory compliance work.
 - Adapt to meet new market needs.
- Strive to create value
 - Question yourself the reason for doing the things we do (do our clients know, like or even care?).
- Think on our feet.
- Acting on the idea.

2. New age skills

These skills may be developed/augmented by various techniques which boost the creative thinking process. One thing is true for all finance professionals: Having work means having clients – whether we do consulting, book keeping, auditing or secretarial work. And it is vital that we maintain and enhance our relationship with them.

The major requisite here is the ability to create new ideas and solutions, adapt to market needs and become efficient and effective. Numerous techniques have been suggested by Michael Michalko, Andy Van Gundy, James Higgins, Dilip Mukerjee and others, each with techniques for different parts of the creative process. For example, techniques for defining a problem, exploring attributes of a problem, generating alternatives, visual explorations, metaphors, analogies, and evaluating and implementing ideas. We discuss some of them below:

Brainstorming:

Brainstorming combines a relaxed, informal approach to problem-solving. The aim is to provide a

ⁱ Paper plane example-http://www.linkedin.com/answers/career-education/mentoring/CAR_MEN/748281-26978213

ⁱⁱ Concept- <http://ubiquity.acm.org/article.cfm?id=964691>

ⁱⁱⁱ Concept- <http://www.increasebrainpower.com/thinking-outside-the-box.html>

freewheeling environment in which everyone can participate.^{iv} In a conventional group, aggressive participants can drown out or intimidate quieter members. Others feel pressurised to conform to the group view, or withhold their opinions out of an excessive respect for authority. This is not so with brainstorming where the aim is total participation of all members to bring out original, creative solutions to the problem, or have ideas that can spark still more ideas. Quirky ideas are welcomed as practical ideas often emerge from wild, impossible ideas. A bizarre idea may lead people to think in a direction which can change an unworkable solution to a great problem. For example, the idea "pray to God to help us recycle" sparked off the idea to involve religious institutions like churches and ashrams in spreading the message of the benefits of recycling.

During brainstorming sessions there should be no criticism of ideas as judgments and analysis stunt idea generation. Ideas should only be evaluated at the end of the session – then the solutions can be further explored using conventional approaches.

In the finance world, there have been numerous instances where a draconian law has been changed because somebody thought the seemingly unsurmountable issue of changing the law was possible. Similarly, top management bought an idea because it was presented in a manner acceptable to them.

1. The Journalistic Six

The Five W's (and one H) forms the basis of information gathering in news research which ensures that reporters get the "full" story. A report is considered complete if it provides answers to the six questions – Who? What? Where?

Innovative thinking can help us devise creative and imaginative solutions to problems and help us spot opportunities that we might otherwise miss. Such thinking has been variously described as lateral thinking, creative thinking, out of box thinking, etc. 



When? Why? How? This maxim was memorialised by Rudyard Kipling in his "Just So Stories" where a poem opens with:

*I keep six honest serving-men
(They taught me all I knew);
Their names are **What** and
Why and **When**
And **How** and **Where** and
Who.*^v

Sounds simplistic? Obvious? Never underestimate the power of simple questions. Ask these questions and you can uncover a wealth of knowledge and opportunity. Do not restrict yourself to single syllable questions. Some variations that you can explore:

Who?

Who is involved? Who uses it, wants it? Who has created or added to the situation? Who can help deal with it? Who's concerned about the task, or excited about it? Who will be included, will be excluded?

What?

What is it? What has been done before? What resources do we have or need? What went or could go wrong? What would we like to see happened?

When?

When did we become aware of this? When do we think most about it? When must action be taken? When is the best or worst time to work on it?

Where?

Where does the action take place? Where did, will, should this occur or be performed? Where else has anyone dealt with a similar situation? Where are the best or worst places to be? Where would we like to be in the near future?

Why?

Why do we have this situation? Why should it be done, avoided, permitted? Why hasn't this been dealt with? Why do we really want to do it?

How

How can the situation be described, understood? How do others view it? How would I like to see changes made? How would other ideas be different from the present? How have other efforts succeeded or failed?

2. Problem Reversal

Tao-te Ching by Lao-tzu stresses that a successful leader needs to see opposites everywhere. In order to lead, the leader learns to follow. In order to prosper, the leader learns to live simply.^{vi} This is true for all behaviour. To get your creative juices flowing, see things backwards, inside out, and upside down. State your problem in reverse: change a positive statement into a negative one, define what something is not, do what no one else is doing and so on. Change your perspective to see things anew.

Say, when the target is to increase your client base think of what would decrease clients. Like calling prospects, being rude to

^{iv} Brainstorming - <http://www.mindtools.com/brainstm.html>

^v Journalistic Six- http://en.wikipedia.org/wiki/Six_Honest_Serving_Men

^{vi} Problem reversal- http://www.mycoted.com/Problem_Reversal

clients, showing poor knowledge, praising the competitor and so on. Now reverse the questions: How can I increase clients by giving better service? How can competitor help my case? Study their strategy and learn. Challenge the notion that increasing client base will increase revenue by finding ways to increase revenue by reducing client base. This could be done by focusing on bigger customers, better paying specialised jobs, retraining staff, delegation, etc.

3. SCAMPER technique

This technique was developed by Bob Eberle, who writes on creativity for children. The keystone of this approach is that if you cannot think of any response promptly, force a response, even though it sounds ridiculous and then devise means to make it work. SCAMPER is an acronym for:

S – Substitute/Simplify: Substitute some part of the accepted situation, thing or concept and replace it with something else. Typical questions include: What can be substituted to make an improvement? What will happen if I swap this for that? How can I substitute the place, time, materials or people?

C – Combine: Join, affiliate, or force together two or more elements of the subject matter to form a combination that provides a solution. Like: What materials, features, processes, people, products or components can be combined? Where can we build synergy?

A – Adapt: Consider which parts of the product/process could be adapted to remove the problem or changing the nature of the product/process. Questions include: What part of the product could be changed? And in exchange for what? What would happen if the characteristics of a component were changed? What might I copy?

M – Modify/distort: Consider many of the attribute of the thing you are working on and change them, arbitrarily, if necessary. Attributes include: size, shape, other dimensions, attitude, position, history and so on.

Purpose (Put to other use): Modify the intention of the subject. Think about why it exists, what it is used for, what it's supposed to do. Challenge all of these assumptions and suggest new and unusual purposes. Typical questions: What new ways are there to use this? Can this be used in other places? Which other people might I reach? How I can I modify this?

E – Eliminate: Eliminate one or some elements of the process/problem and consider what you might do in that situation. Say, what would happen if I removed a component or part of it? How else would I achieve the solution without the normal way of doing it?

R – Reverse/Rearrange: Change the direction or orientation. Turn it upside-down, inside-out, or make it go backwards. View the issue from different angles.^{vii}

4. The TRIZ technique

TRIZ (Teoriya Resheniya Izobretatelskikh Zadach) is a "Theory of Inventive Problem Solving" (TIPS) developed by a Russian scientist Genrich Altshuller and his colleagues (beginning in 1946). Altshuller and his associates

n RCA, information from the previous process step provides

output for the next step. The process is iterative and wrong assumptions or decisions made in earlier stages can be corrected by creating a feedback loop back to the step where the assumption or decision was initially made.

studied a vast array of technological solutions, patents, inventions. They discovered that majority of problems require solutions to overcome a dilemma or a trade-off between two contradictory elements which can be solved by a limited number of basic principles (techniques). The initial tool had 40 Inventive Principles.^{viii} The "Typical solution" is found by defining the contradiction to be resolved and considering which principles may be applied to overcome the "contradiction", enabling a solution that is closer to the "ultimate ideal result". The central purpose of TRIZ-based analysis is to systematically apply the strategies and tools to find superior solutions that overcome the need for a compromise or trade-off between the two elements.

One result of Altshuller's theory – that inventiveness and creativity can be learned - has fundamentally altered the psychological model of creativity. Although little known outside ex-USSR before the end of last century, today more and more organisations recognise TRIZ as the best practice of innovation. Some examples of the TRIZ principles^{ix}:

Principle 1: Segmentation- This could be done by dividing an object into independent parts like replacing a large truck by a truck and trailer. Or by making an object easy to disassemble like Modular furniture.

Principle 4: Asymmetry- Change the shape of an object from symmetrical to asymmetrical. Asymmetrical mixing vessels or asymmetrical vanes in symmetrical vessels improve mixing (cement trucks, cake mixers, blenders).

Principle 6: Nested doll- Just like Russian dolls, placing one object inside another and that in turn inside another is another technique. This principle is used in measuring cups and storage

vii Scamper technique - <http://www.brainstorming.co.uk/tutorials/scampertutorial.html>

viii TRIZ principles <http://triz40.com> <https://www.triz.org/>

ix TRIZ principles - http://www.triz40.com/aff_Principles.htm

boxes. Another alternative is to make one part pass through a cavity of the other as in a radio antenna, zoom lens and retractable aircraft landing gear.

Principle 10: Preliminary action

- This can be done by performing, before it is needed, the required change to an object (either fully or partially) like sterilising all instruments needed for a surgical procedure on a sealed tray. Another application is to pre-arrange objects such that they can come into action from the most convenient place and without losing time for their delivery. Eg. Kanban arrangements in a Just-In-Time factory.

Principle 11: Beforehand cushioning

- this principle suggests that emergency means are prepared beforehand to compensate for the relatively low reliability of an object. Eg. Back-up parachute, Alternate air system for aircraft instruments. Another example is found in the pharmaceutical industry where sleeping pills are coated with a film of an emetic substance. If more than the prescribed number of pills is swallowed at one time, the concentration of the emetic substance reaches a threshold value, which induces vomiting.

Principle 13: The other way round

- Just inverting the action can solve the problem like making movable parts (or the external environment) fixed, and fixed parts movable. E.g. rotating the part instead of the tool or having a moving sidewalk with standing people.

Principle 16: Partial or excessive actions

- If 100 per cent of an object is hard to achieve using a given method then, by using 'slightly less' or 'slightly more' of the same method, the problem may be considerably easier to solve. Like

over spray when painting, then remove excess or use stencil.

Principle 17: Another dimension:

Change of dimension can help too. Like infra red mouse moves in space so can be used for presentations. In case of dump truck, tilting the body allows the truck to be emptied at one go.

TRIZ in business

In recent years, a number of TRIZ researchers and practitioners have been experimenting with extending TRIZ to a range of non-technical areas, including business and management systems.^x Top management who make crucial decisions could benefit from TRIZ to solve issues which have numerous variables and demand "out-of-the-box" thinking.

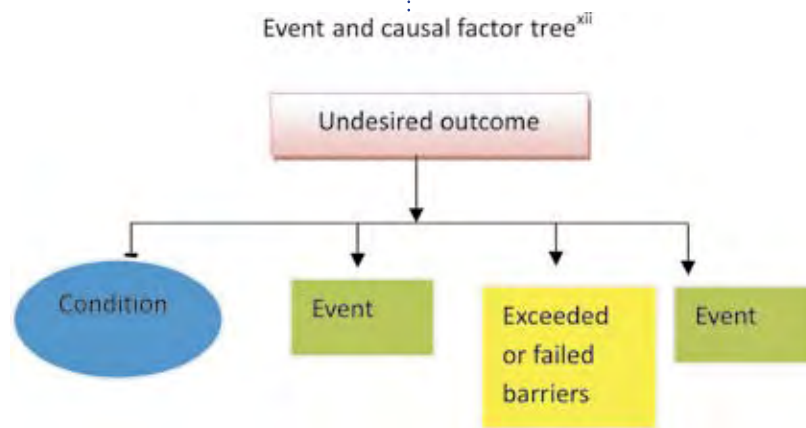
One such method is "xTRIZ" (i.e. "eXtended TRIZ") which helps to analyse business and management problems, to identify root conflicts and causes, to select the problems to solve, to generate new ideas and solution strategies, and evaluate the final results. (Valerie Souchkov, TRIZ for business) in addition to standard TRIZ tools, includes additional techniques to enhance the problem solving and decision making process, such as Root Conflict Analysis (RCA), a Comparative Ranking Scorecard

and Multi-Criteria Decision Matrix.

The basic process of the xTRIZ for business applications has six steps:

- Problem identification and documentation; defining constraints and limitations; establishing targets and goals.
- Problem analysis and diagnostics with RCA+; finding, linking and grouping conflicts/contradictions.
- Assessment of the RCA+ diagram and selection of contradiction(s) to solve.
- Resource analysis within a conflict space.
- Using Contradiction Matrix and Inventive Principles to generate new solutions or strategies.
- Solution strategies evaluation and assessment with Multi-Criteria Decision Matrix and TRIZ criteria.

In RCA, information from the previous process step provides output for the next step. The process is iterative and wrong assumptions or decisions made in earlier stages can be corrected by creating a feedback loop back to the step where the assumption or decision was initially made. A format of event and causal tree is given with an example.^{xii}



^x Valerie Souchkov, TRIZ for business and management <http://www.xtriz.com/TRIZforBusinessAndManagement.pdf>

^{xi} Valerie Souchkov, TRIZ for business: Application of RCA+ to analyse and solve business and management problems <http://www.xtriz.com/RootConflictAnalysisIntroduction.pdf>

^{xii} Root cause analysis - <http://www.hq.nasa.gov/office/codeq/rca/rootcauseppt.pdf>



Another method involves twelve double principles for Business and Management (Pavel Livotov, 2008)^{xiii}. They assist the user in resolving organisational contradictions and conflicts by broadening individual experiences and intuition. They can be used to formulate different approaches to solve the issue at hand. Each principle has two contradictory lines of action. It is left to the user to think creatively and select the suitable course of action.

Twelve Principles for resolving organisational tasks (Paul Livotov, 2008)

- | | |
|-------------------------------------|--|
| 1. Combination - Separation | 8. Action - Reaction |
| 2. Symmetry - Asymmetry | 9. Continuous action - Interrupted action |
| 3. Homogeneity - Diversity | 10. Partial action - Excessive action |
| 4. Expansion - Reduction | 11. Direct action - Indirect action |
| 5. Mobility - Immovability | 12. Preliminary action - Preliminary counteraction |
| 6. Consumption - Regeneration | |
| 7. Standardisation - Specialisation | |

Example 1: A company is having communication problems between its highly technically competent staff and other staff. This is affecting productivity and personal relations. The above principles provide some alternatives.

Principle 1: Combination - Separation:

- "Isolate" the person from the staff by eliminating direct contact.
- Arrange for the person to work at home or work flexi time.
- Set up a database or an expert system to make the expertise of the person available to others through the system.

Principle 2: Symmetry - Asymmetry:

- Reduce asymmetry in company expertise by internally training others or outsourcing.

Principle 4: Expansion - Reduction and Principle 10: Partial action - Excessive action:

- Reduce the amount of time that the individual spends in projects.

^{xiii} Paul Livotov, TRIZ and Innovation Management http://www.triz.it/triz_papers/2001%20TRIZ-based%20Innovation%20Principles%20in%20Business%20and%20Management.htm

- Make the person part of an Excellence (Expert) centre which lends his expertise on need basis thereby reducing the frequency of interaction

Principle 8 Action – Reaction and Principle 11. Direct action - Indirect action:

- Provide a mediator for the individual in the team or in the company.
- Arrange social and psychological guidance for the individual.

Example 2: Another issue which organisations face is effective operation of their corporate innovation programs. They find it difficult to manage day to day operations and simultaneously explore opportunities for growth. Applying the separation principle to the conflict of *ongoing business Vs. innovation and new business*, new alternatives can be discovered:

- Separation in time: Set aside a specific time for discussion of only new, unrelated to current business activities.
- Separation between parts and the whole: Set up a separate team to pursue new activities

Most people want to operate in their comfort zone. Usually, this means

taking the tried and tested path and conforming to norms. Others bow to societal pressure. Following these tendencies may be enough to survive, but is it enough to leave a mark? Thinking out of the box gives us a chance to go beyond this bare existence and fulfill our true potential. Not everyone can be a genius, but we can all try to maximise our potential. ”



reporting to a senior manager with direct accountability for generating "new" business.

- Separation upon condition: Have a simulated exercise based on real or imagined condition (i.e. a new patent, an impending merger, etc.). Based on this, generate ideas relating to what the organisation might do.

This is just a brief overview of how TRIZ can enhance and accelerate business and management innovation. The analytical tools can be used to identify broad range of problems and challenges, while TRIZ patterns and problem solving techniques can help to generate better ideas. TRIZ provides a breakthrough in thinking. Instead of groping in the dark or oversimplifying the situation, we thoroughly analyse a situation, reveal contradictions, and resolve them in "win-win" way. However, TRIZ will not replace the need to think. It provides a structure to the way we think, and helps ensure

that all possibilities are covered. At the end of the day, the more effort you put into TRIZ the more benefit you will get out of it.

3. Conclusion

Most people want to operate in their comfort zone. Usually, this means taking the tried and tested path and conforming to norms. Others bow to societal pressure. Following these tendencies may be enough to survive, but is it enough to leave a mark? Thinking out of the box gives us a chance to go beyond this bare existence and fulfill our true potential. Not everyone can be a genius, but we can all try to maximise our potential.

Thinking out of the box is hard. It requires us to stretch our mental faculties, but we need not to do it all the time. Most times it is fine to drift along on auto-pilot, saving our out of the box thinking for things that matter to us most. All we can take from this world is experience, so make the most of it by challenging the accepted ways. ■

Executive Summary of the Pre-Budget Memorandum-2012 (Direct Taxes) submitted to Ministry of Finance

I. SUGGESTIONS TO IMPROVE TAX COLLECTION

1. Information to be furnished in the Annual Information Return

In respect of the transactions, where the PAN is not provided by the payer, the provisions like Tax Collection at Source (TCS) may be made applicable to the payee. Accordingly, the payee should be allowed to collect tax at an appropriate rate. Later, in case the deductee provides PAN within a specified period to the deductor, the deductee should be provided with a certificate like TCS certificate for claiming the same in the return of income. In case the deductee does not provide PAN with the specified period, the tax so collected would be added to the revenue of the Government.

2. TDS in respect of maturity of insurance policies which are taxable under Section 10(10D)

A provision relating to Tax Deduction at Source (TDS) should be inserted in Chapter XVIIIB to cover those payments where the exemption under Section 10(10D) is denied to the recipient of income from insurance companies.

And in respect of the cases where the premium paid is above 20% of capital sum assured, the premium paid certificate (receipt) issued by insurance companies for the purpose of 80C should clearly mention that the qualifying amount for 80C deduction in respect of such premium paid is only up to 20% of capital sum assured.

3. TDS under Section 194A-Interest payments to NBFC

In order to provide relief to the genuine taxpayers paying interest to NBFC's, Section 194A(3)(iii)(a) be amended to treat NBFC's at par with other banking companies. Further, to ensure compliance of the provisions of the Act for timely collection of taxes and also, provisions of Tax collection at source be made applicable to NBFC's in respect of such interest.

4. Real estate transactions – Uniformity and reduction in stamp duty rates

In order to reduce the wide variations in the rates of stamp duty the Central Government should take the initiative and bring about a consensus among the State Governments for prescribing uniform stamp duty rates in accordance with a general agreement between the State Governments and the Central Government. This will go a long way in simplifying capital gains taxation and would also encourage disclosure of the correct consideration received from the transfer of capital assets.

5. Verification of all income-tax returns

In order to thoroughly check the filed returns and cross-verified with the information collected through Annual Information Report (AIR) and other sources by the

Department, the same may be out-sourced preferably to the professionals understanding the law better and who are in a position to identify the grey areas. This will be just on the line of desk review presently being carried out by the Excise Department. This process once started will ensure better voluntary compliance as every taxpayer filing the return would be aware that the return being filed would be subject to a verification process and those persons who are filing income tax returns but are not declaring their income properly cannot afford to take the liberty of making adjustments which are legally permissible.

6. Verification of the fact that tax audit has been done by a Chartered Accountant

- Tax audit report digitally signed by the tax auditor may be allowed to be uploaded along with the return of income at the earliest.
- On the basis of data regarding practicing members provided by ICAI, a validation link may be created on the Directorate of Income Tax website, which would enable the Department to verify the details of member who is conducting the audit. In case the membership details so entered do not match with the ICAI Data, the system should not allow the uploading of the return after two attempts.
- To further strengthen the system, a user id and a password may be made available to every practicing member by the Income tax Department, so that the member can view all the tax audit reports uploaded in his name. This in turn would further curb the malpractice of misusing the details of member by the assessee as a tax audit not done by the member may be then reported by him to the Income-tax Department for action at its end.

II. SUGGESTIONS TO REDUCE/MINIMISE LITIGATIONS

1. "Annual receipts" under Section 10(23C)

The term "Annual Receipts" be clearly defined as income of the hospitals/educational institutions arising regularly/ every year but excluding value of donation received in kind by way movable assets, land, hospitals/educational equipment, sale consideration received on disposal of land, shares or other movable property, hospital/ educational equipment etc.

Further, it may be specifically provided that donations received towards corpus by way of land, movable assets are excluded from computation of "Annual Receipts" as prescribed under Rule 2BC of Income-tax Rules.

2. Exemption under Section 54 & 54F

- In order to avoid avoidable litigation, a Circular be issued clarifying that in a case where an assessee has entered into a Registered Agreement for Purchase of

a residential flat in an "Ownership Apartment Scheme" and the assessee has paid more than 50% of the cost of the residential flat within the period prescribed in Sections 54 and 54F and has, within a further period of three years obtained actual possession of the residential flat on payment of its full price, the assessee shall be deemed to have "constructed" a 'residential house' within the meaning of Sections 54 and 54F on the date on which the Agreement for Purchase has been registered and the exemption under the said sections will be available to the assessee to the extent of the aggregate cost of the residential flat agreed to be purchased.

- b) The proviso to Section 54F(1) provides that exemption will be withdrawn if the assessee purchases any residential house, other than the new asset within a period of one year after the date of transfer of the original asset. And Section 54F(2) provides the period of two years for the said withdrawal of exemption. Thus in order to avoid unnecessary litigations, the said inconsistency in sub-section(2) and proviso to the sub-section(1) may be removed.

3. Section 50C

The provisions of Section 50C should be reviewed with reference to the following:

- In case where 50% or more has been paid as registration money, the date of agreement may be considered for the purpose of valuation and not the date of actual registration of the property.
- If the transactions for sale of property are entered below the circle rate, the provisions of Tax Collection at Source (TCS) may be introduced and tax be collected at a reasonable rate (say @1%). However, after checking the genuineness of the transaction, due refund should allowed as per procedures.
- In order to avoid litigation, it may be clarified that in respect of the assets which are invested into the common pool of the partnership whether Section 56 or Section 50C, would be applicable.
- Section 50C(2) provides that subject to fulfillment of certain conditions, the Assessing officer may refer the valuation of capital asset to the Valuation officer. The word "may" be substituted with "shall".

4. Section 94A - Special measures in respect of transactions with persons located in notified jurisdictional area

Section 94A and/or Section 206AA may be suitably amended to clarify that Section 94A would prevail in case tax is to be deducted with respect to any payment to a person located in a NJA.

5. Section 32 - Depreciation in case of slump sale

An issue arises whether depreciation can be claimed on the basis of proportionate number of days by the transferor and the transferee company in case of slump sale considering the proviso to Section 32 read with Section 170 of the Act. Section 32 may be amended to clarify the legal position.

6. Section 35AD - Deduction in respect of expenditure on specified business

The term 'New Plant' and 'newly installed capacity in

an existing plant' may be defined objectively to ensure clarity and avoid litigation.

Further, threshold for expansion of existing plant may be provided on the lines of 'substantial expansion' as defined for the purposes of Sections 80-IC and 80-IE.

7. Section 115JB-Minimum Alternate tax

Clause (i) of Explanation 1 to Section 115JB may be amended as follows-

"(c) the amount or amounts set aside as provision for diminution in the value of any asset (other than provision for bad and doubtful debts allowed as a deduction under Section 36(1)(viiia))"

- (i) Necessary amendment may be made in Section 115JB. It may be provided that where format of financial statements presented before the general body/AGM is prescribed under any other law (such as Banking Regulation Act, Electricity Act etc.) or by any regulator such as IRDA then book profit as per profit and loss account drawn up in accordance with such Act or regulation shall constitute the book profit for the purpose of Section 115JB and not profit and loss account drawn up as per Schedule VI.

- (ii) Considering the above, Section 115JB(2) may be amended to provide that every assessee, being a company, shall, for the purposes of this section, prepare its profit and loss account for the relevant previous year in accordance with the provisions of relevant statute.

8. Section 206AA - Requirement of furnishing of PAN for deduction of tax at source

A proviso should be inserted in Section 206AA to the effect that the provisions of this section shall not be applicable in respect of the assessee who is not required to obtain Permanent Account Number under Section 139A.

9. Hardship arising out of the Apex Court's decision in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC)*

- (i) Appropriate amendments may be made to enable the assessee to get relief during the assessment proceedings by methods otherwise than by way of filing a revised return.
- (ii) Provisions of Section 80A(5) should be modified to permit filing of new claim by the assessee in the course of assessment, even without filing of revised return of income. This will remove unintended hardship.

10. Introduction of Advance ruling for residents

Advance Ruling scheme should be introduced for resident's tax purposes also. In case of residents also, it has been observed that assessee takes one interpretation of law and executes the transactions which is denied by the department causing hardship of paying taxes which he thought is not actually payable.

Further, in order to avoid unnecessary application, the scheme can be so framed that only transactions involving certain threshold of investment can be applied or fee for advance ruling can be fixed in a way that small and unnecessary applications are avoided.

11. Clarification regarding TDS on Commission to a partner under Section 194H read with Section 40(b)

A clarification should be provided to the effect that Commission under Section 194H would not include commission paid by the partnership firm to its partners.

12. Signing of notices under Section 282A

The computerised notice/document should have a separate control like provision for a digital signature because these are legal/statutory documents and this aspect should specifically be incorporated in Section 282A. In respect of manual notices/documents the section should also record that signatures will be mandatory applicable.

13. Applicability of Education Cess and Secondary and Higher Education Cess - Double taxation Avoidance Agreement

Appropriate amendment may be made to clarify that EC & SHEC should not be applicable on the rates specified under DTAA.

14. Section 147/Section 148

Proper stipulations be laid down for any reopening and the period of reopening be also reduced to 3 years from the end of the assessment year.

The new proviso to Section 147 should also state that all matters which have been examined in the original assessment should not be reassessed.

15. Section 195 read with Section 194LB

Section 195(1) should be amended to read as follows:
"Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest [OTHER THAN INTEREST MENTIONED IN Section 194LB] or any other sum chargeable under the provisions of this Act....."

16. Delay by Assessing Officer in giving Order giving effects to Orders of higher Appellate authorities, and also delay in issuing refunds arising out of such Order giving effects

The time limits for issuing the Order giving effects and Refund Orders should be stipulated in the Act and also the Interest on Refunds should be calculated up to the date of actual issuing of Refund warrants and not only up to the date of granting the refund/date of Order (as per the existing provisions of the Act).

17. Initiation of penalty proceeding in every assessment orders

- (1) Suitable remedial measures should be incorporated in the Act providing relief to the genuine hardship faced by the assessee on account of imposition of penalty even where there is no concealment of income.
- (2) Further, in respect of pending cases, to reduce litigations, a scheme on the lines of Kar Vivad Samadhan Scheme (KVSS) may also be introduced. It is suggested that in cases where addition made is NOT more than 50% of income or ₹10,00,000 whichever is less:
 - a) Penalty under Section 271(1)(c) may be dropped.

- b) 50% of the interest levied may be waived off.
- c) No further appeals should be allowed to be filed either by the Department or by the assessee similar to existing provisions of Central Excise.

18. Section 132 - Search and seizure

- (a) Amendment should be made in Section 132B to clarify the amount of cash seized to be permitted for adjusting against the advance tax liability of the assessee where specific request is made for such adjustment. This would help in early realisation of tax, avoid litigation and save the assessee from mandatory interest charged under Sections 234B and 234C.
- (b) Since cash is seized at the time of search and lying in PD account of CIT, such cash after adjusting existing tax liabilities, may be permitted to be adjusted against the tax due as per settlement petition. Suitable amendment/instruction is required to be given to the authorities in the matter since they are not permitting such adjustment for want of clarity.
- (c) A provision like 132(5) [omitted by Finance Act, 2002] which provided for provisional assessment be introduced and the asset be released after releasing the amount due as per provisional assessment.

19. Desirability to bring back block assessment system

The continuance of earlier block assessment procedure is desirable. The above approach would assist in:

- (a) reducing controversy over the year of taxability of income;
- (b) providing suitable incentive for a person to make the necessary disclosure without indulging in litigation; and
- (c) removing administrative difficulties such as multiplicity of appeals, bunching together of assessments etc.

20. Section 80IA - Unit-wise deduction should be allowed

A specific clarification/provision should be made in Section 80 IA itself to provide that deduction under Section 80IA is 'UNIT SPECIFIC'. For each unit deduction under Section 80IA should be separately calculated.

21. Section 245A-Settlement Commission

- (a) The (i) Proviso of Section 245(b) along with the Explanation (i) should be omitted.
- (b) In order to further reduce litigations, the limit of ₹10,00,000 may be reduced to ₹5,00,000.

III. SUGGESTIONS FOR RATIONALISATION OF THE PROVISIONS OF DIRECT TAX LAWS

1. Books of accounts in electronic mode - Section 2(12A)

Section 2(12A) defining books or books of accounts should clearly state that the books maintained in digital form would also be considered as books of accounts for the purposes of the Act. The assessee may scan the original documents and subsequently be permitted to destroy the same as they would be available only in digitised form.

The permission to maintain the books in electronic form should be given to companies beyond a certain prescribed size and scale of operations. Consequential

amendments may be made and rules prescribed, as deemed necessary to provide guidance and check points to prevent misuse.

2. Section 2(15) - Definition of charitable purpose

- ₹25 lakh may be the basic exemption limit, and receipts in excess of ₹25 lakh may be subject to tax at maximum marginal rate after deducting the related expenditure.
- Suitable amendment may be made in Section 11 to provide relaxation to genuine cases by considering such application of income outside India as application towards charitable purpose. This provision however, may be made subject to some approval mechanism.

3. Receipt of amount under Life Insurance Policy - Section 10(10D)(c)

Instead of any sum received being made chargeable to income tax, only the sum, which is in excess of the premium payments made by the insured to the insurer should be considered as income exigible to tax. Suitable clarifications should be made accordingly.

4. Section 10(13) - Payment from approved superannuation fund

Section 10(13) may be amended to exempt commuted value received by an employee from the superannuation corpus standing to his credit at the time of resignation, to the extent the same is already taxed at the initial contribution stage under Section 17(2)(vii).

5. Charitable Trusts

- A clarification by way of Explanation may be inserted to clarify that receipts of such nature should be not be considered for determining the limit of ₹25 lakh.
- Mandatory application of income by charitable trusts/institutions under Section 10(23C) Section 10(23C) should be amended to specifically exclude 'corpus donations' from the requirement of mandatory application of income by such trusts/institutions.
- Registration - Condonation of Delay- Amnesty
A one-time scheme may be framed or a time slot may be allowed so that such unregistered charitable organisations may obtain registration under Section 12AA/12A with condonation of delay.

6. Income of minors - to increase exemption limits under Section 10(32)

The limit should be raised to at least ₹10,000/- for each minor child.

7. Section 10(47) and Section 115A(BA) - Income of infrastructure debt fund

- A condition may be prescribed that the infrastructure debt fund notified under Section 10(47) should be denominated in Indian Rupees.
- Any distribution from the debt fund to the non-resident investors, whether characterised as interest or not, may be subjected to the concessional tax treatment.
- The benefit of concessional rate of tax of 5% on income received from such fund may be extended to residents also.

8. Medical reimbursements for retired employees

The provisions of Section 17 may be amended to include retired employees for the tax benefit on medical reimbursements/hospitalisation expenditure in approved hospitals.

9. Perquisite of rent free accommodation provided as a campus accommodation where factory is located in remote areas

In case where accommodation is provided by the employer in factory campus and staying there is a precondition of employment, such accommodation should be valued at NIL.

10. Interest on borrowed Capital

The deduction in respect of interest on housing loan in case of self occupied property should be increased from ₹1.5 lakh to ₹3 lakh.

11. Depreciation

- The depreciation on books purchased by professionals be restored to its original rate of 100%.
- Restoration of 100% allowance for small items of assets:
The proviso should be reintroduced, with a condition that the same would not apply where the total value of such additions during the year exceeds 2% of the written down value of the block of depreciable assets or ₹1,00,000/-, whichever is higher. Such a provision will act as a check on the temptation to abuse, but at the same time, will serve the purpose of simplicity. A similar provision exists under the Companies Act, 1956.

12. Incentives for R&D

- The benefit of Section 35(2AB) should be extended for further period of five years i.e. upto 31st March, 2017.
- Suitable provision should be made in the said section to provide that once the approval is granted under Section 35(2AB) the same should be made effective from the date of initiation of the said R&D facility and so, entire expenditure incurred on establishment of such facility should be allowed as deductible under Section 35(2AB).
- The expenditure incurred on clinical trial carried out outside the in-house R&D facility should be allowed under Section 35(2AB) of the Income-tax Act, 1956.

13. Deduction for payments under Voluntary Retirement Scheme - Section 35DDA

Section 35DDA(1) may be re-worded as follows:

"Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement or purchase of an annuity from an insurance company to cover such payments, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted....."

14. Capital raising expenses

Section 35D should be amended to allow deduction for all expenses incurred by an assessee for raising capital in five equal installments over a period of five years.

15. Due date for crediting the contribution of employees to the respective fund—Section 36(1)(va) read with Section 2 (24)(x)

The due date defined under Explanation to Section 36(1)(va) shall be amended and accordingly the due date shall mean the due date for filing return of income under Section 139(1), thereby bringing it at par with the due date specified for the Employer's contribution under Section 43B of the Act.

16. Section 36(1)(viii)

Asset Reconstruction Companies (ARC) should be included in the definition of specified entity to be eligible for deduction under Section 36(1)(viii).

17. Provision for leave salary – Section 43B(f)

Clause (f) of Section 43B may be deleted. Further, deduction for provision made towards leave salary liability based on actuarial valuation may be allowed. Alternatively, on the lines of gratuity and pension funding, necessary provisions may be included in the Income-tax Act for funding of the leave salary liability and deduction should be allowed on such funding.

18. Section 44AD - Presumptive Income – Some Issues

a) Maintenance of Books of Account

The section may be amended or suitable provision be inserted so as to clarify the intentions of the section. The erstwhile sub-section 4 read as under:

“The provisions of Section 44AA and 44AB shall not apply in so far as they relate to the business referred to in the sub-section (1) and in computing the monetary limits under those sections, gross receipts or as the case may be, the income from the said business shall be excluded.”

b) Eligible Business

- (i) Section 44AD may be amended to clarify whether the receipts of ₹60 lakh under Section 44AD intend to cover the receipts of a single business or aggregate receipts of all businesses
- (ii) The provisions of Section 44AD should not be made applicable for all businesses. The scope of Section 44AD may be clearly defined to cover particular businesses only.
- (iii) Further, it may also be clarified whether the provisions of Section 44AD would be applicable for loss making business and businesses having income below taxable limit.

19. Conversion of stock-in-trade into capital asset

A section may be drafted on the lines similar to Section 45(2) to provide that the difference between the fair market value on the date of conversion and the cost price or market price of stock in trade which has been considered for the purpose of valuation of closing stock is to be deemed as business profits to be taxed in the year in which capital asset is sold. The fair market value on the date of conversion should be deemed as cost of acquisition of the capital asset.

20. Limited Liability Partnership (LLP)

- (a) There is need to increase the figure of ₹60 lakh substantively so that private limited companies doing business can also choose the option of conversion to Limited Liability Partnership.

It may be noted that enough safeguards have been provided in the amendment to not to allow distribution of profit and change of partners etc. to avoid misuse of this provision.

- (b) Merger and Amalgamation of Limited Liability Partnership to be Revenue Neutral.

Similar provision need to be inserted for LLP allowing merger and demerger and amalgamation to be revenue neutral.

- (c) Transfer of capital asset by a Limited Liability partnership (LLP) to Private Company or unlisted public company on account of conversion

Any transfer of capital asset or intangible asset by LLP to a private company or unlisted public company due to conversion subject to fulfillment of certain conditions, may also not be considered as transfer for the purpose of capital gains.

- (d) A specific provision be incorporated in the Income-tax Act, 1961 itself clearly specifying that the conversion from a general partnership firm to an LLP will have no tax implications.

21. Section 49 – Cost of acquisition with reference to certain modes of acquisition

Section 49(1)(iii)(e) to be amended to include reference to demerger which is exempt under Section 47(vib) and (vic).

22. Forfeiture of Advance Money under Section 51

In order to provide relief to the assessee, any forfeited money in respect of any long term capital asset should be allowed to be deducted after Indexation, if any, from date of forfeiture to the date of sale.

23. Section 54EC - Capital gain not to be charged on investment in certain bonds

- a) As the financial year may differ from assessee to assessee, the term “financial year” be substituted with the term “previous year”.
- b) Considering the inflationary conditions in the economy, the limit of ₹50 lakh may be raised to ₹1 crore.

24. Exemption under Section 54 & 54F

Section 54F(1) may be re-worded as follows:

“In the case of an assessee being an individual or a HUF the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee has within a period of one year before or two years after the date on which the transfer took place PURCHASED/ CONSTRUCTED, or has within a period one year before or three years after that date constructed, a residential

house, the capital gain shall be dealt with in accordance with the provisions of this Section.”

25. Exclusion of rights shares and fresh issue of shares from the ambit of Section 56 (2)(viia)

Rights shares and fresh issue of shares be excluded specifically from the ambit of these provisions.

26. Tax incentives under Section 72A in respect of Amalgamation or Demerger (to be extended to all businesses):

- a) The benefit of Section 72A may be extended to all businesses including financial services, entertainment/sports, information technology (IT) and IT enabled services.
- b) Further, the provisions of Section 72A may be simplified specially in respect of the conditions applicable for the amalgamating company like losses/depreciation being unabsorbed for at least three years and holding assets on the amalgamation date upto $\frac{3}{4}$ of the book value of fixed assets held two years prior to the said date.

27. Section 72 - Carry forward and set off

The brought forward business loss may be allowed to be set off against such short-term capital gain in subsequent assessment years.

28. Deduction for Education expenses

Deduction should be available for purchase of all kinds of books, CD's, computers, internet connection etc. the deduction should also be available in respect of part time course for vocational training etc by all universities and approved institutions.

29. Benefit under Section 80IA shall be allowable to the resulting/amalgamated company in case of demerger/amalgamation

The original position, under which the transferee company enjoys the benefit in case of a demerger or amalgamation, may be reinstated.

30. Deduction in respect of royalty on books – Section 80QQB

Clause (b) of the Explanation to the section should be amended by deleting the word 'commentaries' from the list of exclusions.

In order to ensure that the deduction really benefits those for whom it is intended, the benefit should not be restricted to income derived from the exercise of a profession, but should be available to any author of such books

31. Anonymous donations under Section 115BBC

To clarify the intention of the statute, Section 115BBC(1) (ii) may be re-worded as follows:

“the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate amount of anonymous donations WHICH ARE SUBJECT TO TAX IN CLAUSE (i) ABOVE.”

32. Explanation 2 to Section 139(1) - Due date of furnish report under Section 92E

- (i) Clause (aa) may be appropriately amended as

follows:

“in the case of an assessee required to furnish a report referred to in Section 92E, the 30th day of November of the assessment year”.

- (ii) The definition of “specified date” in clause (ii) of Explanation to Section 44AB may be amended to provide 30th November of the assessment year as the specified date for assessee who have entered into international transactions. For this purpose, the definition of “specified date” in the Explanation to Section 44AB may be amended to align the same with the definition of “due date” under Explanation 2 to Section 139(1).

33. Section 139(5)

Section 139(5) may be amended to provide that the revised return can be filed even in the case of belated return.

34. Guidelines for the empanelment of auditors under Section 142(2A)

Specific guidelines for the appointment of auditor under Section 142(2A) by Chief Commissioner or Commissioner may be issued. The said guidelines may provide for conditions like experience of the auditor in the relevant field, number of years of experience, number of partners etc. Further, in order to maintain quality of work and to provide equitable distribution of work, a restriction on the number of such audits by a particular auditor in a particular year may be imposed.

35. The need for withdrawing Section 145A in view of Accounting Standard 2 (Revised) Valuation of Inventories becoming mandatory

The complicated computation required for complying with the provisions of Section 145A will not generate any extra revenue as the impact of Section 145A is revenue neutral. Hence Section 145A needs to be deleted.

36. Rectification of mistake under Section 154 & Appeals under Section 246A

In view of the above Section 154(1) may be amended as follows:

“With a view to rectify any mistake apparent from the record an income tax authority referred to in Section 116 may:

(a)....., (b).....

(c) amend any intimation or deemed intimation under Section 200A w.e.f. 01/04/2010.”

Further, a clause (s) may be inserted in Section 246A(1) as follows:

“(s) Any intimation or deemed intimation under Section 200A w.e.f. 01/04/2010.”

37. Credit of Tax Collected at Source relating to earlier years (for which Assessments are already over & time period mentioned in Section 155(14) has elapsed) demanded by the Government authorities at a later date

Considering the hardship being faced by assessee in respect of cases mentioned above, the department should give credit for such TDS/TCS even if the assessments have been completed and also the period mentioned under Section 155(14) has expired.

38. Suggestions relating to Tax Deducted at Source**(a) Non-deduction of TDS on Service Tax**

No tax at source should be deducted on service tax component of professional fees and other services. The benefit for the exclusion of service tax for calculating TDS should be given for other income also.

(b) Audit of TDS returns

An independent audit provision may be inserted to provide for a comprehensive audit of all the TDS returns filed with the Department. Appropriate forms of audit report can be prescribed to certify about the correctness of the quarterly TDS returns. This will enable the Department to rest be assured about the correctness of the TDS returns filed as well as the remittance of the tax deducted at source to the credit of the Central Government.

(c) TDS on Purchase of Software Licences

A specific provision for deduction of tax at source say @1% on purchase of branded software licences from software dealers be incorporated in the Income-tax Act, 1961.

39. Section 193 - Interest on Securities

- The interest on Debentures issued by companies either listed or non-listed may be given threshold limit under clause (v) of Proviso to Section 193.
- The threshold limit under clause (v) of Proviso to Section 193 regarding non-deduction of TDS may be increased to minimum ₹10,000.

40. Section 195 - Time limit for Issuance of "general or special order"

An appropriate time limit say thirty (30) days may be imposed for passing such general or special order by the Assessing officer. Further, where an application is rejected the Assessing Officer may be required to pass a speaking order after providing a reasonable opportunity of being heard to the applicant.

41. Validity of Certificate issued under Section 197

- the application may be allowed to be made atleast 60 days before the commencement of the financial year.
- Such application should be disposed off within 30 days.
- The certificate under Section 197 may be issued to be effective from the 1st day of previous year.

42. Clarification sought for generation of TDS certificates in case TDS is deducted @20% under Section 206AA

A clarification regarding the procedure for providing TDS Certificate especially in above mention issue to make the process easy and smooth and better compliance of the Act may be provided.

43. Inclusion of payments and receipts made through the modes like RTGS, NEFT, EFT and ECS as valid modes of fund transfers under Sections 269SS and 269T of the Income-tax Act, 1961

Different modes of transfers like RTGS, NEFT, EFT, ECS etc. be included as valid modes of fund transfers

under Section 269SS and 269T of the Income-tax Act, 1961. Alternatively, Section may provide for any mode of payment other than cash on the lines of Section 80D.

44. Omission of Section 282B - Document Identification Number

Section 282B may be reinstated and the date of implementation of DIN may be postponed till the availability of requisite infrastructure on all-India basis.

45. Increase in Ceiling Limits

The following limits may be increased:

Section	Existing ceiling	Suggested ceiling
40A(3)	₹20,000	₹50,000
269SS	₹20,000	₹50,000
269T	₹20,000	₹50,000

46. Introduction of Sunset Clauses in Income-tax Act, 1961

Sunset clauses at suitable places be inserted in the Income-tax Act, 1961.

47. CER Sale to be treated as Capital Receipt

This credit should be treated as capital receipt free from any taxes. Alternatively, the amount spent should be eligible for deduction under Section 10AA, 80IA, 80IB, 80IC etc.

48. Corporate Social Responsibility Costs

- a deduction of the expenditure on community/social development (both capital and revenue) be introduced, specifically covering critical areas like education, health, animal husbandry, water management, women empowerment, poverty alleviation and rural development.
- Even in cases where a company has its own trust or foundation, the deduction in respect of expenditure incurred for CSR activities should be allowed.
- Such expenses, however, should be subject to a limit say 5% of total income.

49. Carry forward of excess foreign tax credit

Assessees be permitted to carry forward (say for five years) such unutilised credit (in USA such relief is granted vide Section 904(c) of Federal Tax Act) for adjustment in future years.

50. Incentivising investments in respect of agricultural infrastructure

The tax incentives may take the following forms:

- deduction of proportionate profits for the total value of turnover arising from such computerised infrastructural facilities (in line with the provisions of Section 80IA read in conjunction with Section 80HHC) for purposes of simplification and avoidance of disputes.
- deduction of the total expenditure incurred, both capital and revenue, for creating such infrastructure (similar to the provisions of Section 35).

51. Age of Senior Citizen for Tax Benefit

To bring more clarity and equality in every section which deals with the senior citizens, 60 year age shall

apply uniformly in the Act and accordingly appropriate amendments may be made in the Act.

52. Gaps in electricity generations

Concessions or additional tax benefits may also be provided where a new building (resident/commercial/hotel etc) installs a solar energy devices & rain harvesting instruments.

53. Procedure for surrender of PAN

Procedure for surrender of PAN & exemption from filing of return of income in respect of Firms whose business discontinued, may be prescribed. With this, firms may be saved from penalty under Section 271F.

54. Differential Stamp duty charges being paid by CA's and Advocates on letter of authority for representing the client

In order to bring uniformity in Court fees for both Chartered Accountants & Advocates for their representing the client before Income-tax Authorities, Section 288 which provides "appearance by authorised representative" should be amended to provide for the fees to be charged for authorisation.

55. Book Profit tax (MAT) on Scientific Research Expenditure

In order to promote in-house R&D in India, the amount of weighted deduction under Section 35(2AB) may be allowed to be deducted while computing tax under 115JB.

56. Deduction for Employee Stock Option Cost

Necessary amendment may be made in Income-tax Act or circular should be issued by the CBDT to allow deduction for ESOP cost being employee remuneration cost.

IV. SUGGESTIONS RELATING TO RULES AND FORMS

1. Valuation of Sweat Equity under Rule 3(9)

Rule 3(9) should also be amended to enable an accountant to do valuation of sweat equity. Thus, Rule 3(9) may be re-worded as follows:

"for the purposes of Section 17(2)(vi) the fair market value of a specified security, not being equity shares in a company, on the date on which option is exercised by the employee, shall be such value as determined by a merchant banker OR AN ACCOUNTANT on the specified date."

2. Section 14A/ Rule 8D Disallowance

Rule 8D should either suitably modified or should be scrapped. In case the same has to be retained, it should be amended to provide that the amount of notional disallowance shall not exceed the income earned which is exempt from tax.

3. Depreciation on Computer

In order to clarify the intent and also to avoid further litigations, Note 7 of Appendix IA of the Income-tax Rules, 1956, may be further amended to provide that "computer" includes printers, scanners and other peripherals.

4. Section 40A(3)/Rule 6DD

Insertion of a clause on the lines of erstwhile clause (j) is

suggested in Section 40A(3) itself.

The following payments may be also prescribed as exempt under Rule 6DD:

- (a) payment of octroi at octroi posts;
- (b) payments to small transport operators, or drivers, towards freight;
- (c) payments at public auctions;
- (d) Payments made to public sector companies
- (e) Payments for acquisition of asset for the use in the specified business under Section 35AD which is allowable as a deduction.
- (f) Expenditure not exceeding ₹ 1,00,000 incurred by a resident while on tour outside India.
- (g) Payments made to hotel.
- (h) other payments where the nature of the transaction is such that it is to be ordinarily paid only in legal tender.

5. Form No.3CD

Clause 17(h) of the Form No.3CD may be re-worded as follows:

"amount debited to profit and loss account being amount inadmissible under Section 40A(3) and 40A(3A) read with rule 6DD and computation thereof"

6. Difficulty being faced in claiming deduction under Section - 35AD

A point C- Computation of Income from specified business be inserted in the Schedule BP, below point B- computation of Income from speculative business (as depicted in the detailed suggestion) which may be further linked to CFL schedule which takes data for carry forward of loss from specified business instead of point 2b.

7. Payment of Interest on External Commercial Borrowing (ECB) TDS Under Section 195

It is suggested to deal with the situation (as mentioned in the detailed suggestion) a separate clarification should either incorporate in the rules or in the section itself which will help the entities to overcome these types of difficulties.

8. Revision of Circular No. 715 dated 8-8-1995 and 716 dated 9-8-1995

In view of existing business conditions, Circular Nos. 715 dated 8-8-1995 and 716 dated 9-8-1995 be revised appropriately.

9. PAN Number for payments in Hotels/Restaurants

Clause(h) of Rule 114B may be continued but its applicability may be restricted to hotels and restaurants for only cash payments above ₹ 1,00,000/-.

10. ITR-6 - Difficulty being faced due to wrong calculation of tax payable

Necessary amendment may be made in the utility of ITR-6 so the assesses do not have to face undue hardship while filing their returns.

11. Rule 26 - Telegraphic transfer buying rate

The explanation presently appearing may be substituted by making a reference to the trading rate for that day as declared and available on the website of Reserve Bank of India. ■

Executive Summary of the Pre-Budget Memorandum-2012 (Indirect Taxes) submitted to the Ministry of Finance

I. SERVICE TAX

S. No.	Issue(s)	Justification(s)
1.		Import and Export of services
1.1	Import of Services – [Service received outside India and paid for by Indian Company]	Language of Section 66A of the Finance Act, 1994 may be modified to reflect the intention of the Statute and simultaneously a Circular clarifying the position may be issued.
1.2	Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import Rules)	It is suggested that Section 66A may be amended appropriately to provide a reference to the Rules to determine the circumstances when services will be deemed to be taxable in India.
2.		Taxable services
2.1	Annual Maintenance Contracts	It is suggested that appropriate abatement (70%) be provided in case of annual maintenance contracts to take care of value of parts, consumables, accessories, etc. included in the value of services.
2.2	Segregation of manpower recruitment services and supply of manpower services	The taxable services of manpower recruitment and manpower supply may be segregated in two separate categories as it is more appropriate to classify manpower recruitment in Rule 3(iii) and manpower supply in Rule 3(ii) of the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006. Similar approach may also be adopted in case of Export of Services Rules, 2005.
2.3	Service tax on renting of immovable property	It is suggested that to avoid multiplicity of levy and reduce the tax burden, appropriate abatement be granted in determining taxable value in relation to this category of service.
2.4	Works contract services	- It is suggested that all types of contracts which are taxed as works contracts under VAT be brought in the category of "works contract service". - Alternatively, benefit of composition scheme be made available to all works contracts classified as such under VAT laws irrespective of its classification under service tax law.
2.5	Works Contract Composition (WCC) scheme	Rate of service tax under WCC Scheme be reduced from 4% to 3%.
2.6	Commercial and industrial construction services/Works contract services/Management, maintenance or repairs services	- Instead of specifically listing few infrastructure projects which are exempted for the purpose of levy of service tax, it could be provided that the notified categories of infrastructure projects would be excluded from the purview of service tax. - Alternatively, infrastructure projects may be treated in the similar manner like that of exports, i.e., they may be nil rated and tax on input services may be refunded. - Power sector needs to be included in the list of specified infrastructure projects that are not liable to service tax. - Maintenance and repair of infrastructure also needs to be excluded from the scope of service tax levy. - There is need to clarify as to whether "Metro" is covered in the meaning of the term "railway".
2.7	Practising Chartered Accountants <i>vis a vis</i> legal professionals	- It is suggested that in line with the legal services, individual Chartered Accountants be also exempted when providing professional services to individual service receivers. - Further, the <i>status-quo</i> by continuing the exemption which was hitherto available to Chartered Accountants for representational services <i>Notification 25/2006 ST dated 13-7-2006</i> be restored till such time as the matter is finally decided.
2.8	Short-term Accommodation	- It is suggested that the levy be restricted to accommodation with actual amount of receipt exceeding ₹3,000 per day so that small hotels which are yet finding their way to survival do not face difficulties. - Abatement be increased to 75% instead of 50% in the initial years. - Further, a clarification be provided in respect of taxability of lump sum amount received by Hotels from customers for blocking rooms exclusively for them irrespective of whether they occupy it or not.

S. No.	Issue(s)	Justification(s)
2.9	Double taxation <i>vis-a-vis</i> VAT	■ Section 67 of the Finance Act, 1944 be amended to provide that "value of taxable service for the purpose of service tax" shall exclude value of "sales"/"deemed sales" which has been subjected to VAT under law of any State Government/Union Territory. ■ State VAT Legislations may specifically provide that, value on which VAT is payable, should exclude that part of the value on which service tax is paid under the Finance Act, 1994.
3.	Service Tax (Determination of Value) Rules, 2006 [Valuation Rules]	
3.1	Exclusion of statutory taxes/levies.	■ It be clearly provided in the Valuation Rules that, all statutory taxes/levies charged in terms of any local/State/Central or other Statutes, be excluded from the value of taxable services subject to the condition that the same is shown separately in the invoice issued by a service provider.
3.2	Reimbursable expenditure/common expenses– Practical difficulties	■ The definition of pure agent be simplified and modified to exclude the lines pertaining to "title of goods" and similar other requirements which are difficult to satisfy in practice. ■ Appropriate mechanism be worked out/clarification be provided so that the benefit of input tax credit is not lost when the service provider seeks reimbursement of expenses incurred on account of the service recipient. ■ In relation to sharing of common expenses, it needs to be clarified as to whether and if so, how, service tax is to be applied.
4.	Procedural and other matters	
4.1	Service tax payable under reverse charge by service recipient in respect of service providers providing services from within India	■ Option be provided to the service provider to pay service tax. ■ Alternatively, appropriate mechanism be developed whereby the benefit of basic exemption limit is available to the small service provider under reverse charge basis. ■ It be clarified that the insurance company/recipient of the service is required to discharge service tax on its own and the same is not required to be deducted while making payment of commission to the service provider.
4.2	Registration – Practical difficulties	■ Registration requirements be specified in the Rules itself. Alternatively, department may issue detailed guidelines for the sake of uniformity. ■ If grant of centralised registration is delayed, provisional registration may be granted, to facilitate payment of service tax, pending grant of final registration.
4.3	Registration as a service receiver, even for single transaction	■ The concept of casual registration on the lines of VAT laws at State level be introduced in service tax law.
4.4	Self-adjustment of excess service tax	■ In view of the fact that chances of errors or omissions have increased manifold in e-payment of service tax, it is suggested that <i>suo moto</i> adjustments of excess amount paid towards service tax liability be allowed without any limit in case of assessee not having centralised registration also.
4.5	GAR - 7	■ It is suggested that GAR-7 may also include the details relating to category of service, period for which service tax is deposited and name of the assessee so as to make it more useful and user-friendly.
4.6	Carry forward of excess service tax actually paid in Form ST-3	■ It is suggested to incorporate a worksheet for computing the excess service tax paid which can be adjusted in the subsequent period in Form ST-3 itself.
4.7	Revision of returns	■ The time limit for revision of returns may be extended to seven months from the end of the financial year as accounts under the Companies Act, 1956 are required to be audited and finalised within six months from the end of the year and period of additional one month would thus be available for revision of returns.
4.8	Online Filing of Service Tax Returns	■ It is suggested that appropriate measures be taken to remedy the various problems faced by the assessee during on-line filing of service tax returns.
4.9	Issue of show cause notice for recovery of service tax	■ A minimum limit of ₹ 1,00,000 for service tax escaping assessment be prescribed for the purpose of proviso to Section 73(1).

S. No.	Issue(s)	Justification(s)
4.10	Time limit for adjudication	- It is suggested that a time limit for completion of adjudication be prescribed in the provisions of Section 73. - The adjudication be not handled by the Officer who has issued the Show Cause Notice.
4.11	Recording of statement	- As far as possible, recording of statements should be avoided and assesses should be asked to submit specific responses to the specific questions of the Department. - In case, the statement is required to be recorded, a copy of the same, duly signed by both the tax payer and the Officer recording the statement, may be provided to the tax payer immediately after the recording the statement. Very often, the statements are written in hand and then typed. The use of computer systems can speed up the process. The statement recorded can be immediately printed, signed and handed over to the assessee.
4.12	Search of premises	It is suggested that in order to avoid vexatious searches, the reasons for conducting the search may be recorded in writing. This will also be in line with income-tax provisions.
4.13	Stay by CESTAT	Though CESTAT has power to extend the stay again, it is a cumbersome and taxing process, on part of the assessee as the department presses for recovery. Further the delay may not be due to the fault of assessee. Hence, the limitation period either be removed or at least extended to one year.
4.14	Settlement Commission for service tax	Provisions for Settlement Commission be introduced in the service tax law.
4.15	Powers under Section 14 of the Central Excise Act, 1944	It is suggested that Section 14 be suitably amended to so as to stop the misuse of the powers provided therein.
4.16	Audit report for the assessee/ Introduction of assessment procedures	- The audit report under Excise Audit 2000 or any other scheme be a complete speaking report which may be provided to the assessee to: - take corrective actions - to ensure that audit is done upto a particular period. - A time limit may be provided for completion of order of audit. - Further, the books of the assessee can be called for scrutiny at the Central Excise Office itself instead of doing the audit at assessee's premises as such a system creates interference with the normal business of the assessee. This would also stop the corruption and undesired nexus between taxman and tax payer. - On a broader note, assessment procedures may be introduced in service tax law as they prevail in other tax laws, like VAT, Income-tax. This would ensure that returns attain finality as also would fix accountability on the department side.
4.17	Tax Audit Report in service tax	In order to streamline the process with all VAT laws, it is suggested that the submission of audit report be made mandatory in service tax also along with audited annual accounts.
4.18	Treatment of transfer pricing adjustments	It is suggested that appropriate provisions be made to deal with transfer pricing in relation to service tax.
4.19	Certification under Section 66A in line with income tax – overseas payments	It is suggested that a declaration and certification by a Chartered Accountant with respect to liability of service tax on payment made outside India be prescribed in service tax law in line with income-tax provisions. This could be verified by the bankers while effecting payment to overseas service provider.
4.20	Penalty for delay in filing returns	- Penalty is levied only when the defaulter of tax is a repetitive defaulter. However, a person is liable to pay the penalty for delayed filing of returns even when there are just and sufficient reasons for the delay penalty. The provisions be modified to grant relief when delay is due to justifiable reasons. - The maximum penalty may be levied when there is delay in both payment of tax and submission of returns. In other cases, the existing penal provisions be continued. - The penalty/late fee be restricted to the amount of tax involved.

S. No.	Issue(s)	Justification(s)
4.21	Prosecution	■ Prosecution provisions ought to apply only in exceptional cases and must include mens rea as also have a minimum threshold over which only such proceedings would be taken. Also, provisions for compounding as is available under other laws be introduced. ■ Power to issue search warrant under Section 82 may be given to Joint Commissioner with the prior approval of Commissioner/Chief Commissioner with the reasons in writing.
4.22	Interest on delayed payment of tax	■ The interest rate of 18% be reduced and brought in line with the income-tax provisions (12%).

II. CENVAT CREDIT RULES, 2004 (CCR, 2004)

S. No.	Issue(s)	Justification(s)																					
1.	Definitions of Capital Goods, Inputs and Input services	■ Taxes paid on all inputs, capital goods and input services used wholly and exclusively for the purpose of business be allowed as input tax credit and there should be no artificial restriction or exclusions in relation to such input tax credit. ■ Alternatively, capital goods credit for motor vehicles in respect of at least the following services may be allowed under Rule 2(a)(B): <table border="1"> <thead> <tr> <th>Service category</th><th>Clause of Section 65(105)</th><th>Justification</th></tr> </thead> <tbody> <tr> <td>Carrying and forwarding services</td><td>(j)</td><td>Distribution main part of job</td></tr> <tr> <td>Broadcasting</td><td>(zk)</td><td>Mobile Vans</td></tr> <tr> <td>Construction related</td><td>(zzq), (zzzh), (zzzza), (zzza)</td><td>Already available for commercial construction</td></tr> <tr> <td>Erection</td><td>(zzza)</td><td>Available for construction - major cost is moving materials</td></tr> <tr> <td>Dredging</td><td>(zzzb)</td><td>Vehicles required to move the dredged material – major cost</td></tr> <tr> <td>Supply of tangible goods</td><td>(zzzz)</td><td>The same asset provided along with driver</td></tr> </tbody> </table>	Service category	Clause of Section 65(105)	Justification	Carrying and forwarding services	(j)	Distribution main part of job	Broadcasting	(zk)	Mobile Vans	Construction related	(zzq), (zzzh), (zzzza), (zzza)	Already available for commercial construction	Erection	(zzza)	Available for construction - major cost is moving materials	Dredging	(zzzb)	Vehicles required to move the dredged material – major cost	Supply of tangible goods	(zzzz)	The same asset provided along with driver
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2.	CENVAT credit on High Speed Diesel (HSD) and Light Diesel Oil (LDO)	■ It is suggested that HSD and LDO should also be made as eligible inputs for the purpose of availing CENVAT credit.																					
3.	Inputs removed as such to EOUs and SEZs	■ It is suggested that appropriate amendment be made to exempt manufacturers clearing inputs/capital goods as such to EOUs and SEZs from the requirement of reversal of such credit.																					
4.	CENVAT credit against Renting of Immovable Property	■ Definition of input service covers the input services in relation to modernisation, renovation, repairs of a premises of a service provider and accordingly, it may be clarified that service tax and CENVAT paid for such services is available as input credit. ■ Further, the fact that significant amount of CENVAT and service tax is incurred in constructing the property, a suitable abatement may also be provided in respect of rental service. ■ Alternatively, deemed credit towards service tax and CENVAT actually paid or at a specified percentage be allowed against rental service.																					
5.	CENVAT credit of service tax paid on advance payment received	■ It is suggested that on principle of equity and natural justice, credit may be allowed in respect of service tax paid on advance payments received for provision of services and the issue be appropriately clarified by the Department at the earliest to avoid litigation in this regard.																					
6.	CENVAT credit of 4% additional duty levied under Section 3(5) of the Customs Tariff Act, 1985 (CTA) for service providers	■ Service providers also be permitted to avail the benefit of CENVAT credit in respect of 4% additional duty levied under Section 3(5) of Customs Tariff Act, 1985.																					
7.	100% CENVAT credit on capital goods in the year of receipt	■ The CENVAT Credit Rules be suitably amended to extend 100% CENVAT credit on capital goods as well at par with inputs.																					

S. No.	Issue(s)	Justification(s)
8.	Transfer of CENVAT credit from one unit to other unit	■ The Rules be amended appropriately to provide for the transfer of credit from one unit to another unit of the same assessee.
9.	CENVAT credit on sale-in-transit transaction	■ It is suggested that the CENVAT Credit Rules, 2004 be amended to the effect that credit can be availed on endorsed documents of title to goods in case of sale-in-transit transactions. Alternatively, appropriate mechanism to allow credit be worked out to address this issue.
10.	CENVAT credit on imports through courier	■ As duty has been paid an appropriate provision may be inserted in the CENVAT Credit Rules to avail the CENVAT credit based on certified copies of such Bill of Entry. Alternatively, a mechanism of casual registration may be introduced in the excise law so that the courier agent may register as first stage dealer and get entitled to pass on the credit.
11.	CENVAT credit on endorsed Bill of Entry	■ It is suggested that Bill of Entry duly endorsed by non-registered traders also be considered as an eligible document for the purpose of availing CENVAT credit when the material is sent to the registered manufacturer for the purpose of conversion of material on job work basis. Alternatively, a simplified mechanism for registration of such casual persons be worked out.
12.	CENVAT credit of service tax in case of pass through transactions	■ It is suggested that where service tax is paid on reimbursable expenses or on pass through transactions credit be allowed to the person who bears such expenses on the basis of a debit note provided by the agent mentioning the value of input service and the service tax paid thereon by the agent on behalf of the principal.
13.	Interest on wrongful availment of CENVAT credit	■ It is suggested that the rules be amended so as to do away with the interest liability on wrongful availment of credit. Interest be only levied when such credit is utilised.
14.	CENVAT credit for job worker	■ It is suggested that appropriate clarification may be issued for extending credit to the job workers.
15.	Filing of separate CENVAT credit return	■ It is suggested that the requirement of filing the service tax credit return under CENVAT Credit Rules, 2004 may be dispensed with.
16.	Writing-off of CENVAT credit	■ Reversal of credit in proportion to the value being written off be made in case of partial write-offs.

III. CENTRAL EXCISE DUTY

S. No.	Issue(s)	Justification(s)
1.	Online E-filing of weekly information by major duty paying unit	■ When the assessee are submitting monthly return regularly, filing weekly information does not serve any purpose and has no duty implications. Many times the assessee are compelled to establish a separate department for this purpose at a cost. It is suggested that such a system be done away with.
2.	Audit Procedures	■ It is suggested that such demands be not made from the assessee. The audit parties be instructed to verify the data at the assessee's premises and seek hard copies of only very relevant data which is required for their records.
3.	Exemption/CENVAT credit to all excisable goods used for research & development (R&D)	■ Considering the potential in earning foreign exchange, to reduce research cost, CENVAT credit on capital goods deployed for R&D activity installed within the factory premises or outside factory premises be allowed. ■ Mechanism be prescribed for availment of CENVAT credit in cases where R&D units are located outside the factory of a manufacturer.
4.	Education Cess (EC) and Secondary and Higher Education Cess (SHEC)	■ EC and SHEC be subsumed in the excise duty.
5.	Benefit of Notification No.108/95 CE and 6/2006 CE to sub contractors	■ In order to avoid ambiguity in law and divergent practices being followed, it is suggested that the benefit of notification be provided to the subcontractors as well.

IV. CUSTOMS DUTY

S. No.	Issue(s)	Justification(s)
1.	Provisional assessment for duty free exports	■ It is suggested that provisional assessment be allowed on duty free exports also.
2.	Amendment in provisions relating to Safeguard Duty	■ The provisions relating to safeguard duty be re-examined and amended to incorporate the views of users of such products and a mechanism be established to take views of domestic users and exporters of such products.
3.	Penalties	■ It is suggested that penalties be substantially reduced.
4.	Interest free warehousing period for imported goods	■ Warehoused goods may be allowed to be kept in-bond for a period of at least 6 months without payment of interest.
5.	CVD on the import of goods on which 1% duty is imposed under central excise	■ Clarification may be issued that the imported goods would be assessed extending 1% countervailing duty benefit in terms of <i>Notification No. 1/2011 CE</i> .

V. CENTRAL SALES TAX

S. No.	Issue(s)	Justification(s)
1.	'C' Form for construction activities	■ The definition of the goods given in Section 8(3) of CST Act be amended to include the goods purchased by the dealer for construction of plant & machinery to manufacture goods as also goods purchased for construction activities which itself constitutes works contract and attracts CST.
2.	Structures, Installations in High Seas	■ It is suggested that CST law be made applicable to such areas as well.
3.	CST Rate	■ CST rate be reduced further.

VI. MISCELLANEOUS

S. No.	Issue(s)	Justification(s)
1.	Disparity between interest payable by assessee and Department under central excise, service tax and customs	■ The rate for both be made uniform.
2.	Chartered Accountancy Professionals in tax policy making body	■ It is suggested that the tax policy making body include a few professionals drawn from the Chartered Accountancy profession. Their contribution would be extremely useful when GST is implemented in India.
3.	Training of Departmental Personnel	■ A comprehensive training covering all the substantive and procedural aspects of the law be scheduled for the officers at all levels.
4.	De-linking of tax policymaking and tax administration	■ There is an urgent need to ensure that there is a clear divide between the tax policy making and the tax administration.
5.	Retrospective amendments	■ Retrospective amendments rectifying past drafting errors or adverse judicial decisions be avoided.
6.	Accountability of tax collectors	■ In order to project a sense of even-handedness in dealing with tax payers, provisions relating to accountability need to be introduced and not be formulated independently.
7.	Appeals to High Court	■ The practice of going on appeal to the High Court quite routinely requires a review.
8.	Supplies to SEZ	■ The time limit for getting the confirmation of receipt of goods by a SEZ from the concerned authority be enhanced from 45 days to at least 60 days.

CROSS WORD

067

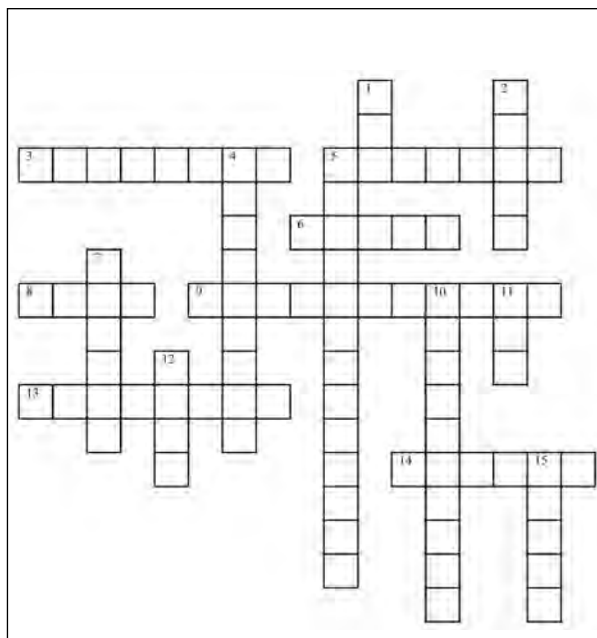
ACROSS

3. Audits conducted under sections 44AD, 44AE and 44AF of the Income-tax Act, 1961 shall not be taken into account for the purpose of reckoning the specified number of _____ assignments. (3,5)
5. Engagement letter generally include reference to _____ unrestricted access to _____ in connection with the audit. (7)
6. The CBEC has introduced the scheme of _____ at premises of importers and exporters.
8. A written instrument. (4)
9. The concept of _____ recognises that some matters, either individually or in the aggregate, are relatively important for true and fair presentation of financial information in conformity with recognised accounting policies and practices. (11)
13. One of the areas that needs to be focused to increase the value of a Business. (4,4)
14. ICAI has recently signed an MoU with the University of _____. (6)

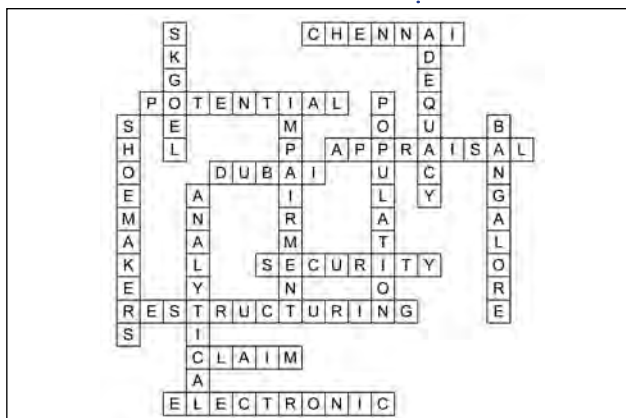
DOWN

1. The price paid for the services. (3)
2. A practicing member can share profits with the _____ of his deceased partner. (5)
4. Growing _____ and interest rates are hampering the economic growth. (9)
5. A programme that is planned and controlled by management and materially changes the scope of a business undertaken by an enterprise is called _____. (13)

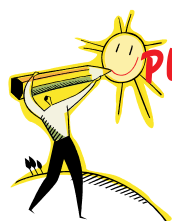
7. The auditor can _____ his audit report in the situations and circumstances mentioned in the 'Guidance Note on Revision of the Audit Report'. (6)
10. _____ means a lawsuit or legal action including all proceedings therein. (10)
11. The CBDT has released the discussion paper on _____ for feedback.
12. ICAI is the founding member of this accounting body.
15. Recently, e-learning course on Standards on _____ was started by the ICAI. (5)



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 066



1 Raman: I haven't slept all night in the train. Friend: Why?

Raman: Got upper berth and I am not comfortable on it.

Friend: Why didn't you exchange with someone else?

Raman: Because, there was nobody to exchange in the lower berth.

2 A man was standing in front of the mirror with his eyes closed. Wife: What you are doing?

Man: I am seeing how I look while sleeping.